

**A Public Consultation Document  
on  
the determination of annual  
Operator Licence fees**

Issued by NICTA, Port Moresby on 8 July 2011

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# 1 Introduction

Under section 14 of the *National Information and Communications Technology (Operator Licensing) Regulation, 2010* (the Licensing Regulation), the annual licence fee of an operator licence is specified by the Minister responsible for treasury matters at a level that the Minister considers to be ‘a reasonable contribution towards NICTA’s forecast expenditure’. Although it is the Minister that is responsible for setting the annual licence fees, NICTA intends to make a recommendation to the Minister on an appropriate methodology for determining the annual licence fees. To that end, NICTA is currently consulting on a proposed methodology and will use the feedback received in response to this consultation paper to shape its recommendation to the Minister. The Minister is not obliged to act on NICTA’s recommendation. The annual licence fee specified by the Minister would apply from the date the Minister may choose to specify.

## 1.1 PUBLIC CONSULTATION PROCESS

The objective of this Public Consultation is to provide stakeholders with the opportunity to make comments to NICTA on the proposed methodology.

NICTA invites all members of the public, including Existing Licensees, private individuals, public organisations and commercial entities (together, the “Respondents”) to participate in this Public Consultation process. Respondents are invited to submit written comments in response to this consultation document no later than close of business on Friday, 5 August 2011. Comments may be submitted to one or more of the following addresses:

- a) E-mail to: [kgulovui@nicta.gov.pg](mailto:kgulovui@nicta.gov.pg)
- b) Post to: Kila Gulo-Vui

Public consultation on the determination of annual Operator Licence fees  
National ICT Authority  
PO BOX 8444  
BOROKO NCD  
Fax: 30004829

Copies of all written comments submitted by Respondents in relation to this consultation will be published on NICTA’s Public Register on the NICTA website consistent with the requirements on NICTA under subsection 229(3) of the Act. Any claims of confidentiality

made by Respondents will be determined by NICTA on a case by case basis. Generally speaking, statements of opinion will not be regarded as confidential by NICTA.

## 2 Background

Under section 35 of the National Information and Communications Technology Act 2009 (the Act), the Head of State is authorised to make regulations prescribing the fees payable by ICT licensees for ICT licence. The Act envisages that those fees will be based on the principles of fee certainty, cost recovery, fee minimisation, non-discrimination, transparency and value recovery. An extract from section 35 of the Act is provided at Annex A.

The Head of State made the Licensing Regulation in 2010. Section 14 relates to operator licensing fees and is reproduced in Annex B. The application fees that must accompany an application for an operator licence are specified in Schedule 2 to the Licensing Regulation (which is reproduced in Annex C). Provision is made for the annual licence fees for operator licences to be specified by the Minister responsible for treasury matters (the Treasurer).

This consultation is focused on annual licence fees only.

Subsection 14(3) of the Licensing Regulation requires the Treasurer to have regard to the following when fixing the annual licence fee:

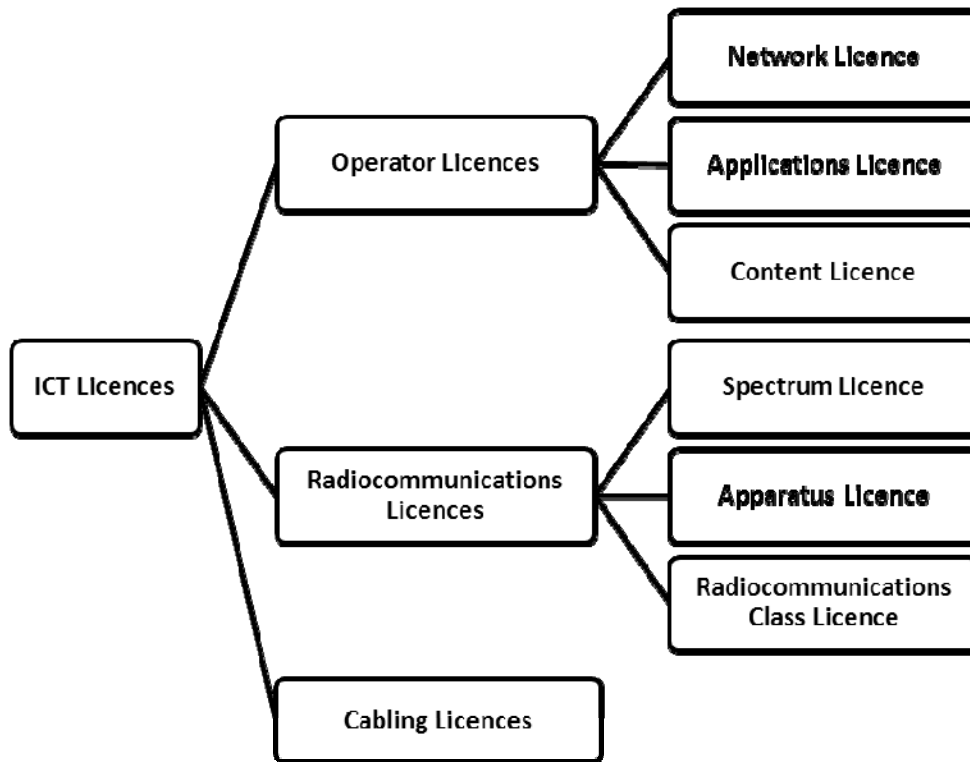
- the principles specified in section 35 of the Act;
- the NICTA budget;
- the audited annual financial statements and any other requested information provided by individual licensees under subsection 14(4) of the Licensing Regulation; and
- such other matters as the Treasurer considers relevant.

NICTA intends to make a recommendation to the Treasurer on an appropriate annual licence fee calculation methodology that is consistent with specified principles, supports NICTA's administration of the ICT licensing regime, and reflects international best practice. That proposed methodology is outlined on the following pages for consideration and comment by affected parties.

Under the Act, it is envisaged that NICTA's operating costs will be recovered on some proportionate basis from all ICT licensees, not just operator licensees. As shown Figure 1, an ICT licence refers to any type of licence issued under the Act and thus includes:

- All types of operator licence (Network Licence, Applications Licence, Content Licence, whether issued as an individual licence or a class licence);
- All types of radiocommunications licences (Spectrum Licence, Apparatus Licence including Radio Dealers' Licences, and Class licence); and
- Cabling Licences.

Figure 1: The types of ICT licences under the National ICT Act



However, the proposed methodology for determining annual licence fees that is described below is applicable to operator licensees only. The fees in relation to radiocommunications licences are described in section 6 of the *National Information and Communications Technology (Radio Spectrum) Regulation, 2010*. NICTA considers that at this stage Cabling Licensees should simply be subject to a fixed annual fee around the same level of the current annual fee of K750 plus GST.

