Universal Service Fund

(A company setup under Section 42 of the Companies Ordinance 1984)

REQUEST FOR APPLICATIONS

TO PROVIDE

UNIVERSAL SERVICE FUND TELECOMMUNICATIONS SERVICES

KhyberPakhtunkhwa-Package-1

(Allai, Kala Dhaka, Kulachi, Paharpur and Palas Tehsils)

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USFCo
Request for Applications to provide
Universal Service Fund Telecommunications Services

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[1] Only applicable if Project is financed by World Bank.

Part I
Introduction

1. Purpose of the RFA Process

1.1 All telecommunications licences issued by the Pakistan Telecommunications Authority ("PTA") subsequent to the *De-Regulation Policy 2003* and the *Mobile Cellular Policy 2004* provide for contribution by licensees to a Universal Service Fund ("USF").

1.2 The purpose of this Request for Applications ("RFA") is to invite holders of such licences ("USF Contributors") to submit Proposals, either individually or as part of a consortium, for providing USF Optic Fiber Network connectivity to all unserved Tehsil Headquarters for provision of USF OFC Services in defined regional areas ("USF Areas") in Pakistan pursuant to a 10 year USF Services and Subsidy Agreement.

1.3 This RFA is part of a universal service program initiated by the Government of Pakistan ("GoP"), which is aimed at increasing access to telecommunications networks and services in un-served and under-served areas of Pakistan in a manner consistent with fair competition, international best practices, and existing sector policies and GoP commitments.

1.4 GoP has created a not-for-profit federal Government owned and controlled Universal Service Fund company ("USFCo") to administer the USF, including the process initiated by this RFA ("RFA Process"). It is GoP's intent that USFCo apply part of the USF toward payment of a one-time subsidy (the "USF Subsidy") to be paid pursuant to the USF Services and Subsidy Agreement to assist in meeting the costs of constructing the USF Optic Optic Fiber Network in the USF Areas.

1.5 Further information on the proposed USF OFC Services, USF Optic Fiber Network and USF Areas is set out in this RFA.

1.6 It is the intention of GoP to act quickly to implement its policy of extending access to telecommunications networks and services in un-served and under-served areas in Pakistan.

2. Source of Funds

2.1 Pursuant to Section 33A of the Act, the sources of funding USF shall consist of

(a) grants made by the Federal Government and the Provincial Governments;

(b) prescribed contribution by licensees;

(c) sale proceeds from the auction of the right to use radio spectrum;

(d) loans obtained from the Federal Government; and

(e) grants and endowments received from other agencies.

2.2 Not Applicable.

2.3 Not Applicable.

3. Current Legal, Regulatory, and Market Regime

3.1 Before 1996, Pakistan's telecommunications markets were governed by the *Telegraph Act, 1885* and *Wireless Telegraphy Act, 1993*. Most telecommunications services were provided by the GoP's Telegraph and Telephone Department. That Department was converted into a statutory corporation in 1990 as the Pakistan Telecommunication Corporation ("PTC") and later in 1996 it was converted into a public limited company Pakistan Telecommunication Company Limited ("PTCL"). Competitive mobile telephone service was launched in 1991. Payphone service was launched in 1993. But of these competitors, only PTC and then PTCL had a formal duty to serve cities, towns, villages and Muzas in all areas of Pakistan.

3.2 Additional mobile, Wireless Local Loop (WLL), fixed-line Local Loop ("LL") and Long Distance International ("LDI") licensing since 2004 has increased competition substantially. Use of telecommunications services has expanded rapidly in this increasingly competitive environment. More than twenty-six providers offer voice telephony services in Pakistan. Mobile subscriber ship has grown from 70,000 in 1996 to about 101 million by Nov 2010. WLL subscriber ship increased to nearly 2.8 million by November 2010. Combined teledensity rose from 2.3 per 100 in 2002 to 64.7 by 2010, with mobile service penetration reaching 61%. The Optic Fiber connectivity with cities has increased from 130 in 2001 to more than 1100 by February 2011.

3.3 The *Mobile Cellular Policy (2004)* and *Pakistan Telecommunications (Re-organisation) (Amendment) Act, 2006* require that PTCL and all mobile licensees provide significant geographic coverage. Yet, in rural areas, teledensity remains at about 1 per 100. Making telecommunications services available country-wide is a GoP priority.

3.4 In a competitive sector, it is not appropriate to impose universal service obligations on a single operator. Accordingly, the *De-Regulation Policy (2003)* at section 5, the *Mobile Cellular Policy (2004)* at section 8, and the *Pakistan Telecommunications (Re-organisation) Act, 1996* at section 33A require that PTCL and all subsequent fixed and mobile licensees pay into the USF.

3.5 Persons who enter into a USF Services and Subsidy Agreement as a result of the RFA Process ("USF Service Providers") will receive a subsidy payment from the USF to extend USF OFN connectivity to unserved Tehsil HQs to provide USF Optic Fiber Services to these defined areas, thus facilitating increase in rural teledensity. The amount of the USF subsidy payment will be established in accordance sections 12 and 43 of this RFA. The subsidy payment will be made in one or more instalments, against identified Project Implementation Milestones, in accordance with the USF Services and Subsidy Agreement.

4. USF Policy

4.1 The *Universal Service Fund Policy* ("USF Policy") is the policy framework guiding the RFA Process. It sets out goals, objectives, and guidelines for using USF funding to meet certain basic telecommunication and ICT services needs in areas of Pakistan which would otherwise remain unserved.

4.2 The USF Policy's goals include making voice telephony and Internet access data services available and affordable to progressively greater proportions of Pakistan's rural population.

4.3 The USF Policy's objectives for 2010 include 85% coverage of the country's population (and therefore access to service if desired), and a preference for one telecentre per 5,000 people, with a minimum target of one telecentre per 10,000 people in USF Areas. This RFA and similar USFCo initiatives are intended to meet these objectives by introducing service in defined USF Areas.

4.4 The USF Policy will guide the actions of USFCo in administering the Universal Service Fund. That administration includes the use of the USF Services and Subsidy Agreement, with compliance monitoring and penalties for non-performance, including forfeiture of bank guarantees. Technological features of the USF Policy include technological neutrality, an emphasis on shared access points, and mandated infrastructure sharing to facilitate multiple operators in the same area. Economic features include capping USF service prices at nationally available retail prices, and a "negative auction" RFA Process to use bidding competition among licensees to minimize the amount of any particular USF Subsidy, and to maximize overall benefits from the fund. Together, these features establish a USF regime to extend telecommunications services to rural locations in a sustainable manner consistent with fair competition.

5. USF Coverage Requirements

The geographic locations that are the subject of this RFA and related USF Subsidy (the "USF Areas") are identified in detail in Schedule C of the USF Services and Subsidy Agreement enclosed as Annex 6. Applicants must demonstrate that the USF Optic Fiber

Networks they propose provide USF OFC services to all of the un-served Tehsil Headquarters and towns identified in Schedule C of the USF Services and Subsidy Agreement as being mandatory for USF Optic Fiber Network and USF OFC Services.

6. USF Service Requirements

The Traffic Matrix (Bandwidth Capacities) for each Optic Fiber Link included in this Package to be provided by the successful Applicant selected pursuant to this RFA are identified in Schedules A and B of the USF Services and Subsidy Agreement enclosed as Annex 6.

7. USF Contributors and Eligibility

7.1 Persons whose Local Loop ("LL") Wireless Local Loop ("WLL"), Long Distance and International ("LDI") or Telecommunication Infrastucture Provider ("TIP") Licence was issued after adoption of the *Deregulation Policy (2003)*, and persons whose mobile cellular licence was issued or renewed after adoption of the *Mobile Cellular Polic*y (2004), (collectively, "USF Contributors") have an obligation to contribute 1.5% of annual gross revenues to the Universal Service Fund, less inter-operator fees and related payments mandated by the PTA or Frequency Allocation Board ("FAB").

7.2 Any other licensee who has had its licence issued, re-issued or amended to include Universal Service Fund contribution payment requirements will, on satisfaction of those requirements, be recognized as a USF Contributor as well.

