

UNIVERSAL SERVICE IN THE NEW TELECOMMUNICATIONS FRAMEWORK IN COLOMBIA

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ABSTRACT

The comment intends to analyze the roll of the Universal Service in Colombia, in the context of a newly open and competitive market, and a converging environment, taking into account its social, political and demographic characteristics, as well as the state of art of technology.

For the proposed analysis the paper evaluates the telecommunications sector in Colombia, the concept of Universal Service described by the legal framework, the plans, policies and strategies for enhancing universality levels and teledensity and finally, determines the place that regulation has in the local and global context.

Key words: *Telecommunications, Universal Service, Universal Access, Telecommunication Regulation, COMPARTEL, Plan Nacional de Servicio Universal, Fondo de Comunicaciones.*

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RESUMEN

Este documento hace un estudio del rol que juega el concepto de Servicio Universal de Telecomunicaciones en Colombia, dentro de un mercado de competencia y un ambiente de convergencia, teniendo en consideración las características demográficas, geográficas de este país, así como el estado del arte de la tecnología.

Para ello, se analiza el papel del sector de telecomunicaciones en Colombia, el concepto de servicio universal descrito desde la perspectiva legal tanto en el plano local como internacional, los planes, estrategias y políticas públicas para incrementar el servicio universal de telecomunicaciones en Colombia (teledensidad) y finalmente, determina el rol que la regulación económica juega en el marco colombiano e internacional.

Palabras clave: telecomunicaciones, servicio universal, acceso universal, regulación en telecomunicaciones, COMPARTEL, Plan Nacional de Servicio Universal, Fondo de Comunicaciones.

SUMMARY

INTRODUCTION

1. TELECOMMUNICATIONS IN COLOMBIA
2. THE CONCEPT OF UNIVERSAL SERVICE IN COLOMBIA
3. STRATEGIES FOR ENHANCING UNIVERSALITY IN COLOMBIA
4. THE PLACE OF UNIVERSAL/ACCESS SERVICE IN THE COMPETITIVE AND CONVERGING COLOMBIAN TELECOMMUNICATION MARKET
5. CONCLUSIONS
 - 5.1. An equilibrium between the realistic definition of Universal Service/access and the national policies
 - 5.2. Finalistic function of regulation: towards universality
 - 5.3. Universal Service as a counterpart institution

BIBLIOGRAPHY

INTRODUCTION

At the beginning, telecommunications sectors were based under monopoly scheme. Reasons¹ for this were very clear. First, it was be easier for one single operator to assume the large fixed costs needed for the maintenance and operation of a telecommunication network². Secondly, the market externalities³ justified the functioning of a monopoly based system⁴. Thirdly, with monopoly systems, cross-subsidies schemes allowed the allocation of basic but non-profitable services for the community⁵. Finally, security concerns indicated that the provision of telecommunication services be reserved to a controlled and unique operator⁶.

It could be thought that liberalization of Colombian telecommunications and open market competition would extend the provision of telecommunication services to rural, distant and marginalized areas generating life quality, economic development, shortening the breach between underprivileged and highly developed cities. Nevertheless, the results were not the expected. The sector focused its activities offering profitable services in few cities, ignoring the satisfaction of basic social needs of most of the population⁷.

The new constitutional framework imposed after 1991 in Colombia engendered a rupture of the old market model of public services, including telecommunications. The State moved back so public services, such as telecommunications, were provided, also, by the private sector. Consequently, in little more than ten years of operation of the liberalized scheme, it now seems profitable to operate telecommunication companies with smaller costs for the user. Though day by day more lines are installed⁸, at the same time, the rate of installed lines nationwide has decreased since 1998.

1 D., GERALDIN, *Controlling Market Power in Telecommunications* (OUP, 2003), ps. 5-7; DAVID MELLOR, IAN LLOYD, *Telecommunications Law*, Lexis Nexis UK. Butterworths, 2004, Chapter 1, p. 13.

2 A., ARMSTRONG, "Telecommunications" in *Competition in regulated Industries* *D. HELM and T. JENKISON (eds.) Oxford University Press, 1998, p. 134.

3 "[A] network externality is said to exist for a service if users of the service benefit when more people use it", (ibid., p. 137).