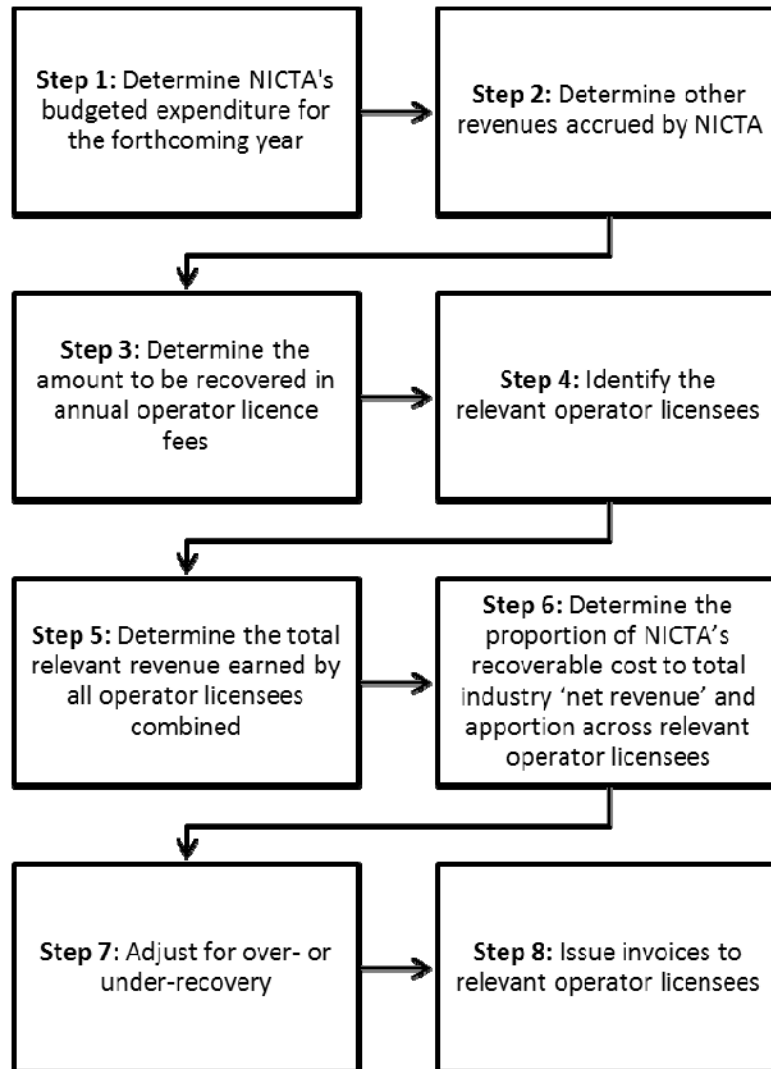
As operator licences that have been issued as class licences are reserved for private use and community service use, and cannot be used to supply services to the public, NICTA intends to recommend to the Treasurer that he exempt class licensees from the requirement to pay an annual operator licence fee. The Treasurer is authorised to make such an exemption under section 16 of the Licensing Regulation.



### 3 Proposed process for determining annual operator licence fees

NICTA has developed a procedure for determining the annual operator licence fees that is based on eight steps. This is summarised in Figure 2 and explained in detail further below.

Figure 2: NICTA's proposed process for calculating annual operator licence fees





**Step 1: Determine NICTA's budgeted expenditure for the forthcoming year**

Annual operating licence fees must be based on the recovery of NICTA's forecast expenditure as estimated in the NICTA budget. The preparation of these expenditure forecasts is governed by section 31 of the Act. NICTA's expenditures will be forecast for one fiscal year into the future.

Example:  
NICTA's forecast expenditure for 2012 is KXXXXXX.

**Step 2: Determine other revenues accrued by NICTA**

NICTA will then identify and estimate all the revenues that it will collect—and retain—over the forthcoming year. For example, numbering fees if any, the variable spectrum fee and the annual fixed fees for spectrum licences and apparatus licences as specified in the Radio Spectrum Regulations. These revenues will partially cover NICTA's forecast expenditure. Revenues that are not retained by NICTA, or amounts that are not paid to NICTA, will be excluded. For example, any universal access levies will be excluded as they would be paid directly into the Universal Access and Service Fund created by section 89 of the Act.

Example (continued):  
In 2012 NICTA expects to collect KXXXX from various sources of non-licence revenue.

**Step 3: Determine the amount to be recovered in annual operator licence fees**

The total amount to be recovered through annual operator licence fees will be found by subtracting the revenues received and retained by NICTA (identified in Step 2) from NICTA's total forecast expenditure (identified in Step 1). This is NICTA's recoverable costs.

Example (continued):  
KXXXX (from Step 1) minus KXXXX (from Step 2) equals KXXXXX, which is NICTA's recoverable costs for 2012.