7.3 Eligibility to participate in the RFA process is limited to USF Contributors under the Universal Service Fund Rules, 2006 (the "Rules")[2].

7.4 Rule 24(12) sets out the following further restriction:

> *No single licensee may accumulate more than fifty per-cent of the total amount of USF subsidies awarded by the USF Company in multiple auctions. The period during which a licensee's accumulation and proportion of USF subsidy amounts will be defined in guidelines or statements of auction procedures to be issued by the USF Company from time to time.*

USFCo has developed guidelines under Rule 24(12) which are available at USF website www.usf.org.pk. Applicants should consider the potential application of this restriction in considering their bidding strategy, particularly where multiple Packages are being offered.

[2] See Rule 24(12) of the USF Rules 2006, as amended.

8. Tentative Time Schedule

8.1 The tentative timetable for the RFA events, beginning with publication of the pre-auction notice, is set out in Annex 8 of RFA.

9. Project Administration and Correspondence

9.1 Nominated Contact for all correspondence relating to this RFA is provided in Annex 8 of this RFA:

End of Part I

Part II
Rights and Obligations of USF Service Provider

10. Exclusivity

A USF Service Provider will not have any exclusive rights to provide USF OFC Services in the USF Areas.

11. Roll-out of USF Optic Fiber Network and Supply of USF OFC Services

The USF Optic Fiber Network shall be constructed and otherwise rolled out in accordance with the Project Implementation Milestones, providing USF OFC services to all Tehsils HQs or Towns identified in Schedule C of the USF Services and Subsidy Agreement as being mandatory for USF Optic Fiber Network and USF OFC Service coverage. Once the USF Optic Fiber Network has been rolled out, the USF OFC Services shall be supplied by the USF Service Provider in accordance with the USF Services and Subsidy Agreement.

12. USF Subsidy Payments

In order to promote GoP's policy of expanding telecommunications services and access in un-served areas, a USF Subsidy shall be paid to the USF Service Provider to help meet the capital costs of rolling out the USF Network. The USF Subsidy payments shall be made in accordance with the USF Services and Subsidy Agreement enclosed as Annex 6.

13. Service Availability and Quality Specifications

13.1 Applicants must demonstrate that the USF Optic Fiber Networks they propose will provide USF OFC services to all of the Tehsils Headquarters or towns identified in Schedule C of the USF Services and Subsidy Agreement as being mandatory for USF Optic Fiber Network and USF OFC Services.

13.2 The USF Service Provider must roll-out and operate the USF Optic Fiber Network substantially in accordance with the plans submitted and the technology described in its accepted Proposal.

13.3 The USF Service Provider must also roll-out and operate the USF Optic Fiber Network so that the USF OFC Services meet all applicable quality of service measures and requirements, including those set out in applicable Licence(s) and Services and Subsidy Agreement.

13.4 Quality of service reports for the USF OFC Services shall be filed by the USF Service Provider with USFCo in accordance with the USF Services and Subsidy Agreement.

14. Scope of Service

14.1 **USF OFC Services** – The USF OFC Services, which include proposed Bandwidth capacities for each Optic Fiber link included in this Package, shall be provided in the USF Areas in accordance with the USF Services and Subsidy Agreement.

14.2 **Optional Services** – In addition to the USF OFC Services, a USF Service Provider may provide other services in the USF Areas, to the extent the USF Service Provider is authorized to provide such services under applicable Licence(s). A USF Service Provider shall be free to apply for additional licences to provide other telecommunications services in accordance with the PTA's then-current licensing practices and procedures.

15. Regulation of Operators

USF Service Providers will remain subject to all other regulatory requirements established from time to time by the PTA, including the terms of all previously granted Licences.

16. Interconnection and Facilities Sharing

16.1 Interconnection between a USF Service Provider's network and other licensed telecommunications networks in Pakistan is governed by:

(a) the Act;

(b) the Pakistan Telecommunication Rules, 2000;

(c) all applicable licences;

(d) the Interconnection Regulations; and

(e) the USF Services and Subsidy Agreement.

16.2 A USF Service Provider's network must be technically compatible with all existing transmission networks to ensure properly functioning interconnection. For interconnection purposes, technical compatibility includes, but is not limited to, signalling, routing, synchronization, capacities and network interfaces as applicable.

16.3 USF Service Providers shall share infrastructure and essential facilities developed using USF Subsidy funding in accordance with the USF Rules and the USF Services and Subsidy Agreement. The USF Service Provider will provide Optic Fiber connectivity to the un-served Tehsil Headquarters from the nearest City or Town having Optic Fiber connectivity. The Service Provider may co-locate his equipment with the existing Operator or may consider to connect to its own nearest ADM/Repeater.

17. (Not Applicable)

18. Type Approval

Any telecommunications equipment or facilities used in Pakistan by a USF Service Provider shall be subject to the type approval requirements of the Act and any type approval processes established by the PTA pursuant to the Act.

19. Regulation of USF Service Charges

19.1 The tariffs charged by a USF Service Provider for the USF OFCServices are subject to requirements under the USF Services and Subsidy Agreement, including that those charges shall not exceed the USF Service Provider's National or Regional tariffs for the same or equivalent services provided in other served locations that are not included in the USF Areas[3].

19.2 USF Service Providers remain subject to any other tariff regulation by the PTA pursuant to the Act.

20. Authority to Construct and Use Facilities

20.1 Subject to the terms of the USF Services and Subsidy Agreement, a USF Service Provider will be authorized to construct or otherwise procure all telecommunications facilities required to provide the USF OFC Services.

20.2 A USF Service Provider may utilise any appropriate Optic Fiber Transmission technology, subject to any limitation in its Licence, in the provision of the USF OFC Services that meet the USF Service requirements identified in the USF Services and Subsidy Agreement.

20.3 All telecommunications facilities and equipment installed by a USF Service Provider as part of the USF Optic Fiber Network shall be:

(a) new when first installed;

(b) field-proven (in accordance with section 42.7); and

(c) compliant with internationally recognized standards.

20.4 Any permissions or authorizations required from authorities in the USF Areas, in connection with the installation/deployment of the USF Optic Fiber Network facilities and equipment shall be the responsibility of the USF Service Provider.

[3] See section 2.06 of the Services & Subsidy Agreement.

21. Requirement to Procure and Manage the USF Network

A USF Service Provider shall be required to own and operate the USF Network in accordance with the USF Services and Subsidy Agreement.

22. Transfer or Change of Control

Transfers and changes in the ownership or control of a USF Service Provider or USF Optic Fiber Network will be subject to USFCo approval in accordance with the USF Services and Subsidy Agreement.

23. Access to Public and Private Lands

A USF Service Provider shall have access to public and private lands, including ongoing rights of inspection and entry, in accordance with the Act and all other applicable laws, regulations and rules.

24. Force Majeure

A USF Service Provider shall be excused, in accordance with the USF Services and Subsidy Agreement, from certain failures to perform its obligations under the USF Services and Subsidy Agreement if an event of force majeure has prevented the performance of the obligations.

25. Dispute Resolution

The USF Services and Subsidy Agreement includes a number of mechanisms to facilitate resolution of disputes, including the appointment by USFCo of a disputes committee consisting of appropriately qualified persons. Where disputes cannot be resolved by application of these mechanisms, parties will continue to have recourse to arbitration and court processes in accordance with the laws of Pakistan.

26. Technical Auditor

A Technical Auditor shall be appointed by USFCo in accordance with the USF Services and Subsidy Agreement and other applicable processes. The Technical Auditor may be an appropriately qualified employee of USFCo and/or expert consultant, and will perform identified functions in accordance with the USF Services and Subsidy Agreement including:

(a) certification that Project Implementation Milestones have been achieved and services have been provided as per specifications and that USF Subsidy payments are therefore due;

(b) certification that events of force majeure have prevented the performance of certain obligations under the USF Services and Subsidy Agreement; and

(c) proposing amendment of the USF Areas, and any related amendments to the agreement, upon the occurrence of a certified event of force majeure.