4 *Ibid.*

5 D., GERALDIN, *Op. cit.*

6 *Ibid.*

7 President ÁLVARO URIBE has planed to install more than 19.000 new local lines in small cities with less than 20.000 inhabitants; will re-install 23.000 old land lines and will try to increase mobile teledensity from 6.5% to 14.5%. Goals of the National Development Plan, República de Colombia, Available at: www.dnp.gov.co, December 5th 2004, http://www.dnp.gov.co/01_CONT/POLITICA/PLAN.HTM

8 According to a recent report about Telecommunications in the Americas, "The telecommunications sector in Colombia has grown significantly within the national economy during the 1990s, with increasing investment, which rose from 1991 to 1998 from 0.77% to 1.24% of the GDP. The number

Deregulation, the appearance of Internet⁹ and the transition to a competition based telecommunication market in Colombia, and in other developing countries, had lead to think about the place that “Universal Service”¹⁰ has in a newly economic, global¹¹, privatised and converging¹² environment, characterized by a preeminence of entrepreneurial profit and not by the achievement of macroeconomic goals concerning social development and attendance of marginal communities’ basic needs.

In this comment I intend to analyze the roll of the Universal Service in Colombia, in the context of a newly open and competitive market, and a converging environment, taking into account it’s social, political and demographic characteristics, as well as the state of art of technology.

For the proposed analysis we will evaluate the telecommunications sector in Colombia, the concept of Universal Service described by the legal framework, the plans and state strategies for enhancing universality levels and teledensity and finally, we will determine the place that regulation has in the local and global context.

of inside plant lines installed rose from 3.0 million at the beginning of 1991 to 7.5 million lines at the end of 1998, thereby achieving a telephone density of 18.62 lines per 100 people”. (CITEL/ITU/Spanish-American Association of Research Centers and Telecommunications Companies, *Universal Service in the Americas*, February 2000, p. 74. See also, *Documento CONPES 3228 16th June 2003, Lineamientos de política para los servicios de telefonía pública básica conmutada a cargo de la nación*, issued by the Consejo Nacional de Política Económica y Social (National Council for the Economic and Social Policy).

- 9 For the implications of the Information Society toward the Universal Service, see YARBROUGH, TANYA, “Connecting the World: the development of the Global Information Infrastructure”, *Federal Communications Law Journal*, March 2001, WestLaw, 53 Fed., Comm.L.J.315, p. 5.
- 10 CITEL/ITU/Spanish-American Association of Research Centers and Telecommunications Companies, *Universal Service in the Americas*, February 2000, p. 1.
- 11 For the International Telecommunication Union, private, competitive, mobile and global, are the main characteristics of the new telecommunication world: ITU, *Global Telecommunications Report*, 2002, Reinventing Telecommunications, p. 12. http://www2.itu.or.th/coe/document/newitupub/WTDR2002_e_firstchapter.pdf. December 1st 2004: Thirteenth Biennial Conference. Telecommunications: The bridge to globalization in the information society, Buenos Aires, Argentina, 2000. See also, *El servicio universal: presente y futuro*, ps. 1 and 2. <http://www.its2000.org.ar/>. <http://216.239.59.104/search?q=cache:-qIV-bX-8tQJ:www.its2000.org.ar/conference/saenzhermua.pdf+El+servicio+universal:+presente+y+futuro&hl=en> November 29th 2004.
- 12 Convergence can also be seen from different perspectives, such as technological convergence, transfrontier convergence, economic convergence, regulatory convergence. GIBBONS, THOMAS, *Regulating the Media*, London, Sweet and Maxwell, 1998, ps. 14-18; MENDES PEREIRA, MIGUEL, *Vertical and horizontal integration in the media sector and EU competition law. The ICT and Media Sectors within the EU Policy Framework*, ULB-SMIT, Brussels, April, 2003, p. 2; SELVADURAI, NILOUFER, “The regulation of the information society in the European Union”, *Computer and Telecommunications Law Review*, 2004, CTRL 2004, 10(6), 130-136. And, for all, see Lloyd and Mellor, *op. cit.*, pgs. 24 and ss.

1. TELECOMMUNICATIONS IN COLOMBIA

Colombia is a northern South American country, bordering the Caribbean Sea, between Panama and Venezuela, and the North Pacific Ocean, between Ecuador and Panama. Covers about 1.1 million square kilometers. The western and northwestern parts are flat coastal lowlands and population has medium-high incomes. There are high mountains that make internal transportation difficult and constitute burdens for the development of infrastructure of all kind. Bogotá, the capital, is located in a valley, as well as most of the largest cities. Around 5 of them, but mostly, Bogotá, concentrate banking and industrial activities as well as country's population (39 million). Coffee, banana and flower exports, plus the recent oil discoveries constitute Colombian main economic activities. Besides that, Colombian government has been struggling with *guerrilla* for more than 30 years¹³.

