

Answers to Bidder's Questions
Bradband GTR-1/2009
Issued On: 5th October 2009

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| 1 | Request for Application to Provide USF Services (RFA) | 20.1 | Please confirm if the USF subsidy is also available on Customer Premises Equipment (CPE). | We can confirm that Applicants are not prohibited from calculating cost of CPE in their financial proposal and clarify that USF Subsidy would be one time and lump sum based on the lowest bid |
| 2 | Request for Application to Provide USF Services (RFA) | 22 | We recommend that instead of seeking prior approval of USF, intimation of change, if any, in the ownership of the Service Provider should be sufficient as understandably USFCO is not the concerned Authority for such approvals. In any case, Article 16.05 of the SSA binds each Party's successors, legal representatives and permitted assigns which should counter USFCO's concern regarding adverse effects, if any, on performance of contract due to change of ownership. | Approval is necessary to ensure replacement of Bank Guarantee and Letter of Lien. It is also necessary to put new owner on notice regarding company's obligations towards USFCo. |
| 3 | Request for Application to Provide USF Services (RFA) | 24 | Term "certain failures" needs to be elaborated with specific reference to such failures. | Please refer to Article 13 of SSA |
| 4 | Request for Application to Provide USF Services (RFA) | 26 | Article 26 of RFA is inconsistent with Article 8.01(b) of SSA. Article 26 on one hand provides that Technical Auditor may be an appropriately qualified employee of USFCo and/or expert consultant and Article 8.01(b) of SSA on the other hand provides that the Technical Auditor will be an external consultant. Since the Technical Auditor has a vital role in this project, therefore, we recommend that he is appointed with mutual consent and must not be an employee of the USFCo to ensure impartiality | Article 26 of RFA is consistent with Article 8.01(b) of SSA. Article 8.01(b) of SSA provides that the technical auditor may be an external consultant. |
| 5 | Request for Application to Provide USF Services (RFA) | 39.4(d) | This clause is un-reasonable as USFCo may be partially/fully responsible in the failure between both parties to successfully conclude the final negotiations and execute the Services and Subsidy Agreement. The clause may be amended as following: "If the USF service provider proposed by the Successful Applicant is solely responsible for failing to execute the USF Services and Subsidy Agreement within 15 days of concluding final negotiations with USFCo, or fails to engage in final negotiations of the USF Services and Subsidy Agreement". | Existing language sufficiently covers the issues raised. |
| 6 | Request for Application to Provide USF Services (RFA) | 33.4 | The changes agreed by USFCo in the pre-proposal meeting and responses to the bidders' queries should be classified as changes in the RFA and SSA documents. (including associated annexure and schedules) | Existing language is saying the same thing with more clarity that not all clarifications may qualify to become amendments and if there are amendment USFCo will re-issue RFA documents |
| 7 | Request for Application to Provide USF Services (RFA) | 48.4(a) | Are bidders allowed to bid for selective Areas within the USF Areas? Please elaborate. | A district is considered a USF Area, within a district the bidders may select any number of towns and broadband connections per town. All bidders must offer bid for all areas and not just selective areas. |
| 8 | Request for Application to Provide USF Services (RFA) | 48.5(b) | Sections 42 and 43 should both be referred in this sub-clause. | Both are referred in the said sub clause. |

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| 9 | Request for Application to Provide USF Services (RFA) | 51.2. | In case the proposal of the original lowest bidder is rejected, Service provider proposed by the Qualified Applicant that proposed the next lowest USF subsidy SHOULD BE declared the First Successful Applicant as per clause 48.4(a) of the RFA. | This is covered in 53.2(c) |
| 10 | Request for Application to Provide USF Services (RFA) | 53.4 | This contract negotiation period should be 30 days (instead of 20) as in earlier bids. | 20 days is a reasonable period as only guarantee is to be arranged as per clause 54. There will not be a material change in SSA at that stage. |
| 11 | Request for Application to Provide USF Services (RFA) | 53.2.c | Would the other bidders then match the next lowest subsidy bid? | The subsequent bidders will be offered to match the next lowest bid. This is in accordance with the Amended USF Rule(9). |
| 12 | Request for Application to Provide USF Services (RFA) | 61.2 | Annex 7 should be referred to instead of Annex 5 in this clause. | It is referring to Annex 7 |