#### **Step 4: Identify the relevant operator licensees**

NICTA's recoverable costs will be recovered from the holders of operator licences, rather than from a charge levied on each operator licence. This is an important distinction as many companies will hold more than one type of operator licence (for example, a Network Licence and an Applications Licence). Apportioning NICTA's recoverable costs across licensees instead of licences will avoid the potential for double charging.

As previously mentioned, operator licences that have been granted as Class Licences will be excluded from consideration.

Example (continued):

If NICTA has issued a total of 50 operator licences to 20 different companies, then NICTA's recoverable costs will be apportioned across those 20 companies.

#### **Step 5: Determine the total relevant revenue earned by all operator licensees combined**

NICTA proposes to apportion its recoverable costs among operator licensees based on the proportion of the total industry revenue earned by each licensee. This is appropriate as it reflects the size and scale of the licensee's operations and thus the scope of its licence. At the same time it avoids NICTA or the Treasurer having to attempt to place a value on different types and subcategories of licence.

By way of example, it is reasonable to expect that an operator licensee that supplies public cellular mobile services under a national Network Licence and a national Applications Licence should pay a greater proportion of NICTA's recoverable costs than, say, an operator licensee that supplies public payphone services under a provincial Applications Licence. By apportioning licensee's liability for NICTA's recoverable costs on the basis of the proportion of total industry revenue earned by the licensee, the national mobile network operator is likely to pay a higher annual licence fee than the provincial public payphone service provider without anyone attempting to assign a value to the various licences.

The focus would be on the revenue earned by operator licensees, not their profits. Further, only relevant revenue will be taken into account, and only after the inter-carrier payments have been deducted. This reflects the definition of 'net revenue' contained in the Act, which states in section 4:

Net revenues means, in respect of an operator licensee, the gross revenues from the supply of ICT services by that operator licensee under its operator licence, less interconnection charges remitted to other operator licensees.

These figures will be calculated by NICTA using information that NICTA will require each licensee to provide (using a standardised template) together with the audited financial statements that each operator licensee must submit annually under subsection 14(4) of the Licensing Regulation.

**Step 6: Determine the proportion of NICTA's recoverable cost to total industry 'net revenue' and apportion across relevant operator licensees**

NICTA's recoverable costs will be expressed as a proportion of total industry net revenue (as that term is defined in the Act). The resultant percentage figure will determine what percentage of net revenue each operator licensee must pay as its annual licence fee.

Example (continued):

NICTA's recoverable costs of KXXXX (from Step 3) divided by industry's combined net revenues of KXXXX (from Step 5) equals 0.XYZ. NICTA's recoverable costs will thus be apportioned across operator licensees by charging each licensee a licence fee equivalent to X.YZ% of its net revenue.

**Step 7: Adjust for over- or under-recovery**

The figures used to derive the recoverable cost percentage for the whole industry and for each operator licensee (as set out in the example box above) may be the best available estimates at the time of billing. When final figures are available the percentage may need to be adjusted down or up for over and under-recovery respectively. Adjustment for under or over recovery can be made in the following year's invoice to each licensed operator, based on their actual payments in the year for which an adjustment is being made.

Example (continued):

Under-recovery in Year 1

NICTA's recoverable costs of XXXX (from Step 3) for the first year are found to be under the amount that should have been recovered by AAA. In the second year AAA is added to the amount to be recovered for year two and the total amount is divided by industry's combined net revenues of YYYY (from Step 5) to determine the relevant percentage to be applied in the second year (0.DMP). NICTA's recoverable costs will thus be apportioned across operator licensees by charging each licensee a licence fee equivalent to D.MP% of its net revenue in the second year.

Over-recovery in Year 1

A similar approach is taken to adjust for over-recovery to that described above except that instead of adding the extra amount to be recovered in year two the amount of the over-recovery is subtracted from the amount to be recovered in year two.