Before 1991 Constitution was enforced, the monopolist state assumed the provision of all public services. It seemed more convenient and the State was the only entrepreneur capable of investing large amounts of capital and technology¹⁴. Colombian State had all the market power and imposed its conditions and dynamics¹⁵. In such way, Empresa Nacional de Telecomunicaciones -TELECOM- acted as the public telecommunications enterprise, providing long distance telephone service (local and international), rural and local telephony in some cities and the first data transmission services.

By the end of 1998, 45% of the population lived in 23 cities and concentrated 75% of all the installed lines. The remaining 25% was disseminated in the rest of the country, where the other 55% was located. From this last percentage, 85% of the lines were located in high populated rural areas¹⁶.

13 For further information regarding Colombian demographic and geographic description and economic activities see, HOOLEY, MARGOT LISE, *Telecommunications in Colombia*, <http://www.vii.org/papers/colo.htm> 29th November 2004.

14 On the issue of transition from monopoly scheme of the telecommunications sector in Colombia, see Departamento Nacional de Planeación, Unidad de Infraestructura y Energía, *Documento sectorial. Regulación de las telecomunicaciones en Colombia*, p. 6, available at: www.dnp.gov.co December 5th 2004.

15 HOOLEY, MARGOT LISE, *op cit*. See also, Comisión de Regulación de Telecomunicaciones, *El sector de las telecomunicaciones en Colombia en la década de los 90's*, Chapter. 1. Las Telecomunicaciones en Colombia, p. 13, http://www.crt.gov.co/documentos/infconomica/publi_sector_2/Las_Telecomunicaciones_en_Colombia_1998-2001.pdf. 29th November 2004 and, Departamento Nacional de Planeación, República de Colombia, Unidad de Infraestructura y Energía, *La telefonía en Colombia 1998*, *Documento sectorial*, Santa Fe de Bogotá, septiembre de 1999, p. 2, www.dnp.gov.co 29 November 2004.

16 Ministerio de Comunicaciones, República de Colombia, (Ministry of Communications) <http://www.compartel.gov.co/index.php?option=content&task=view&id=19&Itemid=40>. For further information, see www.compartel.gov.co

Regions with low annual gross income per capita should have been the privileged zones attended by government's social telephony programs (universal access programs). Rather, they seem to be under attended. Even more, according to CITEL, teledensity in these areas does not reach a number of 5 local lines per 100 inhabitants¹⁷. This circumstance arrives because

“[r]esources for rising the number of installed household lines, exceeded what the economic rationales suggested, according to the NGP per capita of each zone and depriving the offer of more community services”¹⁸.

Colombian government has recently carried out a joint program with the Ministry of Communications pursuing the installation of more than 6.745 telecommunication centres located in rural areas, connecting more than 4 million inhabitants and expects to install 3000 more centres. This model program in Latin America is called COMPARTEL, makes part of the government's social telephony policy (*política de telefonía social del gobierno*)¹⁹ and aims to attend the lack of telecommunication access cutting down distances that inhabitants had to travel in order to use those services²⁰. As described above it could be thought that national plans and policies pay more attention to the consolidation of a reasonable universal access than to the content and obligations of universal service²¹.

2. THE CONCEPT OF UNIVERSAL SERVICE IN COLOMBIA

For numerous reasons, analyzing the general concept of Universal Service seems to be a difficult and challenging task^{22 23}. In first place, the extent of the concept

17 CITEL/ITU/*Spanish-American Association of Research Centers and Telecommunications Companies*, Universal Service in the Americas, February 2000, p. 76.

18 GONZÁLEZ, SERGIO, *et. al.*, *Políticas para el desarrollo de las telecomunicaciones en Colombia*, Comisión de Regulación de Telecomunicaciones, República de Colombia, p. 1, 2001. (Policies for the development of telecommunications in Colombia, Telecommunications Regulation Commission. Colombia), available from www.crt.gov.co November 29 2004.

19 For further information see, *Documentos CONPES 2925, 3228 y 3171*, National Council of Economic and Social Policy, National Planning Department, available at www.dnp.gov.co. http://www.dnp.gov.co/03_PROD/CONPES/CONPES.HTM. December 1st 2004.

20 *Ibid.*

21 *Supra* section 3. Strategies for enhancing universality in Colombia.

22 “It should be mentioned at the outset that one of the main problems arising when discussing the subject of universal service is the definition thereof. (...) Considering how the term was initially used in the United States from before the end of first decade of this century to the present, at the threshold of the year 2000, we see that throughout 20th century, the concept of universal service, as expressed in policy and regulation, has undergone many transformations”. CITEL/ITU/*Spanish-American Association of Research Centers and Telecommunications Companies*, Universal Service in the Americas, February 2000, p. 17.

