



NATIONAL INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY

RESPONSE REPORT

**A Report of the Response of NICTA to comments
received in the Public Consultation on ICT Licence
Application Forms and Guidelines**

Issued by NICTA, Port Moresby on 1 March 2011

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1 Executive summary

NICTA published draft Licence Applications and Guidelines under Section 218 of the *National Information and Communications Technology Act 2009* (the Act) in December 2010 for comment by interested stakeholders.

In the event only two submissions were received – from Telikom PNG Limited and Digicel (PNG) Limited, respectively.

The major comments of both of these stakeholders have been set out in this Report together with NICTA's consideration and response in each case.

The comments received were helpful and appreciated by NICTA. However many related to matters that are subject to other processes, such as, for example, the migration process and the Migration Notice for existing licensees.

In the event NICTA has concluded that none of the comments received require change except for presentation of forms (for convenience only) to the drafts of the Licence Application and Guidelines documents published in December 2010. However, for the avoidance of doubt, the Guidelines will be issued under Section 218, rather than Section 56, of the Act. This will ensure that the Guidelines are not confused with Rules, which would have the effect of replacing part of section 11 of the *National Information and Communications Technology (Operator Licensing) Regulations 2010*. Other action may be taken to pursue some separate matters raised in the submissions as noted in the attached response details.

2 Assessment of major comments and NICTA response

No.	Sub-mission	Reference and Subject	Comment	NICTA Response	Action
1	Telikom	Applicability to licence migration	Telikom states: “We do note however that application for renewal of ICT licences would in the future apply to existing licensees but only after existing licensees have migrated their licences into the new ICT licences and the term of the new ICT licences, as the case may be, expired. In that regard we understand that these Guidelines and Forms do not affect the migration process envisaged by section 304 of the NICTA Act 2009 (the Act) concerning existing licensees.”	NICTA agrees. The Application Forms and Guidelines that are the subject of the current Public Consultation are for on-going administration and are not part of the migration procedure under Section 304 of the Act. The procedures that apply to migration are set out in the Section 303 Notice that appears on NIVTA’s website at http://www.nicta.gov.pg/Pages/LicenceMigration.aspx	No further action required
2	Telikom	Requirements required to be satisfied by applicants for licences	Telikom suggests that the requirements proposed in the Guidelines for new applicants appear cumbersome, although it recognises that information for NICTA scrutiny needs to be obtained in the application. Telikom argues that licence renewals should not require the same stringent measures as new applications and should be expedited.	Licence expiry dates are known in advance and Section 12 of the ICT (Operator Licensing) Regulations provide for applications to be made 60 days before expiry, and need to be accompanied by such information as NICTA thinks fit. At that time it will be important for NICTA to confirm that the details of individual licences are correct and current, but NICTA agrees that some of the information required with the original application may not be needed for renewals. NICTA agrees that some expedition of renewals	NICTA will review Guidelines on the information needed for renewal of each category of licence, when NICTA and the industry have gained further experience in the new licence processes. These will be subject to consultation at the time.

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				<p>in terms of the information required should be examined.</p> <p>The information required to accompany new applications is set out in Section 10 of the ICT (Operator Licensing) Regulations and cannot be changed by NICTA. However once greater experience has been gained in the operation of the regulations NICTA will be able to suggest any changes that are desirable when the regulations are reviewed. In the meantime NICTA has been able to undertake expedition of licence applications urgently required licences on a case by case basis.</p>	
3	Telikom	Timeframes for decision	Telikom suggests that “the Guidelines should state the timeframe within which NICTA is expected to consider and make its decision on every application.”	Section 11(3) of the ICT (Operator Licensing) Regulations sets out the timeframe as 90 days. NICTA does not intend to qualify this provision in its Guidelines, and does not yet have the experience of new applications processing to enable it to do so in any event. This may be a matter for review at a future time.	No further action at this time.
4	Digicel (p.3)	2.1 Duplication	Digicel proposes that a licence front page or general application information page be created with individual support details in attachments specific to each licence type.	The applications are separate and distinct documents and may be processed and recorded separately. The extent of any duplication that may result for an applicant will be minor. However NICTA will seek further comment from the industry based on actual experience when the	Forms will be formatted as requested and will be reviewed by NICTA.

