



Digicel (PNG) Limited
PO Box 1618
Port Moresby NCD 121
Papua New Guinea
www.digicelpng.com

15 January 2024

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

→ DUE For your appropriate action.

→ Copy file

[Handwritten signature]
CEO 16/01/24

By Hand & Email Delivery

Dear Sirs

PUBLIC CONSULTATION INTO THE PROPOSED VARIATION TO THE LICENCE CONDITIONS RULE 2011

We refer to NICTA's consultation on the Proposed Variation to the Licence Conditions Rule 2011 issued on 25 October 2023.

Please find **enclosed** Digicel's submission in response.

We look forward to NICTA's next steps in this process.

Yours faithfully
Digicel (PNG) Limited

Michael Henao
Head of Legal & Regulatory

DIGICEL (PNG) LIMITED

Submission to NICTA

**Public Consultation on the *Proposed variations to the Licence
Conditions Rule 2011***

Issued on 25 October 2023

15 January 2024

***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. This submission sets out Digicel (PNG) Limited's ("**Digicel**") initial comments with respect to NICTA's Consultation Paper titled *Proposed variations to the Licence Conditions Rule 2011* ("**Discussion Paper**") that was released on 25 October 2023.
2. The Discussion Paper proposes a number of amendments to the existing *Standard and Special Conditions of Individual Licences Rule, 2011* ("**Existing Rule**") including to:

"(1) To remove terms and conditions that no longer apply, such as the obligations previously imposed on Telikom in relation to the operation of the National Maritime Safety radio service, or which are no longer appropriate in the circumstances of 2023, such as the obligation to print a hard copy telephone directory annually;

(2) To make provision for the inclusion of Low Earth Orbit (LEO) satellite services and related conditions;

(3) To include special terms and conditions relating to Digitec Communications (trading as Vodafone) similar to those already included in relation to Digicel and Telikom;

(4) To update the lists of locations relevant to coverage obligations; and

(5) To make provision for coverage obligations that reflect the current circumstances of each of the individual licensees concerned and clear milestones for achievement of 100% coverage of each geographic area or location by a nominated date."¹

3. These proposed changes are set out in the Proposed Revised Rules ("**Proposed Revisions**") that were attached to the Discussion Paper.
4. Digicel is supportive of NICTA undertaking regular reviews of regulatory instruments to ensure they remain fit for purpose and reflect ongoing changes to technologies, services and the markets in which those services are supplied.
5. In doing so, Digicel respectfully submits NICTA should expressly recognise that the Existing Rule forms a part of the terms and conditions of the individual licences that have been granted to existing licensees. As such, any amendment to the Existing Rules must be made in accordance with section 58 of the *National Information and Communication Technology Act 2009* ("**Act**"), including the additional consultation required under that section.

¹ Discussion Paper at page 2.

6. Importantly, any licence conditions, including those contained in the Proposed Revisions, should be non-discriminatory in effect and reflect the objectives and regulatory principles enshrined in sections 2 and 3 of the Act which, among other things, state:

“2. Objective of Act

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 –

(a) providing a regulatory framework consistent with the regulatory principles in Section 3 that promotes –

(i) the long-term interests of Papua New Guinea and its people, taking account of the National Goals and Directive Principles and the Basic Social Obligations of the Constitution; and

(ii) the efficiency and competitiveness of the ICT industry in Papua New Guinea; and

...

(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

(g) encouraging, facilitating and promoting industry self-regulation in the ICT industry in Papua New Guinea; 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.

...

3. REGULATORY PRINCIPLES.

To achieve the objective of this Act set out in Section 2, Parliament intends that the ICT industry in Papua New Guinea be regulated in a manner that recognises –

...

(b) that regulatory measures should be –

(i) proportionate and drafted to achieve results that are no more burdensome than necessary to achieve their stated regulatory objectives; and

(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

...”.

7. Consistent with this, Digicel agrees with the changes that NICTA has proposed in respect of Telikom’s obligation to provide the National Maritime Safety radio service and the publication of a printed hard copy telephone directory.
8. Digicel also agrees with the express recognition of Low Earth Orbit (“LEO”) satellite services, although it remains unclear as to whether all of the proposed conditions would be “technology neutral” or practical to implement in respect of such services.
9. Digicel’s principal concerns about the Proposed Revisions are centered around the approach that has been adopted by NICTA with respect to the ongoing imposition of mandatory coverage obligations. In particular:
 - a. Digicel disagrees that mandatory coverage obligations for providers Public Cellular Mobile Services should be expressed to be different for each licensee, as such discriminatory obligations are contrary to the regulatory principles and the specific requirements for licenses mandated by sections 3(b)(v) and 55 of the Act.
 - b. Instead, Digicel submits that the coverage obligations of all providers of Public Cellular Mobile Services should be expressed as being the same with the only difference being that some timing latitude may be given to a new entrant to meet the specified coverage obligation.