23 For further information regarding the discussion about the need for specific definition of universal service, see OECD, *Universal Service Obligations in a competitive telecommunications environment*, 1995. Available at

can vary depending on the social and economic characteristics, as well as the different programs implemented in each country²⁴. Secondly, the technological developments and each regulatory framework define the content of the minimum obligations applied to the concept of universal service²⁵. Thirdly, the concept is confused with other related concepts such as “Universal Access” or “Obligations of Universal Service”²⁶. Further more, the ITU has defined Universal Service²⁷ in an imprecise fashion, usually based in vague words such as “reasonable”, “availability” or “affordability”.

Despite the above, Universal Service as defined in the regulations issued by the Colombian Government (Resolution 575/2002 – Telecommunications Regulation Commission), is the service that seeks to provide general access to basic telecommunications services to households, beginning with telephony services, and then including other services to the extent permitted by technological advances and the availability of resources.

Further more, Decree 899/1999, established the concept of Universal Access, which stands for the right of all users of basic switched public telephony (BSPT) to communicate with any other user of the state telecommunications network and any other telecommunications network abroad. This definition was intended as a mechanism for surpassing barriers than could affect the application of the Universal Service in regions where the provision of telecommunication services could appear uneconomical or unprofitable. The named decree also stated that for purposes of social telephony plans, universal access is the population’s facility to access telecommunications services at a reasonable distance from their homes. The definition of acceptable distance shall depend on the means of transportation available to the user to access telecommunications services.

http://www.oecd.org/LongAbstract/0,2546,en_2649_37441_2349157_1_1_1_37441,00.html,
December 3, 2004.

24 *Ibid.*

25 For a summary of the different conceptions of Universal Service see, IAN LLOYD, DAVID MELLOR, *op. cit.* p. 126 and 127. See also, the *Decision on basic telecommunications commitments, adopted by the WTO’s Council for Trade in Services*, on April 30, 1996, where the Principle of Universal Service is described in the following way: “Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member”.

26 ÉTRAUULT, McARTHUR, *InfoDev, Manual para la reglamentación de las telecomunicaciones*, Chapter 6, Servicio universal, (Manual for telecommunications regulation).

27 International Telecommunication Union (ITU)’s, *World Telecommunications Development Report*, 1998.

The provision of public services was specifically regulated in the Colombian Constitution 1991 where some basic principles were also established. Regarding this issue, I agree with the following:

“In Colombia, the concept of Universal Service is included as a constitutional rule concerning the provision of public services. Article 365 anticipates that ‘Public services are inherent to the social purposes of the State. The State is in charge of ensuring the efficient provision of the services to all inhabitants of the national territory’. In essence, the constitutional rule up to pars the universal service to the minimum provision of public services, where telecommunications are included”²⁸.

This Universal Service policy can be confused with the one on Universal Access. Not only Colombia suffers this confusion since other developing countries face the same issue²⁹. In Colombia, projects of expansion, coverage and infrastructure replacement to provide communitarian access services (Universal Access) have been implemented, and are different from others oriented to the promotion of domiciliary services (Universal Service). The goals sought by the Government and the regulation concern about taking telecommunication services to unattended and marginalized regions³⁰. Several programs and strategies have been implemented for those purposes.

3. STRATEGIES FOR ENHANCING UNIVERSALITY IN COLOMBIA³¹

Until 1994, the task of increasing universality of telecommunications in Colombia was undertaken by public telecommunication enterprises under the implementation of a cross subsidies system between the long distance service and local and rural telephony. Law 142/1994 dismantled this scheme and assigned the Communications

28 LASTRA FUSCALDO, JAVIER, Superintendente delegado para telecomunicaciones, Superintendencia de Servicios Públicos Domiciliarios, República de Colombia, *Consideraciones generales sobre la inspección, vigilancia y control de servicios de telecomunicaciones en convergencia y la adopción de la figura del defensor del usuario*, (Superintendencia for Domiciliary Public Services. Telecommunications Delegate. General considerations on the inspection, monitoring and control of the telecommunications in convergence and the adoption of the customer’s ombudsman, p. 2, without date. Available from www.superservicios.gov.co December 2nd 2004.

29 TETRAULT, McARTHUR, *op. cit.*, p. 9.

30 *Infra*. 1. *Las telecomunicaciones en Colombia*.

31 For further information regarding social telephony programmes in Colombia, see, *Documento CONPES 3171, Lineamientos de política en telecomunicaciones sociales*, May 2002, National Council for Economic and Social Policy, ps. 4-9.

Fund³² (*Fondo de Telecomunicaciones*) the function to make investments for the promotion of social telephony programs.