27. Compliance with Law

A USF Service Provider shall be required to comply with all laws of Pakistan applicable to its USF OFC Services activities at all times, including the Act, all regulations, rules, orders, decisions and guidelines issued under the Act.

28. Term of USF Services and Subsidy Agreement

The USF Services and Subsidy Agreement shall have a term of ten (10) years, commencing from the effective date of the agreement.

29. Other Obligations under USF Services and Subsidy Agreement

The USF Services and Subsidy Agreement contains specific obligations of the USF Service Provider, including obligations regarding the roll-out of the USF Optic Fiber Network and provision of the USF OFC Services. The agreement also includes specific remedies for non-performance, including drawing on the Performance Bond or exercising the lien on USF Optic Fiber Network assets, as well as insurance requirements, indemnification, and USF Service Provider representations and warranties.

30. Fees Payable by the USF Service Provider

A USF Service Provider will be responsible for paying any fees, taxes or charges otherwise applicable to the USF Service Provider in relation to its provision of the USF OFC Services, in accordance with the Act and other laws of Pakistan and regulations made thereunder.

31. (Not Applicable)

End of Part II

Part III
Instructions to Applicants

32. Selection of Successful Applicant

USFCo plans to execute a USF Services and Subsidy Agreement with the Applicant whose Proposal meets the following selection criteria:

(a) the Proposal demonstrates that the Applicant is a "Qualified Applicant", meeting the requirements of sections 34, 35, 36 and 37 of this RFA;

(b) the Proposal is "responsive", meeting the requirements identified in section 40.1 of this RFA; and

(c) the Applicant proposes the lowest USF Subsidy for the defined USF Areas.

33. Pre-proposal Meeting

33.1 USFCo shall conduct a "pre-proposal meeting" at the office of USFCo unless otherwise directed. The purpose of the meeting will be for USFCo to provide answers to the written questions posed and comments made by potential Applicants (see sections 56.5 and 56.6 regarding the submission of questions and comments), and to otherwise clarify or amend the RFA Process and related documentation. All authorised representatives of potential Applicants shall be entitled to attend the meeting.

33.2 USFCo will keep a register of all those who are present at the pre-proposal meeting. All representatives from the Applicants and USFCo attending the meeting shall sign the register.

33.3 USFCo will prepare minutes of the pre-proposal meeting. The minutes, and the text of any written questions and answers from Applicants, will be published by USFCo on the USFCo website.

33.4 Responses to the written questions and results of the pre-proposal meeting shall not constitute an amendment to the RFA documents or the RFA Process unless USFCo re-issues the affected RFA documents with a specific identification of the resulting amendments.

33.5 Any amended RFA documents thus issued shall become the applicable statement of the RFA Process, and shall be communicated in writing to all Applicants. Applicants shall promptly acknowledge receipt of any amended documents by email to the USFCo project administrator identified in section9.1.

33.6 USFCo may extend the deadline for submission of Proposals as required to give Applicants reasonable time in which to take account of any amended RFA documents

34. Qualification Criteria

34.1 USFCo will determine whether an Applicant qualifies as a Qualified Applicant for the purposes of the award of a USF Services and Subsidy Agreement.

34.2 For the purpose of this RFA the qualification criteria are described in sections35, 36 and 37.

35. Financing Capacity

35.1 The Applicant must satisfy USFCo that the proposed USF Service Provider has sufficient financing capacity for the investments required to construct the USF Optic Fiber Network and to provide the USF OFC Services. The criteria to determine whether an Applicant has sufficient financing capacity for a project of this size are:

(a) A net worth of not less than PKR 300,000,000 (Pak Rupees Three Hundred Million only); or

(b) Possession or access to a line of credit equal to PKR 300,000,000 (Pak Rupees Three Hundred Million only).

35.2 The net worth of any shareholder in the proposed USF Service Provider may be included in the calculation of the net worth of the proposed USF Service Provider for the purposes of sections 35.1 and 42.5 if:

(a) The shareholder holds or will hold a minimum of 1/3 (one third) of the ownership interest (including all forms of ownership interest) in the USF Service Provider; and

(b) The shareholder indicates that it is willing to guarantee the performance of the USF Service Provider and provides a written undertaking to this effect for inclusion in the Proposal.

36. Operational Experience

36.1 The Applicant must have operated a telecommunications network that meets all of the following requirements:

(a) The network has a transmission backbone component for OFC; services .

(b) The network includes physical transmission facilities, such as wires, cables, or optic fiber systems owned and operated by the USF Service Provider; and

(c) The network has been operated by the USF Service Provider for a minimum of one (1) year.

36.2 In complying with section 36.1 above , the Applicant may rely on:

(a) the operational experience of the USF Service Provider it proposes; or

(b) the experience of any Person that is a member of the Applicant's bidding consortium, and that:

(i) is licensed by the PTA; and

(ii) is a shareholder in the proposed USF Service Provider, or

(iii) has committed in a binding agreement to become a shareholder in the proposed USF Service Provider,

provided that the Person holds or will hold a minimum of 1/3 (one third) of the ownership interests (including all forms of ownership interests) in the USF Service Provider.

37. Applicant Eligibility

37.1 The Applicant must demonstrate that the proposed USF Service Provider is eligible to receive the USF Subsidy pursuant to the World Bank Procurement Guidelines. An extract from the World Bank Procurement Guidelines, and related information, is included as Annex 3 to this RFA[4].

37.2 As indicated elsewhere in this RFA, the Applicant must be a USF Contributor. In the case of a Consortium Applicant, the Consortium Applicant leader must be a USF Contributor.

37.3 The Applicant must also not have any "conflict of interest", this meaning any association with consultants or other advisors retained by USFCo or GoP to advise on the design or implementation of the RFA Process; or participating in more than one Proposal in this RFA Process.

37.4 The USF Service Provider proposed by the Applicant must be incorporated under the Companies Ordinance, 1984.

37.5 The Applicant must possess valid Licence(s) for the revelant region and telecommunication services, issued by PTA. The Applicant must satisfy USFCo that the proposed USF Service Provider is in substantial compliance with the conditions of its Licence(s). In complying with this requirement, the Applicant may rely on the Licence(s) of any shareholder in the USF Service Provider that meets the requirements of section 35.2.

[4] Only applicable if Project is financed by World Bank

38. Consortium Applicant

38.1 Any USF Contributor leading a consortium may bid for any USF Subsidy on behalf of that consortium ("Consortium Applicant") under conditions similar to those set out for an individual USF Applicant, provided that the consortium's composition and Proposal materials satisfy the consortium requirements identified below:

38.1.1 There shall be no limit on the number of members of the consortium, except that:

(a) the consortium shall include at least one USF Contributor; and

(b) the consortium shall include at least one LL, WLL, Cellular Mobile or LDI licence holder; but shall include no more than one LL, WLL, Cellular Mobile or LDI licence holder.

38.1.2 One member of the consortium shall be identified as the consortium leader. The consortium leader shall be the USF Contributor member of the consortium. The consortium leader shall also enter into all contracts on behalf of the consortium and shall otherwise be responsible for consortium performance.

38.1.3 Notwithstanding section38.1.2, all members of the consortium shall be jointly and severally liable to USFCo in respect to the performance of the USF Services and Subsidy Agreement.

39. Bid Bond

39.1 The Bid Bond shall remain valid for a minimum period of 210 days from the closing date identified in section46.3. USFCo will not be obligated or liable to pay any accumulated interest on the Bid Bond.

39.2 The Bid Bond of all unsuccessful Applicants, other than the Qualified Applicant that has submitted the next lowest USF Subsidy proposal for the USF Aras, will be released not later than 30 days after USFCo issues a Letter of Intent pursuant to section 53.1.

39.3 The successful Applicant's Bid Bond, and the Bid Bond of the Qualified Applicant that has submitted the next lowest USF Subsidy proposal for the USF Areas, will be released not later than 30 days after: i) the execution of the USF Services and Subsidy Agreement; and ii) furnishing of the Performance Bond pursuant to section 54.