| 13 | Draft Services and Subsidy Agreement (SSA) | 3.02 | We recommend that instead of seeking prior approval of USF, intimation of change, if any, in the ownership of the Service Provider should be sufficient as understandably USFCO is not the concerned Authority for such approvals. | Approval is necessary to ensure replacement of Bank Guarantee and Letter of Lien. It is also necessary to put new owner on notice regarding company's obligations towards USFCo. |
| 14 | Draft Services and Subsidy Agreement (SSA) | 4.01.a | We maintain that the penalties need to be made more reasonable and in line with the extent of work left outstanding at the time of completion of the Final Implementation date. Details regarding the penalties should be mutually agreed between USFCo and the USF Service Provider in the USF Services and Subsidy Agreement. Moreover, what would happen if the issuance of Force Majeure Certification is delayed on part of the Technical Auditor as the same should not then amount to failure of performance and imposition of penalties? | All remedies are reasonable, however there would be no exercise of the remedies while any dispute resolution process was pending. This clause is consistent with Rural Telecom RFA so no change is required. Failure of TA can not possibly be attributed to USF Service Provider. |
| 15 | Draft Services and Subsidy Agreement (SSA) | 4.01.a.i | We maintain that the penalties need to be made more reasonable and in line with the extent of work left outstanding at the time of completion of the Final Implementation date. Details regarding the penalties should be mutually agreed between USFCo and the USF Service Provider in the USF Services and Subsidy Agreement. Moreover, what would happen if the issuance of Force Majeure Certification is delayed on part of the Technical Auditor as the same should not then amount to failure of performance and imposition of penalties? | All remedies are reasonable, however there would be no exercise of the remedies while any dispute resolution process is pending. This clause is consistent with Rural Telecom RFA so no change is required. Failure of TA can not possibly be attributed to USF Service Provider. |
| 16 | Draft Services and Subsidy Agreement (SSA) | 4.01.a.ii | We maintain that the penalties need to be made more reasonable and in line with the extent of work left outstanding at the time of completion of the Final Implementation date. Details regarding the penalties should be mutually agreed between USFCo and the USF Service Provider in the USF Services and Subsidy Agreement. Moreover, what would happen if the issuance of Force Majeure Certification is delayed on part of the Technical Auditor as the same should not then amount to failure of performance and imposition of penalties? | All remedies are reasonable, however there would be no exercise of the remedies while any dispute resolution process was pending. This clause is consistent with Rural Telecom RFA so no change is required. Failure of TA can not possibly be attributed to USF Service Provider. |

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| 17 | Draft Services and Subsidy Agreement (SSA) | 4.01.a.iv | We maintain that the penalties need to be made more reasonable and in line with the extent of work left outstanding at the time of completion of the Final Implementation date. Details regarding the penalties should be mutually agreed between USFCo and the USF Service Provider in the USF Services and Subsidy Agreement. Moreover, what would happen if the issuance of Force Majeure Certification is delayed on part of the Technical Auditor as the same should not then amount to failure of performance and imposition of penalties? | All remedies are reasonable, however there would be no exercise of the remedies while any dispute resolution process was pending. This clause is consistent with Rural Telecom RFA so no change is required. Failure of TA can not possibly be attributed to USF Service Provider. |
| 18 | Draft Services and Subsidy Agreement (SSA) | 4.01.b | We maintain that the penalties need to be made more reasonable and in line with the extent of work left outstanding at the time of completion of the Final Implementation date. Details regarding the penalties should be mutually agreed between USFCo and the USF Service Provider in the USF Services and Subsidy Agreement. Moreover, what would happen if the issuance of Force Majeure Certification is delayed on part of the Technical Auditor as the same should not then amount to failure of performance and imposition of penalties? | All remedies are reasonable, however there would be no exercise of the remedies while any dispute resolution process was pending. This clause is consistent with Rural Telecom RFA so no change is required. Failure of TA can not possibly be attributed to USF Service Provider. |