Under this perspective, the Government aims to increase coverage, modernize the infrastructure, diversify the offer of services and promote the Colombian information infrastructure, seeking a general access to the telecommunications services for the population³³. For the achievement of these goals, some strategies have been set in motion.

For carrying out the Social Telecommunication Program, Colombian Government has implemented two strategies: The National Plan for Universal Service³⁴ and the COMPARTEL program³⁵.

This National Plan has been operating since 1998 and is expected to finish on the year 2009. Intends to promote the use of telecommunication services and its extension overall the territory. It is based on assessment and researches carried out by a private firm contracted for:

- i) determining the nation's needs regarding social telecommunications and universal service,
- ii) structure development projects in this matters,
- iii) suggesting the most efficient mechanism for carrying out these projects and
- iv) identifying the basic elements for the institutional enhancement of the Communications Fund (*Fondo de Comunicaciones*), this is, the public agency in charge of executing the National Plan on Universal Service³⁶.

32 The Fund was created by the 129/1976 Decree, as a special management resources account. Decrees 1901/1990 and 1130/1999 later defined some legal and administrative issues.

33 *Documento CONPES 3171. Lineamientos de políticas sociales en Colombia 2002-2003*, (Policy Document. Outlines of social policies in Colombia) May 2002, p. 3.

34 Comisión de Regulación de Telecomunicaciones, *El sector de las telecomunicaciones en Colombia en la década de los 90*, Colombia, p. 177. Available at: http://www.crt.gov.co/documentos/infeconomica/publi_sector/Cap11_Sociales.pdf, December 3rd 2004.

35 Available at www.compartel.gov.co

36 *Infra* 31.

Its principles are: to promote a compatible scheme of universal service with the local sector, to develop basic infrastructure that enables the provision of services, to seize the existing infrastructure, promote the development of contents and strengthen the institutional framework.

On the other hand, *COMPARTEL Program* is expected to finish also in the year 2009³⁷. The imbalance of the coverage of the telecommunications services, evinced the necessity of reframing the Social Telephony Program in the short term, giving as a result, the implementation of *COMPARTEL*:

“[T]he program is designed to find a solution ‘[the problems involved in providing universal access to telecommunications services for Colombians in rural areas without telephone service or where it is inadequate[e]’³⁸.

By the allocation of resources for telecommunications operators, the program promoted the installation of communitarian telecom centres (*telecentros*). The owners of these centres will run them on their own risk and responsibility. On the year 2000, more than 60M us\$ had been invested in these projects³⁹.

4. THE PLACE OF UNIVERSAL/ACCESS SERVICE IN THE COMPETITIVE AND CONVERGING COLOMBIAN TELECOMMUNICATION MARKET

The market of public services, including telecommunications, is far from being a perfect competition market because there are great entrance barriers and important economies of scale requirements. The State is not any more the titleholder of the service, and has come to be liable for the accomplishment of the constitutional principles, the development plans proposed by each government and multilateral agreements (such as the WTO). At the same time, the State must intervene in order to maintain balance between local policies and international trends and technological advances⁴⁰. Hence, the State will have to manage market failures, and define the

37 Ministerio de Comunicaciones, *Plan Nacional de Servicio Universal. Política de Telefonía Social*, (Ministry of Communications, *Universal Service Plan, Social Telephony Policy*), available at http://www.dnp.gov.co/ArchivosWeb/Direccion_Infraestructura_Energia/Telecomunicaciones/Documentos/Pnsu.pdf, December 3rd 2004.

38 CITEI/ITU/*Spanish-American Association of Research Centers and Telecommunications Companies*, *op. cit.* p. 85.

39 *Ibid.* p. 86.

40 For further information, and examples of Colombian political efforts regarding internet projects and expansion of ITC services, see, www.agenda.gov.co, December 5th 2004.

goals and mechanisms concerning universal service/access. Finally, the State will have the difficult task to issue the proper regulation for an open market structure, avoiding the disregard of constitutional principles, such as universality, life quality and economic efficiency.

One might be forced to think that the future regulation and the strategies that seek the enhancement of Universal Service in Colombia should ensure:

1. The expansion of new access services, instead of supporting and improving the already existing.
2. The expansion of basic services to distant areas, or to population with low income, where such services seem unprofitable or uneconomic.
3. Greater priority public access services, instead of promoting private and household access.

Regulation is the only means that will enable the transition from a monopoly system to an open market, allowing the State to keep oversight and direction over the provision of public services, avoiding that market failures cause undesirable prejudices to the community. Regulation is also the instrument capable of ensuring that telecommunications public service provision accomplish its social, economic and democratic functions, which is nothing different that the consequences of promoting universal telecommunication service/access.