39.4 Notwithstanding section39.3, the Bid Bond shall be forfeited by an Applicant in any of the following cases:

(a) the Applicant withdraws its Proposal prior to execution of the USF Services and Subsidy Agreement;

(b) where the successful Applicant has received from USFCo a Letter of Intent to execute the USF Services and Subsidy Agreement and the USF Service Provider proposed by the Applicant fails or refuses to submit the Performance Bond in accordance with sections 53 and 54 of this RFA;

(c) if after the issuance of the Letter of Intent USFCo determines that Applicant is disqualified pursuant to section 51.1 of the RFA; and

(d) the USF Service Provider proposed by the successful Applicant does not execute the USF Services and Subsidy Agreement within 30 days of receipt of LOI.

40. Responsiveness of Proposals

40.1 A Proposal will be considered responsive only if all of the following requirements are met:

(a) The Proposal is submitted by an Applicant (or any company or other Person identified in the Proposal as a member or participant in a Consortium Applicant) that has registered with USFCo and purchased an official copy of the RFA in accordance with the Notice of Request for Applications document issued by USFCo.

(b) The Proposal is complete and submitted in accordance with all the requirements of this RFA, including the content requirements identified in sections 41, 42 and 43 and the submission requirements identified in sections 45 and 46.

(c) The Proposal is received before the closing date and time for submission identified in section46.3.

40.2 Proposals that do not comply substantially with the above requirements will be rejected as non-responsive.

41. Content and Format of Proposals

Bid shall be well formatted starting with Table of Contents referring page numbers. Colored separators, tags or flags shall be used to identify different sections/items of Table of Contents stacked in to Box Files.

41.1 Each Proposal shall be assembled in two separate parts, contained in separate and clearly marked envelopes, as follows:

(a) **Part 1** - "Qualifications and Service Proposal", setting out information about the Applicant, the USF Service Provider proposed by the Applicant, the USF Optic Fiber Network and the USF OFC Service proposal of the Applicant; and

(b) **Part 2** - "USF Subsidy Proposal", which shall set out the proposed USF Subsidy amount for the USF Areas.

41.2 The required content and form of each Part of the Proposal are outlined in more detail below. All parts of the Proposal must be printed using indelible ink.

42. Part 1 Structure Requirements – Qualifications and Service Proposal

Part 1 of the Proposal shall include the following documents and information:

42.1 Cover Letter and Attachments

(a) The cover letter and each page of the attached proposal materials must be signed by a person or persons duly authorised to act on behalf of the Applicant. Where the Applicant is a consortium, the cover letter and attachments must be signed by a person or persons duly authorised to act on behalf of each member of the consortium.

(b) The cover letter must provide a summary description of the Applicant, including the members of any Consortium Applicant, and of the USF Service Provider proposed by the Applicant.

(c) The cover letter must indicate a firm commitment to engage in final negotiation of the USF Services and Subsidy Agreement promptly and in good faith.

(d) The cover letter must confirm that the Proposal is open for acceptance by USFCo for 180 (one hundred and eighty) days from the bid closing date identified in section 46.3 of this RFA.

(e) Attached to the cover letter must be one or more Powers of Attorney or notarised certificates that clearly evidence the authority of the signatory (ies) of the cover letter and other documents submitted with the Proposal which require signature on behalf of the Applicant, a shareholder of the Applicant, the members of the Applicant consortium, if applicable, or the USF Service Provider proposed by the Applicant.

(f) Also included with the cover letter, must be the Bid Bond in the form of Annex 2 to this RFA, in accordance with the following requirements:

(i) The Applicant shall furnish a Bid Bond in the minimum amount of PKR 1,500,000 (Pak Rupees One Million and Five Hundred Thousand only) in the form of Annex 2 to this RFA and issued by a reputable bank located in Pakistan that is acceptable to USFCo.

(ii) The Applicant shall complete the Bid Bond in the form included in Annex 2. The form must be completed without alterations to its format, and no

substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

(iii) The Bid Bond of a consortium must be in the name of the lead member of the consortium.

42.2 **Information and Documentation on the Applicant**

(a) The name, legal status, registered office address and a description of the business of the proposed USF Service Provider.

(b) The name, legal status, registered office address and a description of the business of all shareholders in the proposed USF Service Provider.

(c) The name, legal status and registered office address of any Person who Controls the proposed USF Service Provider.

(d) The name, legal status and registered office address of all Persons who own, directly or indirectly, any ownership interest in a shareholder of the proposed USF Service Provider.

(e) The name, country of citizenship and address of each Person who is a director of the proposed USF Service Provider.

(f) A chart:

(i) showing the ownership structure of the proposed USF Service Provider;

(ii) illustrating the relationship among all Persons having a direct or indirect ownership interest; and

(iii) specifying the nature and level of such ownership interest.

(g) A description of the legal status of the proposed USF Service Provider, including:

(i) a certified copy of its certificate of incorporation, Memorandum and Articles of Association;

(ii) a certified copy of a resolution of the Board of Directors of the USF Service Provider that authorizes the Applicant to submit the Proposal and propose the USF Service Provider for the USF Services and Subsidy Agreement; and

(iii) any shareholder agreement, joint venture agreement or Memorandum of Understanding, or other arrangement of any kind between the shareholders of the proposed USF Service Provider.

(h) In the case of companies with shares listed on a stock exchange, the information regarding shareholders required in sections 42.2(b), 42.2(d)

and 42.2(f) must be provided only to the best of the Applicant's knowledge and only in respect of shareholders owning more than 10% (ten percent) of the issued shares.

42.3 Information to be Submitted by a Consortium Applicant

In the case of a Consortium Applicant, the Consortium Applicant's Proposal shall also include:

(a) the name, legal status, registered office address and a description of the business of all Persons with a direct or indirect ownership interest of more than 10% (ten percent) in the Consortium Applicant or in any member of the consortium;

(b) where a consortium member is an individual, identification and proof of citizenship for that individual;

(c) specific details of the structure of the consortium, including identification of the lead member of the consortium; and

(d) the agreement(s) establishing the consortium, specifying at least:

(i) a clear allocation or responsibilities and confirmation that all members of the consortium will be jointly and severally liable to USFCo in respect of performance of the USF Services and Subsidy Agreement;

(ii) the duration of the consortium agreement;

(iii) details of the ownership interests in the consortium and the financial contributions of each member; and

(iv) arrangements governing managerial control by the consortium over the operation of the USF Service Provider.

42.4 Documentation on the Applicant's Licence(s)

To demonstrate substantial compliance with the conditions of existing Licence(s), the Applicant shall submit:

(a) a copy of each Licence issued by the PTA to the proposed USF Service Provider, or to any shareholder of the USF Service Provider that meets the requirements of section35.2;

(b) a copy of the most recent renewal of any such Licence; and

(c) a declaration in the form of Annex 4 to this RFA, representing that the Applicant is in compliance with all applicable licence conditions, and is otherwise in good standing with the PTA.

42.5 **Documentation on Financial Resources of the Applicant**

(a) Financial statements of the proposed USF Service Provider for the preceding two years, including an income statement and balance sheet, prepared in accordance with internationally accepted accounting standards; or

(b) If the proposed USF Service Provider has not existed, or has not received service revenues, for at least two years prior to the submission of the Proposal, the financial statements of any shareholder that meets the requirements of section 35.2 must be provided. The financial statements of said shareholder must be provided for the preceding two years and must be prepared in accordance with internationally accepted accounting standards.

42.6 **Documentation on Operational Experience of the Applicant**

(a) Where the Applicant will rely on the experience of a Person identified in section36.2, the Applicant must demonstrate that arrangements are in place to provide the proposed USF Service Provider with access to the technology, professional know-how and operational experience required to operate the USF Optic Fiber Network and to provide the USF OFC Services. Specifically, the Proposal must include:

(i) a statement that identifies the Person;

(ii) documentation that clearly demonstrates that the relationship between the proposed USF Service Provider and such Person meets the requirements of section36.2(b);

(iii) a written commitment from said Person to participate in the USF Service Provider's operations;

(iv) a description of such proposed participation, which must clearly demonstrate to USFCo's satisfaction that the Person will have a significant and continuing participation in running the operations of the USF Service Provider for the life of the USF Services and Subsidy Agreement; and

(v) approval in writing by the Person's Board of Directors of the commitment and description of the Person's proposed participation.