| 19 | Draft Services and Subsidy Agreement (SSA) | 4.02.a | We maintain that the penalties need to be made more reasonable and in line with the nature and the extent (deviation from the acceptable value) of the QoS parameter(s) which is/are not met. Details regarding the penalties imposed for not meeting these parameters should be mutually agreed between USFCo and USF Service Provider in the USF Services and Subsidy Agreement. | All remedies are reasonable, however there would be no exercise of the remedies while any dispute resolution process is pending. All QoS parameters are technology neutral and are minimum / limiting values. These parameter are obtained from CVAS licenses issued by PTA, and are reasonable enough, further deviation from these parameters would mean degraded service / no service. |
| 20 | Draft Services and Subsidy Agreement (SSA) | 4.02.a.i | We maintain that the penalties need to be made more reasonable and in line with the nature and the extent (deviation from the acceptable value) of the QoS parameter(s) which is/are not met. Details regarding the penalties imposed for not meeting these parameters should be mutually agreed between USFCo and USF Service Provider in the USF Services and Subsidy Agreement | All remedies are reasonable, however there would be no exercise of the remedies while any dispute resolution process is pending. All QoS parameters are technology neutral and are minimum / limiting values. These parameter are obtained from CVAS licenses issued by PTA, and are reasonable enough, further deviation from these parameters would mean degraded service / no service. |
| 21 | Draft Services and Subsidy Agreement (SSA) | 4.02.a.ii | We maintain that the penalties need to be made more reasonable and in line with the nature and the extent (deviation from the acceptable value) of the QoS parameter(s) which is/are not met. Details regarding the penalties imposed for not meeting these parameters should be mutually agreed between USFCo and USF Service Provider in the USF Services and Subsidy Agreement | All remedies are reasonable, however there would be no exercise of the remedies while any dispute resolution process is pending. All QoS parameters are technology neutral and are minimum / limiting values. These parameter are obtained from CVAS licenses issued by PTA, and are reasonable enough, further deviation from these parameters would mean degraded service / no service. |

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| 22 | Draft Services and Subsidy Agreement (SSA) | 4.02.a.iv | We maintain that the penalties need to be made more reasonable and in line with the nature and the extent (deviation from the acceptable value) of the QoS parameter(s) which is/are not met. Details regarding the penalties imposed for not meeting these parameters should be mutually agreed between USFCo and USF Service Provider in the USF Services and Subsidy Agreement. | All remedies are reasonable, however there would be no exercise of the remedies while any dispute resolution process is pending. All QoS parameters are technology neutral and are minimum / limiting values. These parameter are obtained from CVAS licenses issued by PTA, and are reasonable enough, further deviation from these parameters would mean degraded service / no service. |
| 23 | Draft Services and Subsidy Agreement (SSA) | 4.03 | Same as those above for Articles 4.01a and 4.02 above. | Same as above |
| 24 | Draft Services and Subsidy Agreement (SSA) | 8.01.a. | Technical Auditor, mutually agreed between USFCo and the USF Service Provider(s), should be appointed within 60 days of the Effective date (as in previous USF bids) and not within 90 days. | 90 days is a safe period as USFCo might have to go through a tender process. Desires of USF Service Provider may be considered but making consent mandatory may cause deadlock. |
| 25 | Draft Services and Subsidy Agreement (SSA) | 8.01.e. | The replacement or reappointment of Technical Auditor should also be in consultation with USF Service Provider. | The same process which has been provided for the appointment of a TA will be applied in case of any replacement of TA. |
| 26 | Draft Services and Subsidy Agreement (SSA) | 8.03.a | A formal request has to be made for access to Mobilink sites upon which an appointed personnel will accompany the Auditor to the location. | This will be addressed in the a separate document i.e. Agreement with Technical Auditor. However such formalities should be avoided to save time. |
| 27 | Draft Services and Subsidy Agreement (SSA) | 9.01.iii | Number of subscribers registered in the USF Service provider's AAA server should be adequate rather than providing copies of Registration forms of the customers. (which may contain customer personal data confidentiality clauses). | Its 9.01 III. This requirement is on-demand and not a routine requirement. The objective is to have access to such information, if a cross-check is necessitated, hence this clause will be kept. |
| 28 | Draft Services and Subsidy Agreement (SSA) | 12.01.a | Third Party indemnifications by USF Service Provider cannot be assured in favor of USFCO. Indemnity is to be provided by both parties and it is not standard to have one sided indemnity. | It's a standard clause coming from rural telecom project. Third party indemnification is effective if it is relevant to acts of USF service Provider or his services. USFCo would not be doing anything which requires indemnification for USF Service Provider. |