When a young market, such as telecoms in Colombia, develops and its failures have been minimized or at least, controlled, regulation can take a step aside and slowly disappear, letting the market impose the condition of the provision and the extent and coverage of the services. Meanwhile, the “*Sunset Clause*”⁴¹ approach of regulation must be maintained. Only when Colombian telecommunication market ensures a sustainable and equitable provision of public universal telecommunication service, the regulators can rest and focus in other aspects. For this purposes EU experience⁴² constitutes an interesting example.

From a broad perspective, all decisions of State concerning the performance of the economy and the organization of society constitute an expression of economic and social regulation. The economic market is not a natural phenomenon and its

41 NIKOLANIKOS, NIKOS TH., “Promoting Competition in the Local Loop Access Network: local loop unbundling”, *European Competition Law Review*, 2001, ECLR 2001, 22(7), 266-280, p. 14.

42 *Ibid.*

correct conception depends on the recognition, from the State, of certain basic institutions⁴³, such as the Universal Service in telecommunications. The correct enforcement and implementation of such institutions, and the proper controls and oversight of regulatory agencies will contribute to the adequate market structure, ensuring the social principles and the constitutional aims. Without that minimum intervention from the State, defining the content and extent of Universal Service/Access, the market could not serve the purposes established in the Constitution.

For a succeeding Universal Service/Access policy a serious and rational effort on defining the obligations of this policy is required. Though we have emphasized that according to the Colombian social environment and economic characteristics, the main concern should be the enlargement of coverage; one might be forced to think that the following criteria should be taken in account whenever the regulator is asked to define the minimum content of universal service obligations⁴⁴:

- a. *Transparency*: the mechanism should provide full and clear disclosure of universal service, targets and achievements.
- b. *Equity*: the mechanism for providing and funding universal service should be regarded as fair: people in similar circumstances should be treated similarly and people in different circumstances should be treated differently.
- c. *Efficiency*: the provision of funding should have desirable effects in terms of resources allocation for the provision of services, minimizing the cost of producing it and promoting technological advances and developments.
- d. *Cost effectiveness*: the desired effects or objectives should be achieved at the minimum cost.
- e. *Flexibility*: the system should be able to have the flexibility to respond quickly to any kind of change.

43 Holding on Colombian Constitutional Court: C-150 de 2003.

44 OECD, Universal Service Obligations in a competitive telecommunications environment, 1995, available at http://www.oecd.org/LongAbstract/0,2546,en_2649_37441_2349157_1_1_1_37441.00.html, December 3, 2004, p. 78.

5. CONCLUSIONS

According to the International Telecommunications Union⁴⁵, the new conception of Universal Service implies a practical option and tool for developing countries, preferring the enhancement of global (countrywide) access, rather than promoting the enhancement of individual access. Communitarian solutions, rather than installation of private household lines. Colombian social telecommunications policies are working in that direction, achieving considerable results and it is desirable that the following governments keep seeking the same objectives.

Regulation should seek for a balanced scheme⁴⁶ where Universal Service providers do not have to afford discouraging, anticompetitive and unprofitable obligations; and consumers can enjoy quality services, at a reasonable distances from their households, according to the technological state of art, in such a way that Colombia can take advantage from the information society. Effectiveness, coherence and rationality of the regulation, taking into account the typical characteristics of the telecommunications sector in this country would determine this equilibrium.

5.1. An equilibrium between the realistic definition of Universal Service/access and the national policies

In many countries the main cause of poor universal service/access rates is determined by the lack of social policies updated to the needs and development of the society⁴⁷. Therefore, local and international policies should be developed on time and effectively. Social policies about universal access should act promptly and before universal service policies. There will be no progress at all if regulation defines an ideal model of universal service obligations if there is not a phone booth for enjoying the service, in a reasonable distance that can allow the inhabitants of distant areas benefit from the advantages of telecommunications services. There is no point on focusing the regulation of an activity that does not correspond to the real situation of the daily living of people. A quick review of the universal service obligations described in Resolution 575/2002 (Telecommunications Regulatory Commission) can lead us to conclude that, the regulatory effort in this matter has

45 ITU, "Telecommunications Policies for the Americas (Blue Book)", March 1996, quoted in *CITEL/ITU/ Spanish-American Association of Research Centers and Telecommunications Companies*, Universal Service in the Americas, February, 2000, p. 74; ITU, *World Telecommunication Development Report: Universal Access*, 4th edition, 1998, available at: www.itu.int.