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				forms and applications are next reviewed.	
5	Digicel (p.3)	2.2 Timeframes	Digicel notes that NICTA should be given timeframes in respect of each Application (type) and that this be less than the 90 days specified in Section 11(3) of the ICT (Operator Licensing) Regulations. Digicel notes that Section 11 only applies until NICTA makes rules under Section 56(4) of the Act and the Guidelines are such rules.	<p>Section 11(1) of the ICT (Operator Licensing) Regulations relates to criteria for applications and the Section is only withdrawn in respect of the licenses affected by such rules. Section 11(3) is not affected by the Guidelines that are the subject of this Public Consultation when they come into effect.</p> <p>For the reasons stated in Response 3 above, NICTA does not intend to qualify the timeframe in Section 11(3) at this stage.</p> <p>However, for the avoidance of doubt these Guidelines will not be issued under section 56(4) of the Act. They will be issued under Section 218 of the Act.</p>	The guidelines will be issued under Section 218 of the Act. No further change to the documents.
6	Digicel pp.3/4	2.3 Existing licence holders	Digicel submits that existing licence holders should not be required to provide the volume of information to migrate their licences.	The information requirements associated with migration under Section 304 of the Act have been pared back and are subject to a separate set of rules as set out in Response 1 above.	No further action required.
7	Digicel p.4	2.4 Draft licences	Digicel submits that stakeholders should be provided with draft template licences to review and comment on prior to the migration process.	Agreed. These will be issued shortly in a consultation paper.	No further action required here.
8	Digicel	3.1 Applications Licences -	Digicel submits that NICTA should not consider applications for Applications	NICTA is not prepared to make such a statement. NICTA is administering the Act in accordance	No further action required.

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	p. 4	Guidelines	Licences to operate services in any currently nationally allocated or awarded spectrum.	with its objectives in section 2 which include the development of an efficient and competitive ICT sector. Ruling out Applications Licences of any sort is not consistent with those objectives in NICTA’s view. NICTA also notes that no supporting argument has been made for this proposal. Spectrum allocation is a separate matter.	
9	Digicel p. 4	3.2 Forms – Applications Licences	Digicel submits that separation of Applications licences and Network licences is unnecessary as facilities and services may be combined into a single Network Licence or Gateway Licence.	The scheme of the Act and Regulations provides for these licence categories. They may be applied for separately and the Application Forms and Guidelines facilitate this where required.	No further action required.
10	Digicel p. 5	3.2 Applications Licences – default benefits	Digicel submits that a network licence holder should by default be granted an automatic application licence – to simplify processes.	This is not the scheme for licensing in the legislation. The Act separates out the two types of licences and recognises that network and application licences may be held separately by separate persons. There should be no presumption that a network licensee would also require an applications licence.	No further action required.
11	Digicel p. 5	4.2 Content Licences - Forms	Digicel suggests that there is some ‘duplicity’ on information required.	NICTA assumes that Digicel means ‘duplication’ and, if so, that has already been addressed	No further action required.
12	Digicel p. 5	4.2 Content Licences - Forms	Digicel suggests that in the Migration Notice at Schedule 3 existing Value Added Service licences that involve the provision of content	The Migration Notice is not the subject of the present public consultation. However the point is dealt with below for expediency’s sake:	No further action required.