(b) The Proposal shall include specific information regarding the telecommunications markets in which the proposed USF Service Provider (or, if its experience is relied upon, the Person identified in section 36.2) has operated in the manner described. Details should be provided concerning:

(i) the number of years of operation;

(ii) the telecommunications management experience of the proposed USF Service Provider;

(iii) the types of telecommunications services provided; and

(iv) the experience of the proposed USF Service Provider in rolling out a telecommunications network.

(c) The operational experience listed in section 36.1 above shall constitute experience of only one Person and not the aggregate experience of two or more Persons.

42.7 **Field Proven Equipment, Software and Solutions**

(a) All proposed equipment and software shall have been satisfactorily field-proven in actual service. To meet this requirement, the proposed suppliers shall have supplied equipment and software of the type described in the Proposal to at least two telecommunications network operators and the equipment and software shall have been in satisfactory service with those telecommunications network operators for a minimum period of one year prior to the date of submission of the Proposal.

(b) The Applicant shall provide the technical specifications of the major types of equipment and software to be supplied, installed and operated in order to provide the USF OFC Services,.

(c) The Applicant shall submit evidence that the proposed suppliers of the equipment, identified pursuant to sub-section (a) above, have been in the business of manufacturing telecommunications equipment for at least three years before the date of the Proposal.

(d) The Applicant shall submit the names, addresses, telephone numbers and fax numbers of the two network operators referred to in sub-section (a) above. The Applicant shall also submit letters from either the proposed equipment suppliers or the two network operators certifying satisfactory performance of the proposed equipment and software. USFCo reserves the right to verify the quality of the equipment and software and its satisfactory performance in actual service with the two network operators.

(e) In view of the rapid technological development in communications technology, hardware and software, Applicants may propose that the USF Service Provider will install updated versions of the equipment and software in actual service. Applicants shall provide full details of the technological changes introduced in the proposed equipment and software.

(f) All solutions and practices followed to provide telecommunication services shall be in accordance to the international standards defined by ITU-T. The solutions and practices must be well known and observed by the Industry.

(g) As an alternative to meeting the requirements of sub-sections (a), (c) and (d) above, the Applicant must demonstrate satisfactory performance of the proposed equipment and software as part of the operations it has identified pursuant to section 36.1 of this RFA for a minimum period of one year prior to the date of submission of the Proposal.

42.8 **Network Description**

(a) The Applicant must provide a concise description of the planned network of the proposed USF Service Provider. The description must demonstrate that the proposed USF Optic Fiber Network will meet the requirements specified in the USF Services and Subsidy Agreement, including, but not limited to, the USF OFC Services specifications in Schedules A and B to that agreement. The network description provided by the Applicant must also clearly demonstrate that the USF Service Provider will:

(i) extend Optic Fiber transmission facilities into the USF Areas, with sufficient planned capacity to meet the requirements of the USF OFC Services; and

(ii) provide proposed bandwidth capacities to all Tehsil Headquarters or towns identified in Schedule C of the USF Services and Subsidy Agreement as being mandatory for USF Optic Fiber Network and USF OFC Services.

(b) The network description shall include:

(i) a description of the Optic Fiber transmission network, interface technology to be employed, including applicable technical standards, and a network map illustrating the intended network architecture and USF Optic Fiber Network installations;

(ii) a summary description of the roll-out and service provision plans for the USF Optic Fiber Network and USF OFC Services, that meet or exceed the Project Implementation Milestones;

(iii) (Not Applicable);

(iv) the specific USF Optic Fiber Network bandwidth capacity estimated by the Applicant as required to meet traffic requirements in the USF Areas

over the first five years of commercial operations, and how that capacity will be provided by the USF Service Provider;

(v) **proposed interconnection points**. The Applicant should specify how it intends to to plan and build the USF Optic Fiber network identifying specific interconnection points for smooth flow of intelligence in upward and downward modes.

(vi) the Applicant shall also provide the information identified in the "Design Parameters" included in Annex 5.

42.9 **Operations Description -** The Proposal must include**:**

(a) a general description of the intended operations of the USF Service Provider, including its general approach to implementation of the USF Optic Fiber Network and provision of the USF OFC Services; and

(b) a brief description of any land or rights in land (i.e., rights of way) that must be acquired for the operations, the estimated cost of acquiring such land or rights in land and the impact acquiring such rights might have on the Applicant's network roll-out plan.

42.10 **Quality of Service Description -** The Proposal must include a summary of the methodology and processes that will be implemented by the proposed USF Service Provider to meet the service requirements and quality of service standards identified in Schedules A and B to the USF Services and Subsidy Agreement, including performance monitoring, reporting and fault resolution processes.

42.11 **Tariffs and Charges** - The Proposal must include a statement by the Applicant confirming that its tariffs and service charges for the USF Services will meet the tariff requirements identified in the USF Services and Subsidy Agreement.[5]

42.12 **Additional Information**

(a) The Applicant's comments on the draft USF Services and Subsidy Agreement or any other transaction documents or requirements, including particularly any terms or conditions that the Applicant cannot or will not comply with; and

(b) Any information that does not specifically respond to this RFA, but that the Applicant thinks is relevant to the Proposal.

43. Part 2 Subsidy Proposal

Information to be submitted by the Applicant in Part 2 of its Proposal**:**

[5] See Section 2.06 of the Agreement.

(a) **Subsidy Proposal** – The Applicant must provide a completed USF Subsidy Proposal Form prepared in accordance with Annex 1 to this RFA. As indicated in Annex 1, the amount of the proposed USF Subsidy and total cost of the Project shall be set out in words and numbers and in the event of any discrepancy between the words and numbers, the amount set out in words shall govern, and the currency of the proposed USF Subsidy shall be stated in PKR.

(b) **USF Areas** – The Applicant's USF Subsidy Proposal must state the proposed amount of USF Subsidy for implementation of the USF Network and delivery of the USF Services throughout the USF Areas.

(c) **Calculation of Subsidy** – The Proposal must include a concise financial analysis detailing the calculation of the proposed USF Subsidy amount. The information furnished in this regard will be kept strictly confidential by USFCo; however, and as indicated in section 47.2, USFCo shall be entitled to publicly announce the total amount of each Applicant's USF Subsidy Proposal. The financial analysis must clearly demonstrate the breakdown of projected USF Optic Fiber Network costs, itemized to show the costs of the USF Optic Fiber Network components identified pursuant to section 42.8, per each link.

(d) **Projected Financial Statements** - The Applicant must provide projected financial statements for years one through five of the USF Service Provider, including an income statement, balance sheet and statements of sources and application of funds for the USF Service Provider prepared in accordance with internationally accepted accounting standards. For this purpose, the financial statements shall treat the USF Subsidy amount as if it were part of the debt, equity or deferred income of the USF Service Provider[6]. The financial statements shall include projections of fee revenues from the USF OFC Services and any Optional Services.

44. Compliance Checklist

44.1 A "Compliance Checklist" is attached as Annex 5 to this RFA. Applicants must include a completed Compliance Checklist in each copy of their Proposals.

44.2 When completing the Compliance Checklist, Applicants must identify the specific parts and page numbers of their Proposals that correspond to the documents and information required by the RFA sections identified in the Compliance Checklist. Applicants must also specifically identify and comment on any of the identified RFA sections for which their Proposals are either "Non-Compliant" or only "Partially Compliant".

[6] Applicants must take care that the USF Subsidy amount included in the financial statements is aggregated with other funds so that the amount of the Applicant's intended subsidy cannot be specifically identified.

44.3 Without derogating from the provisions of sections 44.1 and 44.2, above, in the event of any discrepancy between the Proposal requirements described in this RFA and the Compliance Checklist, the terms and requirements of this RFA shall prevail.

45. Submission of the Proposal

45.1 The Applicant shall prepare three copies of the Proposal, clearly marking the first copy "Original Proposal" and the 2nd & 3rd copies "Copy of Proposal".