46 TETRAULT, McARTHUR, *op. cit.*

47 TETRAULT, McARTHUR, *op. cit.*, p. 6.

taken into account the basic needs of the population, but also the economic and social environment and limitations. That is why only basic obligations are imposed, in a flexible description, allowing that further modifications and changes in the environment can be quickly incorporated.

Teledensity in Colombia still doesn't reach 17%⁴⁸ and consequently, the Resolution imposes a light catalogue of obligations, like basic transmission of voice and data, certain specific privileges for disabled users and the provision of telephone guide books and information services. This evinces a proportionate and rational regulation, coherent with the needs of users, but still respectful of international trends. In the task of regulating, a deep analysis of the real needs of the population took place, and that is why the provision of broadband internet connection or even the obligation of enabling internet access for every line is not a serious concern. Again, internet access for the inhabitants plays an important roll in the access policy⁴⁹, but is not part of minimum and basic telecommunication services⁵⁰.

As EDMUNDO MATARAZZO⁵¹, contributes about the latest World Bank Project for Universal Service in Latin America:

“The idea is to map telecommunication service offers in poorer regions and to identify their practical benefits to a community's everyday life. In this case, technology is not the most important aspect, but to attend to citizens' needs”⁵².

5.2. Finalistic function of regulation: towards universality

There is no doubt about the importance and effects that could be given by the issuance of regulation and the establishment of directives. Universality policies and programs are implemented trough the imposed guidelines, seeking higher levels of

48 Which means than out of 100 people, only less than 17 has a local fixed line. *Comments on Draft Telecommunications Law of Government of Colombia Report on Mission to Bogotá*, Colombia, February 4-8, 2003, BRUCE, ROBERT, Debevoise & Plimpton, p. 5, available at www.leyttelecomunicaciones.gov.co/docs/comentarios_banco_mundial.doc

49 See, www.agenda.gov.co, where internet social policies are described as part of access plans for the inhabitants.

50 *Infra*. Section 3.

51 MAZZARAZO, EDMUNDO, is the responsible for Public Services at the National Agency of Telecommunications and coordinator of the Universal Service project of Regulatel, entity that congregates all telecom regulation agencies in Latin America.

52 Ana Paula Lobo. Universal Service receives money from the World Bank. Available at: <http://www.frecuenciaonline.com/english/mostrarcontenido.php?id=43&contenidoid=409>. December 6th 2004.

coverage and quality services. Regulatory agencies⁵³, depending on the social needs and the behavior of the market actors, will have the task to control and monitor the universal service system. As well as the concept of Universal Service is dynamic⁵⁴, regulation that enforces it and makes it real, necessarily responds also dynamically, according to the social trends, the arising technological advantages and the evolution of the market.

In the telecommunication sector, regulation can determine important roles and characteristics of the market. Regulation can promote privatization, seeking new provision of services and larger levels of access (service/access). It may also determine the coverage of networks and its extension, and could precisely define the content of the universal service obligations catalogue. Regulation can re-balance rates, lowering prices of certain services making them more available for the marginalized areas.

5.3. Regulation and the funding of Universal Service/Access

Regulation can help answering the question regarding how to finance universal service. The matter seems extremely complex in competitive markets and therefore, the State should make an effort to establish mechanisms for sharing between operators and himself the net costs of universal service obligations. Whether the mechanism is the best one of all or not, regulation will give the guidelines for its administration.

Regulation can determine a cross-subsidies system for the promotion of Universal Services, as it once existed in Law 142/1994. This Law created, according to the principle of solidarity stated in article 368 of Colombian Constitution, that (i) some geographical sectors will pay higher rates than others whose income was lower, or, that (ii) for some kind of services, higher rates could be charged for the construction and expansion of new networks that can reach distant areas, or for the provision of unprofitable services (in the case of Colombia, long distance calls funded local switched public telephony). The imposition of subsidies can also promote the provision of better services for disabled people or access to emergency numbers.

53 Miguel Solanes. *Servicios Públicos y Regulación. Consecuencias legales de las fallas del Mercado.* (Public services and regulation. Legal consequences of market failures) United Nations. CECLAC. Division of Natural Resources and Infrastructure. Santiago de Chile. 1999. P. 7.

54 Lloyd and Mellor, *op. cit.* p. 125

Cross subsidies are actually proscribed and many reasons evinced the disadvantages of this model⁵⁵. Consequently, Colombia stopped using it for Universal Services funding. Cross-subsidies affect competition because leads telecommunication companies to provide only profitable services, forgetting about those that are being subventioned.⁵⁶ Cross-Subsidies can also bring inefficient services and discourage investment in technology⁵⁷.