- c. Digicel is also concerned that the proposals to extend the coverage obligations of Public Cellular Mobile Service providers appear to have a considerable overlap with the locations of greenfield sites that have previously been determined to be UAS Projects and for which UAS Levies have been imposed. While Digicel would agree in principle that non-discriminatory licensed coverage obligations are likely to be a superior mechanism for delivering services to underserved parts of Papua New Guinea, such overlaps need to be better understood so that there is a clear delineation between what is a UAS Project and what is a coverage obligation under an individual licence.
10. These issues are discussed in further detail below.
11. This submission does not contain any information that is confidential or commercially sensitive to Digicel. Accordingly, this submission may be disclosed publicly.
12. Digicel looks forward to being able to review and comment on any submissions being made by other parties and to seeing a draft decision from NICTA prior to the issuance any new or revised Rule.

B. Requirement for non-discriminatory imposition of coverage obligations

13. Subject to Digicel’s comments regarding the UAS, Digicel does not disagree in principle with providing Network Coverage in the locations identified in Schedules 8 – 11 of the Proposed Revisions.
14. However, the mandatory coverage obligations that have been included in both the Existing Rule and the Proposed Revisions are, in Digicel’s respectful submission, discriminatory in both their expression and application. That is because each of Telikom Limited (“Telikom”), Digicel and Digitec Communications Limited (“Vodafone”) are subject to different obligations in terms of the timing of meeting their mandatory coverage obligations. This is shown in the following table²:

Locations specified in Schedules 8 – 11	Mandatory Coverage Obligations specified in Schedules 5 – 7		
	Telikom (Schedule 5)	Digicel (Schedule 6)	Vodafone (Schedule 7)
8	<i>“Network Coverage in all of the main centres”</i>	<i>“from Commencement Date, 100%”</i>	<i>“Network Coverage in all of the main centres”</i>
9	<i>“Network Coverage in all of the mid-sized centres”</i>	<i>“from Commencement Date, 100%”</i>	<i>“Network Coverage in all of the mid-sized centres”</i>
10	<i>“Network Coverage in the 87 administrative district centres specified ... by ... : (a) 60% on Commencement Day; (b) 65% on 31 December 2023; (c) 80% on 31 December 2024; (d) 100% on 31 December 2025”</i>	<i>“from Commencement Date, 100%”</i>	<i>“Network Coverage in the 87 administrative district centres specified ... by ... : (a) 60% on Commencement Day; (b) 65% on 31 December 2023; (c) 80% on 31 December 2024; (d) 100% on 31 December 2025”</i>
11	<i>“Network Coverage in the 120 localities specified ... by...: (a) 40% on Commencement Day; (b) 55% on 31 December 2023; (c) 80% on 31 December 2024;</i>	<i>“from Commencement Date, 95%; and” “from 1 January 2026. 100%”</i>	<i>“Network Coverage in the 120 localities specified ... by...: (a) 40% on Commencement Day; (b) 55% on 31 December 2023; (c) 80% on 31 December 2024;</i>

² Schedule References are to the Schedules contained in the Proposed Revisions

	(d) 95% on 31 December 2025; (e) 100% in 31 December 2026"		(d) 95% on 31 December 2025; (e) 100% in 31 December 2026"
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15. The table shows clearly that the proposed mandatory coverage obligations for Digicel are not only expressed differently from the obligations of Telikom and Vodafone, they are also considerably more onerous.
16. In our view this is contrary to the regulatory principle that regulatory measures be “*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*”.
17. Digicel further submits that the approach that has been adopted by NICTA is also inconsistent with the requirements of Section 55 of the Act which states:

“55. TERMS AND CONDITIONS OF AN INDIVIDUAL LICENCE.

(1) NICTA shall make rules setting out the standard terms and conditions, and any special terms and conditions, for individual licences.

(2) All individual licences shall include the standard licence conditions set out in rules made under Subsection (1).