| 29 | Draft Services and Subsidy Agreement (SSA) | 12.01.b | This would be applicable only when the contents of Article 12.01 are agreed upon. | Based on Answer 28, this clause will be kept |
| 30 | Draft Services and Subsidy Agreement (SSA) | 13.04.a | Force Majeure time lines would not be under the control of the Service Provider, therefore, obligations, if any, arising as a result of such force majeure should be shared by both the Service Provider and the USFCO. Moreover, how can a Force Majeure be treated as a material breach leading to termination, in the sole discretion of USFCO? | This is for the purpose of ending a contract where force majeure event prolongs up to six month. There has to be a cut off date. Treating it material breach is only for the purpose of terminating the agreement but no other consequence of material breach would follow. |
| 31 | Draft Services and Subsidy Agreement (SSA) | 13.04.b | Force Majeure time lines would not be under the control of the Service Provider, therefore, obligations, if any, arising as a result of such force majeure should be shared by both the Service Provider and the USFCO. | USFCo has nothing to share except requiring TA report and waiting for up to six months. |

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| 32 | Draft Services and Subsidy Agreement (SSA) | 15.02.a.i | Re-organization of a Service Provider should not lead to termination. Thirty (30) days may be a short time to remedy default; therefore, the same may be extended to ninety (90) days. USFCo's discretion to terminate the Contract may be acceptable to the extent where a Receiver is appointed for the winding up purposes, however, including reference to re-organization and arrangement or composition of a company in the same context is uncalled for and, therefore, recommended to be deleted. | Article 15.02 (a)(i) deals with a situation where a custodian or receiver or receiver and manager or any other official with similar powers has been appointed for the USF Service Provider or for the substantial portion of its properties or assets. In that case, the article provides that if such appointment has not been dismissed or discharged within 30 days thereof, the USFCo may terminate the agreement. We think that 30 days is not short period evidently because those aggrieved with the appointment order would not lose any time to go to the court to get the appointment dismissed or discharged. |
| 33 | Draft Services and Subsidy Agreement (SSA) | 15.02.a.ii | We maintain that 30 days is a short period to remedy default where court proceedings are involved. Despite best efforts by a party, court proceedings take longer and decisions are given in due course of time therefore, the same may be extended to ninety (90) days. | With regard to Article 15.02 (a)(ii) of the SSA, USFCo is of the view that the period of 30 days is not "short period", because the aggrieved party should, without any loss of time, get the petition dismissed or discharged. |
| 34 | Draft Services and Subsidy Agreement (SSA) | 15.02(b) | Re-organization of a Service Provider should not lead to termination. Sixty (60) days may be a short time to remedy default, therefore, the same may be extended to ninety (90) days | No change is necessary |
| 35 | Draft Services and Subsidy Agreement (SSA) | 15.04(b) | As per Article 15.03(a) of the draft SSA, USF Service Provider would be entitled to terminate the Agreement in case of material default by USFCO. However, upon such termination the USF Service Provider is only entitled to subsidy payments for Project Implementation Milestones achieved prior to effective date of termination. This seems unfair – considering that the USF Service Provider would have entered upon the project on the basis that full subsidy would be provided, and this should not therefore be denied to the USF Service Provider where termination is on account of material default by USFCO itself. It would be reasonable to require full subsidy in this case. | This clause give equal rights to both parties. USF Service Provider can ignore material breach committed by USFCo if it wants to continue with the agreement. |
| 36 | Draft Services and Subsidy Agreement (SSA) | 16.01.b | Twenty four (24) hours notice for appointment of Auditors may be extended to at least seven (7) days. | The time of 24 hours is the same time as in rural telecom project, already tested during the RTeS Projects, and hence kept the same |
| 37 | Draft Services and Subsidy Agreement (SSA) | 16.02 | Article 16.02 provides that time is the essence of the contract. It may be noted that under Section 55 of the Contract Act, 1872 inclusion of this clause means that failure to meet specified time lines provided for in the contract would render the same voidable at the option of the promise. We understand that usually timelines may not be followed between the parties strictly for several unavoidable reasons. Therefore, the inclusion of such provision would not be in the best interest of the parties concerned and may accordingly be deleted. | Timelines must be followed. |
