



Bemobile Limited
Level 2, Bemobile Building
Section 38, Lot 2 Waigani Drive.
PO Box 1055, Waigani
NCD, Papua New Guinea
Tel: (+675) 325 9400
Fax: (+675) 325 9428

21 June 2011

Charles Punaha
Chief Executive Officer
National Information and Communications Technology Authority
Frangipani Street
Hohola
PO Box 8444
BOROKO
NCD
Papua New Guinea

Dear Charles

Re: Public Consultation on Regulatory Instruments: Guideline and Rule under National ICT Act 2009

Thank you for your letter of 10 June 2011 and providing us with the opportunity to discuss the draft licence terms last week in person.

As requested we confirm our comments in writing:

1. We note that Schedule 1: Standard terms and conditions of the Individual Licence (g) contains an indemnity. In providing any indemnity bemobile insists that there is a cap on the maximum liability of the indemnity as well as a requirement to provide prompt notice of any action or claim, that no settlement for which indemnification is to be sought is made without our consent, such consent not to be unreasonable withheld or delayed, and the right to direct the defence of any claim including the right to appoint counsel to defend any action or claim on behalf of the entity seeking indemnification. We should be most grateful if you would consider including these safeguards as the provision of an unlimited and unqualified indemnity will cause issues for us in securing insurance, finance and under our reporting obligations.
2. We note that Schedule 1: Standard terms and conditions of the Individual Licence (i) there is an obligation to provide authorised Interception of Communications. Whilst this obligation is similar to the existing obligation it fails to guarantee that the agency seeking the inception will fund the implementation of this capability. We therefore respectfully request that provisions equivalent to 13.3 of our existing licence are included in the new licence.

3. We note that Schedule 3: Special Terms and Conditions for Network Licensees who provide Cellular Mobile Services 2. sets out minimum level of Network performance. Bemobile as you are aware is dependent on 3rd parties, such a Telikom PNG Limited for transmission, and failures within these 3rd parties therefore affects the level of service bemobile is able to provide. May we discuss further how these provisions may be modified so that these are attainable levels of service within the control of bemobile.
4. We note that Schedule 3: Special Terms and Conditions for Network Licensees 3(8) has a requirement that Network Coverage must be continued until NICTA specifically authorises otherwise. Under the existing licence bemobile is required to continue to provide such coverage until 10 years after the commencement of its licence i.e. 18 July 2012 and by virtue of Section 304(4)(c) these obligations should not be extended beyond that date. We respectfully request that this provision is therefore modified in the new NICTA licence proposed for bemobile to reflect the terms of our existing obligations.
5. We note that Schedule 3: Special Terms and Conditions for Network Licensees 4 introduces a performance bond which is not a requirement of bemobile's existing mandatory coverage obligations or licence and by virtue of Section 304(4)(c) these obligations should not be extended beyond the existing obligations. We respectfully request that this provision is therefore modified in the new NICTA licence proposed for bemobile to remove this provision 4 - Performance Bond.
6. We note that Schedule 3: Special Terms and Conditions for Network Licensees who provide Cellular Mobile Services 5 provides obligations in respect of Network Repair. As indicated above bemobile is reliant on 3rd parties, such as Telikom PNG Limited, for the provision of certain parts of its network. May we discuss further how these provisions may be modified so that these are attainable levels of service within the control of bemobile.
7. We note that Schedule 13: Special Terms and conditions for international gateway operators 2 places a restriction on traffic being routed through a Switching Centre or other facility that is located in a country other than Papua New Guinea. Bemobile already has a commercial incentive to ensure efficient routing of domestic traffic however this prohibition in the licence would have inadvertent detrimental effects on roaming traffic, network continuity/disaster recovery planning and potential efficient solutions for rural or remote locations. We therefore request that this provision is removed.
8. We note that Schedule 13: Special Terms and conditions for international gateway operators 3 is entitled "Efficient routing of domestic traffic" although it relates to inception. Please see our comments in bullet point 2. above in respect who bears the cost of implementing this capability.
9. Further to our discussions, bemobile desires an international gateway licence which is not restricted to any particular technology e.g. is capable of use with both satellite and cable.
10. In respect of the proposed fee calculation, as bemobile has indicated in our previous discussions, the total liability for regulatory fees borne by bemobile and which must be passed on to its customer base is what is of the greatest concern to bemobile. bemobile market share in both terms of revenue and subscriber numbers is substantially less than its dominant competitor Digicel. We believe that Digicel has circa 80% of the mobile market in both terms of subscriber numbers and revenue. Should bemobile be required to bear and pass on to its customers an equivalent financial amount to Digicel in regulatory fees bemobile's ability to compete effectively with this dominant operator will be materially diminished. The regulatory fee burden on bemobile will therefore be detrimental not only

to bemobile but also the objectives of the Act set out in Section 2 such as, but not limited to, promoting the long term interests of Papua New Guinea and its people and ensuring effective competition. May we therefore re-request a benchmarking exercise is undertaken by NICTA which takes into account both similar markets and reflects the competitive environment faced by bemobile. For example, in the Solomon Islands regulatory fees may be imposed to meet the approved costs of the regulator up to a maximum of 2% of the gross revenue of the licensee but the allocation of spectrum and/or licences has no additional fee or charge.

Yours sincerely,



Stuart Kelly
Chief Executive Officer