45.2 The Applicant shall also prepare one electronic copy of the Proposal (i.e., a CD-ROM or DVD containing copy of the Proposal that is in a format readable by Microsoft Office or Adobe Acrobat software).

45.3 All copies of the Proposal shall be clearly marked with the name of the Applicant.

45.4 In the event of any discrepancy between copies, the original shall govern.

45.5 As indicated in section 41, the Proposal consists of two separate parts: Part 1, the Qualification and Service Proposal; and Part 2, the USF Subsidy Proposal. Each part of the Proposal shall be separated into clearly labelled envelopes, with each envelope containing the three hard copies and the single CD-ROM or DVD copy of the applicable part of the Proposal. The envelopes containing the separate parts of the Proposal shall be packaged together in a single box or other container. The container shall be sealed; that is securely packed and closed, so that it is not possible to open it without visual evidence thereof.

45.6 Each Proposal package shall be clearly marked with the following information:

Proposal to Provide USF Telecommunications Services (Optic Fiber Connectivity with Tehsil HQs)
Name of Applicant:
Local Contact Name, Phone Number and E-Mail Address:

"*DO NOT OPEN, EXCEPT IN PRESENCE OF USFCo EVALUATION COMMITTEE*"

45.7 USFCo will provide a written receipt confirming the delivery of each Proposal received prior to the closing date and time.

45.8 The Bid Bond should be enclosed in a separately sealed envelope clearly marked with the name of the Applicant and the text "Bid Bond". This envelope should be included in the container that includes all Proposal

contents (see section 45.5), and delivered with the assembled Proposal package.

46. Delivery of the Proposal

46.1 The Proposal packages shall be delivered at the address identified in Annex 8 of RFA before the closing date and time mentioned in section 46.3.

46.2 If the Proposal container is not sealed and marked properly, USFCo will assume no responsibility for the Proposal or the disposition of its contents. Improperly marked or sealed packages may be rejected by USFCo.

46.3 **Closing Date for Submission of the Proposal** - The sealed Proposal package shall be delivered to USFCo at the address specified in section 46.1 no later than date and time identified in Annex 8 of this RFA.

46.4 **Late Proposal** - Proposals received after the closing date and time identified in section 46.3 will be returned to the Applicant(s).

47. Opening of Proposals

47.1 USFCo will publicly open the duly received Proposals, in the presence of authorised representatives of any Applicants who desire to attend, at least thirty minutes after the deadline for submission of bids identified in section 46.3, in the conference room of USFCo, 5th Floor HBL Tower, Jinnah Avenue, Islamabad. The opening will proceed whether one or more representatives of Applicants are present or absent. Following opening of the Proposals, USFCo will proceed with evaluation of the Proposals in accordance with section 48.

47.2 All Proposals shall be opened one at a time, with a representative of USFCo reading out the name of the Applicants and any other Applicant information that USFCo may consider appropriate. Only Proposals opened and read out at the proposal opening shall be considered for further evaluation, irrespective of the circumstances. No Proposals shall be rejected at Bid opening except for late Proposals or any Proposals that are not accompanied by a Bid Bond.

47.3 USFCo shall prepare a record of the initial Proposal opening that shall include, at a minimum, the name of the Applicant, the presence or absence of a Bid Bond and identification of any Proposals rejected for late submission. The Applicants' representatives who are present shall be requested to sign an attendance sheet. A copy of the record shall be distributed to all Applicants.

48. Selection Process and Evaluation of Proposals

48.1 Subject to any request for clarification submitted by USFCo pursuant to section 56.7, the information submitted by Applicants in response to this RFA will be the sole basis for the selection of the USF Service Provider. Provided that the Proposal is substantially responsive, GoP and USFCo reserve the right to request Applicants to provide additional information and documents to assist them in evaluating the Proposals. However, neither the GoP nor USFCo, nor any other GoP body, will assist Applicants to supplement Proposals which are otherwise deficient or non-compliant. Failure to provide additional information within the identified timeframe may result in the Applicant's proposal being determined to be non-compliant.

48.2 USFCo will review each Applicant's "Qualifications and Service Proposal" (Part 1 of the Proposal) to determine whether or not each Applicant is a Qualified Applicant within the meaning of section 34 of this RFA. Applicants that fail to satisfy the criteria identified in section 34 for becoming a Qualified Applicant will be rejected. USFCo will identify the grounds for rejection in a letter to each Applicant that fails to qualify as a Qualified Applicant.

48.3 USFCo will open and review each Qualified Applicant's "USF Subsidy Proposal" (Part 2 of the Proposal). USFCo will identify the date and time of opening the USF Subsidy Proposals, and representatives of Qualified Applicants will be entitled to attend the opening of the USF Subsidy Proposals. The representatives of Qualified Applicants who are present at the opening shall be requested to sign an attendance sheet. A representative of USFCo shall read out or otherwise announce the amount of USF Subsidy proposed by each Qualified Applicant. USFCo will prepare minutes for the USF Subsidy Poposal opening meeting. The minutes will be sent to all Qualified Applicants and will be published by USFCo on its website.

48.4 **Awarding USF Services and Subsidy Agreement –** Subject to section 60, the USF Services and Subsidy Agreement will be awarded to the Qualified Applicant that proposes the lowest USF Subsidy for the USF Areas.

48.5 **Ties** - In the event that there is more than one Qualified Applicant bidding the lowest USF Subsidy for one or more USF Areas, USFCo shall proceed as follows:

(a) The tied Qualified Applicants will receive written notice of the tie and instructions for submission of second round bids.

(b) The tied Qualified Applicants will proceed to a second round of bidding in which they will submit new USF Subsidy Proposals that comply with the requirements of section 43.

(c) The new USF Subsidy Proposal amount submitted by the tied Qualified Applicant must be smaller than or equal to the original USF Subsidy Proposal amount submitted by the Qualified Applicant.

(d) The new USF Subsidy Proposals shall be delivered in a sealed envelope, that is, securely closed so that it is not possible to open it without visual evidence thereof, to the address identified in section 46 and before the date and time specified in the written notice referred to in section 48.5(a). New USF Subsidy Proposals will not be accepted after the date and time specified in the written notice referred to in section 48.5(a).

48.6 USFCo's determinations in the evaluation process shall be final and binding upon Applicants, subject to the laws of Pakistan.

49. Fraud or Corruption [7]

It is the World Bank's policy to require that Borrowers (including beneficiaries of Bank loans), as well as bidders, suppliers, and contractors and their subcontractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.[8] In pursuance of this policy, the World Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice"[9] is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(ii) "fraudulent practice"[10] is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

[7] This section would apply in substance. However, the references to the Bank would be applicable only if the project is financed by the World Bank.

[8] In this context, any action taken by a bidder, supplier, contractor, or a sub-contractor to influence the procurement process or contract execution for undue advantage is improper.

[9] "Another party" refers to a public official acting in relation to the procurement process or contract execution. In this context, "public official" includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

[10] In this context, a "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

(iii) "collusive practice"[11] is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) "coercive practice"[12] is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(v) "obstructive practice" is

a. deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

b. acts intended to materially impede the exercise of the Bank's inspection and audit rights.

(b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

(c) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;

(d) will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a Bank-financed contract; and

(e) will have the right to require that a provision be included in bidding documents and in contracts financed by a Bank Loan, requiring bidders, suppliers, contractors and consultants to permit the Bank to inspect their accounts and records and other documents relating to the Bid

[11] "Parties" refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

[12] In this context, a "party" refers to a participant in the procurement process or contract execution.

submission and contract performance and to have them audited by auditors appointed by the Bank.

50. Period of Validity of Proposal

The Proposal shall remain valid for 180 days from the closing date identified in section 46.3 of this RFA.

51. Grounds for Rejection of Proposal

51.1 USFCo shall reject Proposals and remove them from further consideration for any of the reasons set out below:

(a) Failure to comply with any of the procedures or other requirements identified in sections 35, 36, 37, 40, 42, 43 and 45 of this RFA.

(b) Failure to submit the Bid Bond amount specified in this RFA.