**Step 8: Issue invoices to relevant operator licensees**

NICTA will issue an invoice to each operator licensee (with an individual licence) identifying the annual licence fee that is payable and the calculations through which that figure was derived.

The potential penalties for late payment of an annual licence fee are specified in subsection 14(8) of the Licensing Regulation.



## Annex A: Extract from the National ICT Act

### Section 35 Licensing fees

Subject to this Section, the Head of State, acting on advice, may make regulations prescribing the fees payable by ICT licensees for ICT licences.

The fees prescribed under Subsection (1) shall be prescribed with regard to the following general principles (without limitation) –

- (a) the principle of fee certainty, so that annual volatility in fees is minimised or the manner of calculation of fees is known in advance; and
- (b) the principle of cost recovery, so that NICTA ensures that the aggregate fees it proposes to recover from all ICT licensees are sufficient to recover its forecast ongoing expenditure; and
- (c) the principle of fee minimisation, so that NICTA endeavours to minimise the fees payable by ICT licensees, subject to the principle of cost recovery; and
- (d) the principle of non-discrimination, so that similarly situated ICT licensees undertaking the same activities are subject to similar fee structures; and
- (e) the principle of transparency, so that ICT licensees are informed of the rationale behind the fee structure proposed by NICTA; and
- (f) the principle of value recovery, so that a higher proportion of fees are recovered from those ICT licences that provide the greatest value to ICT licensees.

The regulations made under Subsection (1) may include (without limitation) –

- (a) in relation to operator licences –
  - (i) the one-off fees payable by the applicant for an individual licence upon the filing of an individual licence application; and
  - (ii) the one-off fees payable by a registrant upon the filing of a class licence registration form; and
  - (iii) the manner of calculation of the annual fees payable by individual and class licensees; and
- (b) in relation to numbering fees –
  - (i) the manner of calculation of an annual charge to be levied on operator licensees as a numbering fee; and
  - (ii) the manner of calculation of a standardised “per number” charge for identified types of numbers that may involve different fees for different types of numbers based on their relative scarcity, such that, for example, numbers with smaller numbers of digits are subject to higher “per number” charges; and
- (c) in relation to radiocommunications licences –
  - (i) the one-off fees payable by the applicant upon the filing of a spectrum licence or apparatus licence application; and
  - (ii) the manner of calculation of the annual fees payable by a spectrum licensee and an apparatus licensee.

ICT licensees, applicants and registrants shall pay to NICTA the fees prescribed by the regulations made under this Section as applicable.

Any Universal Access and Service Levy imposed under Part V of this Act is not a fee to which this Section applies.



## Annex B: Section 14 of the Licensing Regulation

### 14. LICENCE FEES.

- (1) The fees to be paid in respect of each category of operator licence are –
  - (a) the applicable Application Fee set out in Schedule 2 to accompany the application for the licence; and
  - (b) an annual licence fee calculated in accordance with this Section.
  
- (2) The annual licence fee for an operator licence shall be an amount fixed from time to time by the Minister responsible for treasury matters in respect of that licence as an amount that he considers to be a reasonable contribution towards NICTA's forecast expenditure as estimated in the NICTA budget.
  
- (3) In fixing annual licence fees under Subsection (2), the Minister shall have regard to –
  - (a) the principles specified in Section 35 of the Act; and
  - (b) the NICTA budget; and
  - (c) the information provided under Subsection (4) and
  - (d) such other matters as the Minister considers relevant.
  
- (4) For the purposes of fixing the applicable annual licence fee payable each individual licensee shall submit to NICTA –
  - (a) within three months from the end of its financial year, its latest annual financial statements audited by a registered company auditor or in such other form as approved by NICTA; and
  - (b) such other information as NICTA may request.
  
- (5) The fee to be paid for the renewal of an individual licence is the applicable application fee.
  
- (6) Other fees payable to NICTA in connection with operator licences are set out in Schedule 2.
  