(3) Special terms and conditions only apply to those individual licences to which they are specified to apply in the rules.”
(emphasis added)

18. Importantly, all references to special terms and conditions of individual licences are made in respect of the licences themselves and not specific individual licensees. Digicel considers this to be an appropriate safeguard to:
 - a. ensure that specific licensees are not subject to onerous conditions that do not apply to other individual licensees; and
 - b. prevent cherry picking by other existing licensees or new entrants who would seek to gain a competitive advantage from discriminatory licence conditions. This is especially the case in respect of coverage obligations. That is because it is considerably more costly to establish and provide coverage in rural and remote areas than it is to provide coverage in urban areas. In the event that one individual licensee is required to carry the burden of providing more extensive coverage than other licensees, then its average costs of providing service will necessarily be higher and it will be at a competitive disadvantage to those licensees that choose to only provide coverage in lower cost urban areas.

19. A discriminatory approach by NICTA towards the coverage obligations of specific individual licensees is also likely to have far reaching effects with respect to the proper interpretation and application of Parts V and VI of the Act relating to Universal Access and Interconnection and Wholesale Access.
20. In particular, Digicel does not consider there to be any reason why Telikom, which has held a licence and operated services in Papua New Guinea for at least as long as Digicel, is not subject to exactly the same mandatory coverage obligations as those that apply to Digicel. Nor has any such reason been given by NICTA.
21. While it may be appropriate to provide a brief grace period for a new entrant to the market to meet any mandatory coverage obligations, Digicel strongly disagrees with NICTA's proposed approach to imposing mandatory coverage obligations whereby individual obligations are assigned to each licensee.
22. In our view, an alternative approach that would be fairer and meet the requirements of the Act should be adopted. That is, non-discriminatory mandatory coverage obligations should apply to *all* licensees, subject to a brief grace period to allow new licensees to implement their networks.
23. Such an approach would obviate the need for "licensee specific" coverage obligations and could be expressed as follows in section 2 of Schedule 3 of the Proposed Revisions:

(x) The licensee must:

(a) from the Commencement Date, provide and maintain until the expiry of its licence Network Coverage in all of the main centres specified in Schedule 8;

(b) from the Commencement Date, provide and maintain until the expiry of its licence Network Coverage in all of the mid-sized centres specified in Schedule 9;

(c) from the date that is the later of:

(i) the Commencement Date; or

(ii) the date that is one year from the date of issue of its licence,

provide and maintain until the expiry of its licence Network Coverage in all of the administrative district centres specified in Schedule 10;

(d) from the date that is the later of:

(i) one year from the Commencement Date; or

(ii) the date that is two years from the date of issue of its licence,

provide and maintain until the expiry of its licence Network Coverage in at least 80% of the small centres specified in Schedule 11; and

(e) from the date that is the later of:

(i) two years from the Commencement Date; or

(ii) the date that is three years from the date of issue of its licence,

provide and maintain until the expiry of its licence Network Coverage in all of the small centres specified in Schedule 11.

24. Moreover, any new licensee should be required to provide a compliant network rollout programme as a part of its individual licence application, with strong sanctions being imposed in cases of non-compliance with that programme.
25. If such an approach is adopted then we submit Schedules 5, 6 and 7, at least insofar as they relate to coverage obligations, could be removed in their entirety from the Proposed Revisions.

C. Inter-relationship between Mandatory Coverage Requirements and UAS

26. Digicel is concerned that there appears to be a material degree of overlap between the locations specified in Schedules 8 – 11 of the Proposed Revisions and UAS Projects that have previously been approved by the Minister for which UAS Levies have been imposed by NICTA.
27. Aside from raising some obvious questions around those UAS Projects and the validity of any related UAS Levies, the use of mandatory coverage obligations as alternative mechanism to deliver on the Government's social inclusion objectives is an interesting approach that Digicel suggests is worthy of further consideration.
28. Digicel would be broadly of such an approach if it is used as an alternative to replace what we consider has proven to be a largely ineffective UAS mechanism to deliver greenfield sites and upgrades under the provisions of Part V of the Act.
29. We would welcome an opportunity for further discussion with NICTA on this important issue.

D. Other Issues

30. Digicel notes that it has had difficulty identifying a number of “Small Centre” locations that are described in Schedule 11 of the Proposed Revisions, including:

Ref. No.	Province	District	LLG/Ward	Small Centres
13	West New Britain	Talasea	Mosa Rural	Bugal
14	New Ireland	Kavieng	Lovangai Rural	Meteselen
23	East Sepik	Wewak	Wewak Rural	Passam Station
36	Sandaun (West Sepik)	Nuku	Yankok Rural	Auguganak Station

31. In order to permit Digicel to better understand the coverage requirements that have been proposed for these Small Centres, we would appreciate additional location details being provided, including latitude and longitude information.

E. Conclusion

32. Digicel welcomes the opportunity to comment on the submissions of other stakeholders and looks forward to continuing to discuss these issues with NICTA as the Consultation progresses.