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			should be migrated as a content licence as well as an application licence, pursuant to section 51 of the Act	Paragraph 2.2 of the Guidelines for Content Service Applications explicitly mentions that content services are defined to include “an applications service which also supplies content”. However, the ICT (Operator Licensing) Regulations (section 2(3)) make it clear that only broadcasting or narrowcasting content is being referred to. That is why VAS licences do not migrate to content licences.	
13	Digicel p. 5	5.1 Class Licences - Guidelines	Digicel submits that NICTA should not consider applications for a Class Licence to build infrastructure or to operate services in any currently nationally allocated or awarded spectrum.	As noted in Response 8, NICTA is not prepared to make a statement of this kind. NICTA is administering the Act in accordance with its objectives in section 2 which include the development of an efficient and competitive ICT sector. Ruling out Class Licences of any sort is not consistent with those objectives in NICTA’s view. NICTA also notes that no supporting argument has been made for this proposal.	No further action required.
14	Digicel p. 5/6	5.2 Class Licences - Forms	Digicel notes that “there appear to be no restrictions on applying for class licences other than they must meet some closed user group requirements or be operated on a community basis. However there is no mention of what technologies or services may be offered or what spectrum these services can be offered in.” Digicel claims	The Guidelines for Class Licence do not and should not be service or technology defined, not should services or technologies be permitted or eliminated in advance by NICTA. NICTA’s job is not to make service and technology decisions by way of ex ante regulation. If experience suggests that further technology or service specific guidance is needed that can be added in a	No further action required.

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			this creates an ‘ambiguity’ and that class licences should not be awarded in any spectrum band or adjacent band already allocated or awarded on a national basis.	future review of the Guidelines. Spectrum management is a separate matter and NICTA certainly has a role to avoid arrangements that will lead to interference or to adverse impacts on legitimate users of spectrum.	
15	Digicel p. 6	6.1 Network Licences - Guidelines	Digicel submits that no applications for a Network Licence to be considered if the licence is to build infrastructure or operate services in any currently allocated or awarded spectrum.	See Responses 8, 13 and 14 above.	No further action required.
16	Digicel p. 6	7.1Cabling Licences - Guidelines	Digicel submits that cabling licences should be able to be granted to companies and not only to natural persons, if the company has staff able to provide such services.	The submission is not clear on whether the persons employed by such a company also must be licensed as cabling licensees. In any case the licence is awarded on the basis of individual skill and knowledge, and this is not something that a company could have, being only a legal entity. If the cablers working for a company are individually licensed there is neither need nor point in the company being licensed as well. That would be regulatory duplication.	No further action required.
17	Digicel p. 6	7.1Cabling Licences - Guidelines	Digicel proposes that pro-rated licence refunds should be available if the licensee requests termination ahead of expiry date. Digicel also suggests that the relevant	Licence fees are payable to enable NICTA’s licensing workloads can be undertaken. In the Cabler field there is a three year licence, not a one year licence or a two year licence. Pro-rated refunds would create such arrangements by default and also would not recognise that much	No further action required.

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			<p>Guideline should be amended to require the licensee to “comply with any reasonable directions and notifications which NICTA from time to time issues in accordance with its powers under the National ICT Act”.</p> <p>Digicel also suggests the indemnification in para 4(iv) be removed.</p>	<p>of the work and cost associated with licence administration will have been committed. This is not done on an individual licence basis.</p> <p>There is no need for the amendments suggested by Digicel because all actions by NICTA must be authorised by its legislated powers.</p> <p>It is possible that customers of the cable licensee might seek to pursue NICTA for having licensed the cabler in the first place. The indemnification makes it clear that if NICTA is exposed to costs or liabilities as a result of the actions of the cabler the cabler should be responsible for those costs as well.</p>	
18	Digicel p. 7	8.1 Apparatus Licences - Guidelines	Digicel submits that it should be added to the list of space segment holders because it has spectrum licences to operate C and Ku band services in PNG	This is a personal matter to Digicel not a response to the public consultation.	No further action required here. NICTA will address this separately.
19	Digicel p. 7	8.2 Apparatus Licences - Forms	Digicel suggests that shops selling boxed mobile phones should not have to have radio dealer licences.	Will require change to the legislation	No further action required