- (7) The licence fees payable for operator licences shall be paid to NICTA by such means, at such times, and in such manner as NICTA may from time to time determine.
  
- (8) If a person fails to pay any licence fee or levy payable under the Act by the due date, NICTA may –
  - (a) impose an additional charge for late payment, calculated daily at a rate of 5 percentage points above the Kina Facility Rate per annum on the amount unpaid from the time when the fee or levy became payable until it is paid; and
  - (b) suspend the licence until all outstanding payments are made.
  
- (9) Except on payment of the applicable fee, NICTA shall not –
  - (a) issue or renew an individual licence; or



- (b) register an applicant under a class licence.

## 15. FEES PAYABLE UNDER EXISTING LICENCES

- (1) This Section applies where, immediately prior to the Succession Date, an existing licence includes an obligation to pay annual licence fees determined in accordance with Subsection 19J(5) of the *Telecommunications Act* 1996 (an “existing obligation”).
- (2) For the period that an existing licence continues in force, an existing obligation is replaced by an obligation to pay annual licence fees of an amount fixed from time to time by the Minister responsible for treasury matters in respect of that licence as an amount that he considers to be a reasonable contribution towards NICTA’s forecast expenditure as estimated in the NICTA budget.
- (3) In fixing annual licence fees under Subsection (2), the Minister shall have regard to –
  - (a) the principles specified in Section 35 of the Act; and
  - (b) the NICTA budget; and
  - (c) the information provided under Subsection (4) and
  - (d) such other matters as the Minister considers relevant.
- (4) For the purposes of fixing the applicable annual licence fee payable, each existing licensee shall submit to NICTA –
  - (a) within three months from the end of its financial year, its latest annual financial statements audited by a registered company auditor or in such other form as approved by ICTA; and
  - (b) such other information as NICTA may request.
- (5) For the purposes of Section 304(4)(b) of the Act, the one or more ICT licences issued shall include an obligation to pay –
  - (a) where the quantum and timing of payments are specified in the existing licence, those amounts and timing; and
  - (b) where an existing licence contains an existing obligation, annual licence fees of an amount fixed from time to time by the Minister responsible for treasury matters in respect of that licence as an amount that he considers to be a reasonable contribution towards NICTA’s forecast expenditure as estimated in the NICTA budget.

## 16. EXEMPTION FROM LICENCE FEES.

- (1) Subject to Section 35 of the Act, the Minister responsible for treasury matters, acting on advice from NICTA, may by notice in the National Gazette –
  - (a) exempt the payment of a fee; or
  - (b) substitute a reduced fee,otherwise payable under the Act.
- (2) An exemption or a reduced fee under Subsection (2) –
  - (a) may relate to –

- (i) any type of licence specified in the notice; or
  - (ii) any type of licensee specified in the notice; or
  - (iii) any use to which the licence may be put; or
  - (iv) any combination of the matters referred to in paragraphs (i), (ii) and (iii);  
and
- (b) may further be subject to compliance with any conditions as are specified in the notice; and
- (c) shall continue in force for such period as is specified in the notice or until the revocation of such notice by a subsequent notice.

**17. REFERENCES TO PREVIOUS REGULATORS.**

- (1) Any reference in an existing licence to the ICCC in relation to any fee payable under that licence or any other matter regarding such licence shall be construed as a reference to NICTA.
- (2) Any reference in an existing licence to PANGTEL in relation to any fee payable under that licence or any other matter regarding such licence shall be construed as a reference to NICTA.



## Annex C: Schedule 2 to the Licensing Regulation

<b>Item</b>	<b>Fee K</b>
Application fee (commercial, other than not for profit)	5000
Application fee (solely not for profit)	500
Application to vary conditions of licence	500
Change of particulars of licence	200
Copies or extracts from public register	K2.50 per page
Replacement of licence, certificate or permit (lost, destroyed, etc) certified by NICTA	K25 per page