(c) Serious inaccuracy or misrepresentation of any material facts in any part of the Proposal.

(d) Default by a USF Contributor in making USF contribution payments.

(e) The Applicant submitting the Proposal is determined by USFCo to have a conflict of interest (as that term is defined in section 37.3).

51.2 On the occurrence of any of the forfeiture events identified above in section 51.1, USFCo shall be entitled to select another Applicant. In such an event, USFCo may award the USF Services and Subsidy Agreement to the USF Service Provider proposed by the Qualified Applicant that proposed the next lowest USF Subsidy for the USF Areas for which the first-selected Applicant proposed the lowest USF Subsidy. Where the USF Subsidy is financed by the Bank pursuant to the Loan (see sections 2.2 and 2.3), the award of the USF Services and Subsidy Agreement shall be subject to prior consultation with, and the absence of objection by, the **Bank.**

52. Subsequent Disqualification and Ineligibility

52.1 If evidence of any of the activities referred to in sub-sections 51.1 (c) through (e) is disclosed after the USF Services and Subsidy Agreement has been executed, USFCo may terminate the USF Services and Subsidy Agreement without compensation. Disclosure of such evidence will also entitle the Bank or other institution of the **World Bank**[13] to decline to finance the USF Subsidy, and for USFCo to seek repayment of any part of the USF Subsidy that may have been paid. The provisions of this section are in addition to any criminal or civil legal action which may be

[13] Only applicable if Project is financed by World Bank.

available to or taken by any government or regulatory authority, including PTA and USFCo.

52.2 USFCo will declare an Applicant ineligible, either indefinitely or for a stated period of time, to be awarded a USFCo financed contract if it at any time it determines that the Applicant has engaged in corrupt, fraudulent, collusive or coercive practices in applying for, or in performing, a USFCo financed contract.

53. Letter of Intent

53.1 USFCo will issue a Letter of Intent ("LOI") to the successful Qualified Applicant to confirm USFCo's intention to grant the USF Services and Subsidy Agreement to the USF Service Provider proposed by the Applicant. The LOI will also require the USF Service Provider proposed by a successful Applicant to submit the required Performance Bond within 10 days of receipt of the LOI.

53.2 If the USF Service Provider proposed by the Applicant to whom the LOI is directed does not submit the required Performance Bond within 10 days from the date of receipt of the LOI, USFCo may:

(a) Cause the Applicant to forfeit the Bid Bond pursuant to section 39.4 above;

(b) Disqualify the Applicant and the USF Service Provider proposed by the Applicant; and

(c) Issue another LOI to the Qualified Applicant that has submitted the next lowest USF Subsidy proposal for the USF Areas.

53.3 An Applicant to whom a LOI is directed must accept the LOI by notice in writing (the "Letter of Acceptance") to USFCo within seven (7) days from the date of receipt of the LOI.

53.4 It is the intention of USFCo that the USF Services and Subsidy Agreement (the "Contract") will be finally negotiated and signed within 30 days of the date of receipt of the LOI. In the event that USFCo and the recipient of the LOI are unable to finalize the terms of the Contract within the 30 day period, USFCo shall be entitled to terminate negotiations, return the Performance Bond and issue another LOI to the Qualified Applicant that has submitted the next lowest USF Subsidy proposal for the USF Areas.

53.5 Once the Contract has been entered into with the USF Service Provider put forward by the winning Applicant, USFCo shall publish the results of the RFA Process including at least the following information: (i) name of each Applicant who submitted a Proposal; (ii) name of Applicants whose Proposals were rejected, and the reason(s) for their

rejection; (iii) the USF Subsidy Proposal amounts as read out at the subsidy proposal opening; (iv) the name of the winning Applicant; and (v) a summary of the resulting Contract. The information shall also be published on USFCo's website and in the dgMarket and UNDB online and may be published in any other manner directed by USFCo or GoP.

54. Performance Bond

A USF Service Provider proposed by an Applicant to whom an LOI has been directed shall furnish the Performance Bond in accordance with this RFA Process and the USF Services and Subsidy Agreement. The Performance Bond shall be prepared in the form of Schedule F to the USF Services and Subsidy Agreement, and shall be furnished within ten (10) days of the date of receipt of the LOI.

55. Information Provided by USFCo

55.1 The information contained in this RFA and any other information provided to Applicants during the Proposal process is intended to assist Applicants in the preparation of their Proposals. USFCo will ensure that all Applicants are provided with the same information during the Proposal process, in accordance with sections 33.5 and 33.6 of this RFA.

55.2 USFCo has made and will continue to make reasonable efforts to include accurate and current information in this RFA and in any other documentation provided to Applicants and potential Applicants. However, neither USFCo nor any of its agencies, employees, representatives, advisors or consultants shall have any liability whatsoever to any Applicant or any of its shareholders or members or any other Person resulting from use of or reliance on any of the information so provided. Applicants are encouraged to undertake their own verification of any information supplied by USFCo prior to use of or reliance on that information.

56. Communications, Comments and Requests for Clarification

56.1 All deliveries, notices or other communications made by USFCo to Applicants in connection with the Proposal process shall be sent by fax, e-mail or personal delivery to the registered office of the Applicant, as specified at the time the Applicant registered with USFCo pursuant to this RFA Process.

56.2 All deliveries, notices or other communications made by Applicants to USFCo in connection with the Proposal process, except for submission of the Proposal itself, shall be sent in writing by e-mail or personal delivery, unless otherwise specified by USFCo, to the contact person and address specified in section 9.1.

56.3 Subject to section 48.1, during the period between the deadline for submissions of Proposals and the award of the USF Subsidy, no

Applicant, no USF Service Provider proposed by an Applicant and no party interested in a Proposal shall be permitted to discuss the merits of any Proposal with any representative of USFCo. Any communications, or attempted communications, in contravention of this section shall be grounds for immediate disqualification.

56.4 Applicants are expected to carefully examine all instructions, forms and annexes in this RFA. Failure to furnish all information required by this RFA or the submission of a Proposal that does not comply with the RFA in all respects may result in disqualification of the Proposal.

56.5 A prospective Applicant requiring any clarification of this RFA or the draft USF Services and Subsidy Agreement may pose one or more questions to USFCo in writing by e-mail or personal delivery up to twenty one (21) days prior to the closing date for Proposals. USFCo will respond in writing to such written questions following the pre-proposal meeting described in section 33 above. Written questions received by USFCo less than twenty one (21) days prior to the closing date will not be answered.

56.6 A prospective Applicant may make comments on the structure and contents of this RFA or the draft USF Services and Subsidy Agreement. Such comments should be sent in writing by e-mail or personal delivery to USFCo up to twenty one (21) days prior to the closing date for Proposals. USFCo will respond in writing to such written comments following the pre-proposal meeting described in section 33 above. USFCo will not respond to written comments received by USFCo less than twenty one (21) days prior to the closing date.

56.7 To assist in the examination and evaluation of Proposals, USFCo may, at its discretion, ask any Applicant for a clarification of its Proposal. Any clarification submitted by an Applicant in respect to its Proposal that is not in response to a request by USFCo shall not be considered. USFCo's request for clarification and any response shall be in writing. Subject to sub-section 48.5, no change in the proposed USF Subsidy amount shall be sought, offered or permitted, except to confirm the correction of arithmetic errors discovered by USFCo in the evaluation of the Proposals. In responding to any request for clarification, Applicants may not attempt to change their Proposals, and any response that USFCo determines constitutes a change to an Applicant's Proposal shall not be taken into account by USFCo in evaluating the Proposal.

57. Confidentiality of Proposals

57.1 Except for the public opening of USF Subsidy Proposals pursuant to section 47, USFCo shall treat all Proposals received in relation to this RFA as confidential during the period before the award of the USF Services and Subsidy Agreement.

57.2 USFCo and its agencies, employees, representatives, advisors or consultants shall take reasonable steps to protect Proposal related information from improper use or disclosure; however, liability for disclosure shall be subject to the limitation set out in section 61.3.