Finally, regulation can determine the creation of a Special Fund for the coverage and provision of Universal Access/Service. This mechanism is considered to be the best alternative for the promotion of universal service objectives⁵⁸ giving grounds for the creation of the Communications Fund (Fondo de Comunicaciones) whose tasks not only include the administration of funds for the development of universal service projects in Colombia, but also the responsibility of promoting every single IT project i.e., e-government, e-procurement, digital signatures infrastructures, Compartel/Internet Centers, etc.

5.3. Universal Service as a counterpart institution

As a final conclusion, Universal Service in Colombia can be seen as the counterpart of an open telecommunication market or some sort of liability against the risk of social life cohesion caused by liberalization and economic competition. The government plans for expansion of social telephony, but mainly, regulation, are the basic tools for keeping the balance between market failures and the democratic and social functions that telecommunications public service play's in Colombia. Telecommunications Fund (*Fondo de Comunicaciones*) is suggested to be the mechanism for paying net costs of the services and the achievements of the goals in universal service/access matters.

An approach to Universal Service in Colombia should encourage a check and balance system between the following main issues:

55 For further information regarding disadvantages on the use of cross-subsidies see WELLER, DENNIS, *Auctions for universal service obligations. Presented at the twelfth biennial conference of the ITS*, Stockholm, June 1998, p. 3-5, available at http://faculty-gsb.stanford.edu/wilson/archive/E542/classfiles/gte_colr_auctions.pdf, 5 December 2004.

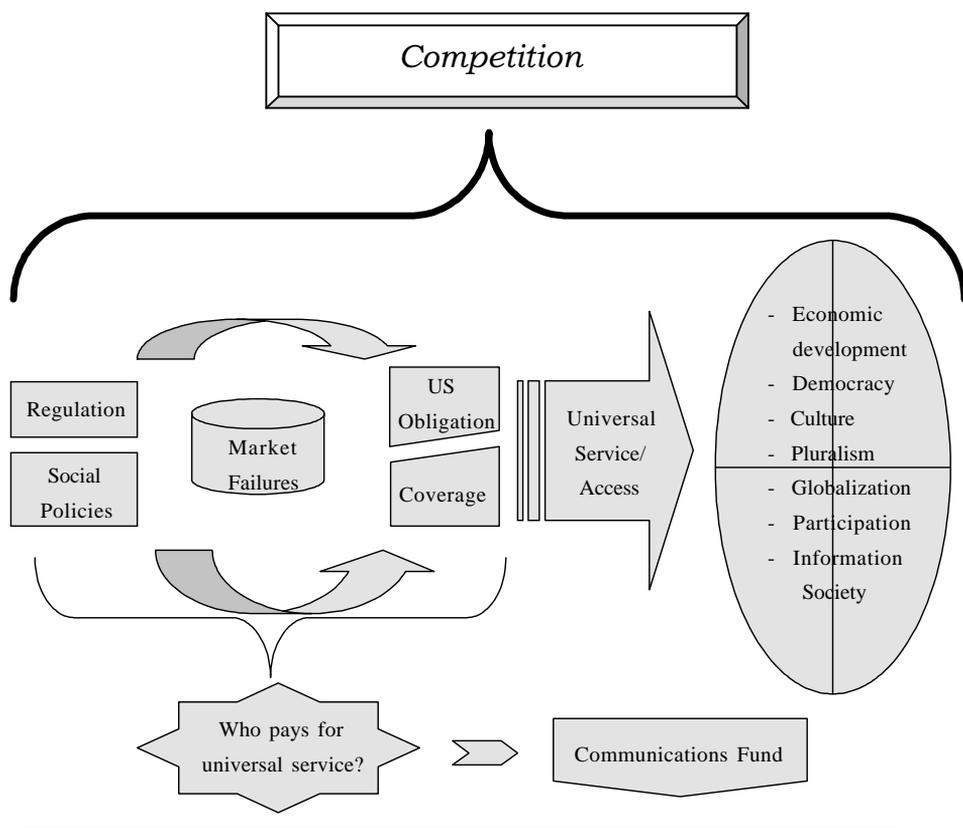
56 *Ibid.*

57 OECD, *Universal Service Obligations in a competitive telecommunications environment*, 1995, available at http://www.oecd.org/LongAbstract/0,2546,en_2649_37441_2349157_1_1_1_37441.00.html, December 3, 2004, p. 57.

58 TETRAULT, McARTHUR, *op. cit.* p. 23.

- i. Social policies on coverage and expansion of Telecomm and IT services,
- ii. Local Regulation,
- iii. Coherent and rational universal service obligations catalogue,
- iv. Establishment of coverage goals and v. Funding Mechanisms.

The above expressed ideas are simplified and presented in the following graphical way:



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