| 38 | Schedule "A" to the draft SSA | 5 | It seems that these QoS parameters are specific for wire-line broadband access and their compliance may not be possible in wireless broadband networks. Therefore, please re-define these parameters to accommodate wireless broadband access networks. | All QoS parameters are technology neutral and are obtained from CVAS licenses issued by PTA. USF will follow PTA's QoS parameters |

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| 39 | Schedule "D" to the draft SSA | 3 | As in case of the earlier USF bids, there should be no time restriction on USF Services provider to achieve the first project milestone. Moreover, the time frame for the completion of all four milestones should be no less than 12 months. | USFCo has to obligate USF Service Provider to show commitment to the project right from the beginning. The timeframe is 18 months. |
| 40 | Schedule "D" to the draft SSA | 5 | The Technical Auditor must certify in writing within 15 days (as per earlier bids) instead of 45 days, of the Receipt of Project Implementation Milestone notice whether or not the Milestone has been achieved. | Its clause 5 not 6, 15 days is too less a time for the TA to complete his work, the 45 days time is kept |
| 41 | Schedule "E" to the draft SSA | 1.a.i. | This sub-clause should be amended as: "failure by USF Service Provider" to meet the Final Implementation Date identified in paragraph 3 of Schedule "D". | There is no difference between the existing text and proposed text, except omission of "(s)". |
| 42 | Schedule "E" to the draft SSA | 1.a.iii | Since this clause is related to material events of default, it is necessary that the type and number of repeated failures and the cumulative effect of repeated failures on public use of the USF services should be defined in tangible terms. | Clause 1(a)(iii) of Schedule E sufficiently defines "repeated failure" as one, the cumulative effect of which significantly affects public use or enjoyment of the USF services in the USF Areas. |
| 43 | Schedule "E" to the draft SSA | 1.a.iv | We maintain that this clause should be removed (as it includes reference to Article 3 of SSA, that is, 3.02 being directly applicable to which we have reservations) and PTA's approval should be sufficient for transfer and changes in the ownership of the USF Service provider. We understand that the Performance Bond and Equipment Lien provisions provide adequate security to USFCo against any risk or performance management purposes. Furthermore, Rule 25(2) of the USF Rules requires such permission from USFCo only for Applicants entering into bidding/SSA as a Consortium. | In case of transfer or change in the ownership of USF Service provider USFCo's prior approval is necessary. |
| 44 | Schedule "E" to the draft SSA | 1.a.viii | The nature and type of other material breaches referred in this clause (which are not covered in the schedule E) should be such that they cause a significant degradation (extent to be agreed mutually between the USF service provider and USFCo in the SSA) in the availability of the USF services. | Referred clause is 1(a)(ix). Same clause as is in rural telecom. |
| 45 | Miscellaneous | | What is the minimum number of broadband connections to participate in bidding process, is there any limit on minimum or maximum number of users/connection to participate? | The minimum number of Broadband Connections to bid, is 50% of the Dist. wise Targets given in Schedule C. The bidders may chose targets higher than 50%, up till 100% target values. |
| 46 | | | Do we have to participate in all areas, can we select specific areas/districts or is it mandatory to participate on all areas? | Bidders must bid for all USF Areas (District in this case) |
| 47 | | | Do we have to give city wise numbers/connections or do we have to give our targets on area/district basis? | The target number of Broadband Connections, are USF Area/District wise. Within a USF Area/District, the bidder may choose any distribution of target number of broadband connections among the cities/towns . |

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| 48 | | | Is there any limitation of providing broadband services to all cities mentioned or can we select on our own the cities to cover with broadband services? | The target number of Broadband Connections, are USF Area/District wise. Within a USF Area/District, the bidder may choose cities/towns to cover. |
| 49 | | | How to calculate the EBC's & CBC's for bid participation? | The minimum number of EBCs and CBCs to bid, is 50% of the Dist. wise relevant Targets given in Schedule C. The bidders may chose higher than 50% targets, up till 100% target values. |