57.3 Information relating to the examination, evaluation, comparison, and qualification of Proposals, and any recommendation of Contract award, shall not be disclosed by any representative of USFCo or GoP to Applicants or any other Persons not officially concerned with such process except as specifically permitted by sections 47, 48, and 53.5 of this RFA.

58. USFCo Use of Proposals

Subject to compliance with intellectual property laws of Pakistan, and section 57 above, USFCo shall have the right to use or reproduce ideas and information contained in a Proposal without notice or payment of any kind to the Applicant.

59. Cost of Proposal and Bidding

The Applicant shall bear all costs associated with the preparation and submission of its Proposal and USFCo will in no case be responsible for any such costs, regardless of the conduct or outcome of the Proposal process.

60. Reservation of Rights

60.1 USFCo reserves the right, in its sole discretion, to take any action, including amendment of this RFA, which it considers necessary to ensure that the RFA Process proceeds in a fair, open and transparent manner, in accordance with the laws of Pakistan and to meet the objectives of USFCo.

60.2 USFCo reserves the right to modify or terminate the RFA Process at any time in its sole discretion.

60.3 USFCo is not legally obligated to execute the USF Services and Subsidy Agreement. It may terminate the RFA Process or revoke an award of the USF Services and Subsidy Agreement at any time before the USF Services and Subsidy Agreement is executed.

61. Legal and Formal Requirements

61.1 **Governing Law** - This RFA and any USF Services and Subsidy Agreement executed pursuant to this RFA shall be exclusively subject to, and interpreted in accordance with, the laws of Pakistan.

61.2 **Settlement of disputes** - Any dispute, controversy or claim arising out of or in connection with this RFA document, or the breach, termination

or invalidity thereof, shall be subject to the dispute resolution terms and processes set out in Annex 7 to this RFA.

61.3 **Limitation of Liability** - Neither GoP nor any of its Ministries, agencies, employees, representatives, advisors or consultants, including USFCo and its officers, employees and contractors, shall incur any liability whatsoever to any Applicant or any USF Service Provider proposed by an Applicant, or any of their respective shareholders or members or any other Person, in connection with any damages, losses, expenses or injury whatsoever, including but not limited to loss of revenue, opportunity, or goodwill, resulting from participation in the RFA Process, including reliance of any person on the information set out in this RFA; it being understood and agreed that USFCo's or GoP's liability for damages shall, in any event, be limited to such amount as may have been actually paid by an Applicant or other person to participate in the RFA Process.

61.4 **Language** - The Proposal, the accompanying documents, and all correspondence relating to this RFA shall be submitted in the English language.

Part IV
Definitions

62. Definitions

In this Request for Applications (RFA), unless the subject matter or context otherwise requires, the following terms shall have the following meanings:

"Act" means the *Pakistan Telecommunication Act (Re-Organization) Act, 1996*, XVII of 1996, as amended, and any successor legislation;

"Applicant" means any Person that registers itself with USFCo as an Applicant for purposes of this RFA, having obtained a copy of this RFA from USFCo;

"Bandwidth" means the range within a band of frequencies or wavelengths or an amount of data that can be transmitted in a fixed amount of time usually expressed in bits per second (bps) or bytes per second (Bps)

"Bid Bond" means the financial security for the bid, including any pay order or demand draft in the name of USFCo, that an Applicant must furnish to USFCo in accordance with section 39 of this RFA;

"Compliance Checklist" means the form set out in Annex 5 to this RFA that Applicants must complete in accordance with section 44 of this RFA;

"Consortium Applicant" means a group of Persons, including a joint venture, that submits a Proposal on behalf of its members, and that meets all elgibility requirements identified in section 38.1 of this RFA;

"Contract" means the USF Services and Subsidy Agreement signed with one or more successful Qualified Applicants on successful conclusion of the RFA Process;

"Control" of a Person other than an individual means the ownership of at least 51% (fifty-one percent) of the voting interests in the subject Person; or the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Person, whether through the ownership of shares, voting, securities, partnership or other ownership interests, agreement or otherwise;

"GoP" means the Government of Pakistan;

"Interconnection Regulations" means any interconnection regulations, rules or guidelines that may be issued by PTA from time to time;

"Letter of Acceptance" means the letter described in section 53.3 of this RFA;

"Letter of Intent" or **"LOI"** means the letter described in section 53.1 of this RFA;

"Licence" means any telecommunications licence granted by the PTA to the USF Service Provider, or to any shareholder of the USF Service Provider that meets the

requirements of section 35.2, which authorizes it to provide the USF Services, as that Licence may be amended;

"Net worth" for the purposes of sections 35 means total assets minus total liabilities

"Optional Services" means services that a USF Service Provider is authorized but not required to provide pursuant to the USF Services and Subsidy Agreement and any Licences held by a USF Service Provider;

"Performance Bond" means the financial security for performance a USF Service Provider must furnish in accordance with section 54 of this RFA;

"Person" means any individual, firm, company, corporation, partnership, joint venture or other consortium, government or governmental entity;

"Point of Interconnection" or **"POI"** means a connection point between the networks of two telecommunications service providers;

"Project Implementation Milestones" means the milestones for the roll-out of the USF Network and provision of the USF Services identified in Schedule D of the USF Services and Subsidy Agreement;

"Proposal" means a proposal submitted by an Applicant in response to this RFA;

"PSTN" means the public switched telecommunications network of Pakistan;

"PTA" means the Pakistan Telecommunication Authority, a statutory body corporate established under Section 3 of the Act, and its predecessors and successors;

"Qualifications and Service Proposal" means Part 1 of the Proposal that Applicants must prepare in accordance with section 41.1(a) of this RFA;

"Qualified Applicant" has the meaning ascribed thereto in section 34 of this RFA;

"RFA" means this Request for Applications, including all annexes hereto, as amended or modified by USFCo;

"Technical Auditor" means the Person appointed in accordance with the USF Services and Subsidy Agreement;

"USF Areas" mean the Tehsil HQs or towns identified in Schedule C of the USF Services and Subsidy Agreement as being mandatory for USF Network and USF Services;

"USF Contributor" means any Person who's Licence includes identified USF Contribution requirements, and who is identified by PTA as being fully compliant with those requirements;

"USF Optic Fiber Communication Services" or **"USF OFC Services"** or **"USF Services"** means transmitting intelligence from one place to another by sending light

trhough an Optic Fiber for Voice, Data and Video signals through various bandwidth capacities, to be provided by the USF Service Provider pursuant to SSA;

"USF Optic Fiber Network" or **"USF FON"** or **"USF Network"** means the the network, that processes and switches signals in or through Optic Fiber Cable and is widely used in Optic Fiber Communication over longer distances and at higher data rates than other forms of communications, to be deployed by the USF Service Provider to provide USF Optic Fiber Communication Services pursuant to the Services and Subsidy Agreement;

For the purpose of definition:

(a) "Network" means a telecommunication system that transmits and electrical, optical or radio signal from one place to another over multiple links and through various nodes; and

(b) "Optic Fiber" means fiber made of glass or plastic that carries light along its length and includes a cable containing one or more optical fibers, typically individually coated with plastic layers and contained in a protective tube suitable for the environment where the cable will be deployed;

"USF Rules" means the Universal Service Fund Rules, 2006 (as amended);

"USF Service Provider" means the Person put forward by an Applicant that will provide the USF Services in accordance with the USF Services and Subsidy Agreement;

"USF Services and Subsidy Agreement" means the agreement, a draft of which is annexed as Annex 6 to this RFA, for the construction and roll-out of the USF Network, provision of the USF Services and payment of the USF Subsidy to be granted pursuant to this RFA;

"USF Subsidy" means the subsidy to be paid by USFCo to the USF Service Provider on the USF Service Provider achieving the Project Implementation Milestones;

"USF Subsidy Proposal" means Part 2 of the Proposal that Applicants must prepare in accordance with section 43 of this RFA;

"USF Subsidy Proposal Form" means the form attached at Annex 1 of this RFA; and

"USFCo" means the Universal Service Fund, a company setup under Section 42 of the Companies Ordinance 1984 and its successors.

End of Part IV