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11 September 2023

Mr Kila Gulo-Vui
Chief Executive Officer
National Information & Communications Technology Authority
Punaha ICT Haus
Frangipani Street
Hohola
National Capital District

MLB
For your attention and action
18/09/23

By Email and By Hand Delivery

Dear Mr Gulo-Vui

**Public Consultation Discussion Paper
Licensing for the Provision of Non-geostationary Orbit (LEO/MEO) Satellite Services in Papua New Guinea**

We refer to NICTA's consultation on Licensing for the provision of Non-geostationary Orbit (LEO/MEO) Satellite Services in Papua New Guinea.

Please find enclosed Digicel's submission in response.

Thank you for affording Digicel an opportunity to comment on this important matter. We look forward to NICTA's next steps in this consultation.

Yours faithfully
Digicel (PNG) Limited


Michael Henao
Head of Legal & Regulatory

DIGICEL (PNG) LIMITED

Submission to NICTA

Public Consultation Discussion Paper

Licensing for the Provision of Non-geostationary Orbit (LEO/MEO) Satellite

Services in Papua New Guinea

11 September 2023

***This submission is provided to NICTA for the purpose of the current public inquiry only and
may not be used for any other purpose***

A. Introduction

1. Digicel welcomes the opportunity to comment on the *Public Consultation Discussion Paper Licensing for the Provision of Non-geostationary Orbit (LEO/MEO) Satellite Services in PNG* ("**Discussion Paper**"). We commend NICTA for taking this initiative to help to ensure that Papua New Guinea's regulatory framework, including the licensing requirements specified under Part III of that *National Information and Communication Technology Act 2009* ("**Act**") are applied fairly and consistently across all providers of ICT networks and services.
2. Low Earth Orbit ("**LEO**") satellite services are now being used widely to compete directly with terrestrial based services and, as such should be treated by NICTA on an equivalent basis with other licensed services.
3. Digicel submits that such fairness and consistency is mandated by the Objective enshrined in section 2 of the Act which, among other things, states:

"The objective of this Act is to ensure that the ICT industry contributes to the greatest extent possible to the long-term economic and social development of Papua New Guinea, by means that include –

...

- (d) ***promoting and maintaining fair and efficient market conduct and effective competition*** between persons engaged in commercial activities connected with the ICT industry in Papua New Guinea, including by assisting the ICCC to achieve this; and

...

- (f) *providing appropriate community safeguards in relation to ICT activities and to regulate adequately participants in sections of the ICT industry in Papua New Guinea; and...* (emphasis added)

4. The Act's Objectives are further supported by the Regulatory Principles in section 3 which, among other things, require:

"(b) that regulatory measures should be –

...

- (ii) *based on sound economic principles and, to the extent feasible, should be **technology-neutral** to reflect the potential for convergence of technologies; and*

...

- (v) ***non-discriminatory in application*** such that, to the extent appropriate, similarly situated ICT licensees are treated on an equivalent basis subject to the recognition of legitimate differences; and

...

- (h) *encouraging, facilitating and promoting sustainable investment in, and the establishment, development and expansion of, the ICT*

industry in Papua New Guinea, including via the exercise of facilities rights.” (emphasis added)

5. It is in this context that Digicel provides its responses to the questions posed by NICTA in the Discussion Paper.

B. Responses to Questions

Question 1: (a) Do you agree that providers of LEO satellite services in PNG should be licensed by NICTA under the Act, as other providers of network services are licensed? (b) If not, what other authorisation arrangements, if any, should apply? (c) Would any form of exemption be appropriate, and under what circumstances?

6. Digicel considers that LEO satellite services are network services. The services themselves, and providers of them, are bound by the Act. They are therefore required to be licensed under the Act.

7. Specifically, section 49 of the Act provides:

“49. NETWORK LICENCE.

- (1) Subject to Section (3), **no person shall exercise a facilities right, or supply any facilities access service, or supply any network service, unless they hold a network licence, that is an individual licence or a class licence, that authorises them to do so.***
- (2) A network licensee shall comply with the terms and conditions of its network licence.*
- (3) Notwithstanding Subsection (1), the Head of State, acting on advice, may make regulations that identify (without limitation) the procedure, circumstances and consequences associated with NICTA exempting a person, by way of a published declaration, from any obligation under this Act to hold a network licence, where a network licensee has agreed to assume all obligations under this Act that would apply to that person if they were to hold such a network licence.” (emphasis added)*

8. The Act defines a network service as follows:

*““network service” means a service for the carrying of communications, by means of guided and/or unguided electromagnetic energy, supplied between distinct geographic points **at least one of which is located in Papua New Guinea**, but does not include services provided solely on the retail customer side of the network boundary”*

9. In Digicel’s view, the LEO satellite service is a network service as that term is defined under the Act, and should therefore be subject to licensing regime prescribed by the Act, and that any such licence should be an individual licence.

Question 2: Do you agree with NICTA's assessment of the current terms and conditions of individual network licences which should apply to the provision of LEO satellite services? If not, what alternative arrangements should apply?

10. Digicel does not agree that any other form of authorisation, such as a class licence, or an exemption to the requirement to hold a relevant individual network licence would be appropriate.
11. In Digicel's submission, a class licence would not be consistent with the licence categories contained in the *National Information and Communication Technology (Operator Licensing) Regulation, 2010* ("**Regulation**"), and would not meet the Act's requirements for neutrality, and would be insufficient to safeguard community interests.
12. Nor would a licence exemption be appropriate in Digicel's view, as there are no good reasons for it. Among other things, the granting of a licence exemption would also contravene the Act's Objectives and Regulatory Principles in respect of neutrality and non-discrimination.
13. For example, by granting a licence exemption for a LEO satellite service, NICTA would also, in effect, be granting an exemption to LEO satellite service providers from paying operator licence fees and Universal Access and Service Levies. Such an outcome is wholly undesirable, and would be at odds with NICTA's following statement at section 6.1 of the Discussion Paper:

*"Licensed network operators contribute to the development of PNG in many ways beyond providing services to end-users. They contribute to industry administration through regulatory fees and charges, and to the extension of service coverage to unserved and underserved areas through Universal and Access Service (UAS) levies. **There is no basis on which LEO satellite service providers should be exempted from similar contributions.**" (emphasis added)*

Question 3: Do you agree with the addition of a specific section in the 2011 Rule to clarify the terms and conditions of licence where an individual network licensee chooses to provide LEO satellite services, as set out in Attachment 1 to the Discussion Paper? If not, what changes would you recommend?

14. Digicel is concerned that NICTA may be categorising LEO satellite services as a subset of services within the broader category of Public Cellular Mobile Services. It is not clear why this approach has been taken. Although LEO satellite services may compete directly with public cellular mobile services (as that term is defined in the Regulation), exactly the same may be said for other services, including bandwidth services and other data services provided over fixed terrestrial networks.
15. In Digicel's respectful view, it would be better to consider the imposition of any special licence conditions in the context of a broader review of the Regulations and the *Standard and Special Conditions of Individual Licences Rule, 2011* ("**Licensing Rule**").
16. Importantly, any such consideration should not delay the requirement for licensing of LEO satellite services which, in the meantime, can be covered adequately by the *Standard Terms and Conditions of Individual Licences* contained in Schedule 1 to the Licensing Rule.

Question 4: Do you agree that the LEO services should be permitted in locations and or areas designated by NICTA where telecommunications services are not existent and or are inadequate and structured and managed within the service provision of the Universal Service Scheme (UAS)?

17. Digicel agrees that LEO satellite services should be considered in the context of the delivery of Universal Access and Service initiatives under Part V of the Act.

C. Conclusion

18. Digicel supports NICTA's efforts to ensure any LEO satellite services that are provided in Papua New Guinea comply with the requirements of the Act and are treated consistently with services that are provided using other technologies.
19. We also recognise that it is timely to consider a review of the Licensing Rule to ensure it remains fit-for-purpose and is applied consistently across all technologies and licensees. However, such a review should not delay the enforcement of the requirement for licensing for LEO satellite services.
20. Digicel does not agree that LEO satellite services need to be treated as a special case or granted any exemptions from the application of the Papua New Guinea's licensing framework.
21. Digicel thanks NICTA for the opportunity to comment on the matter.