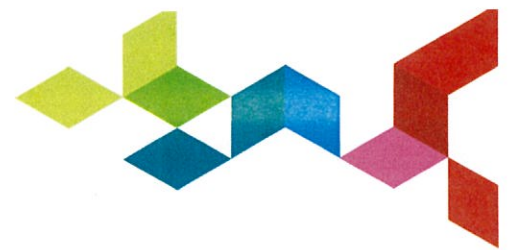


Friday, 20 December 2013



Director Economics, Consumer and
International Affairs
NICTA
P O Box 8227, Boroko, NCD

Attention: Warren Suti

BY EMAIL: uas_consultations@nicta.gov.pg

Digicel

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Dear Warren

Re: Public Consultation Draft Regulations and Procedures for Universal Access and Service (UAS)

We refer to the draft Regulations and Procedures for Universal Access Service that were released for public comment on 22 November 2013. Digicel notes that the consultation on this matter coincides with three other public consultations and a number of other investigations that NICTA is currently conducting. Digicel is concerned that the number of proceedings on foot and the tight timeframes provided for response makes it very difficult for industry to be able to provide quality inputs in a timely manner. This is likely to diminish the value of any consultations and reduce the overall quality of decision making. Digicel respectfully requests NICTA to reconsider some of the timeframes for responses and to prioritise which matters it chooses to pursue in order to afford industry a better opportunity to participate meaningfully.

Nevertheless Digicel is pleased to be able to participate in this important consultation and hereby provides its initial views on the documents that have been made available. Digicel would appreciate any further opportunities to provide its views as the matter progresses.

Please note that this submission does not contain any confidential information.

General Comments

Part V of the *National Information and Communications Technology Act 2009* ("Act") sets out a comprehensive and prescriptive regulatory regime to support the establishment and administration of Universal Access services. Among other things, it establishes a UAS Board, Secretariat (NICTA), a Universal Access and Service Fund and detailed procedures by which UAS Projects are chosen and implemented. Importantly, section 91(2) provides that it is the role of the Board to:

- "(a) to give effect to the objective of this Part as set out in section 90; and*
- (b) to provide advice to the Minister in the formulation of Government Policy in respect of any aspect of this Part or that otherwise promotes the objective of this Part; and*

- (c) *to publicise the Universal Access and Service Fund and its objective; and*
- (d) *to consult, where appropriate, commercial, industrial and consumer organisations about the Universal Access and Service Fund and the implementation of the objective of this Part; and*
- (e) *to conduct research in relation to matters affecting the implementation of the objective of this Part; and*
- (f) *to develop and receive from stakeholders, UAS Project proposals and submit UAS Project proposals to the Minister; and*
- (g) *to prepare and publish an annual report to the Minister on the activities of the UAS Board; and*
- (h) *to give effect to Government Policy in the manner contemplated by this Part."*

It therefore seems to Digicel that the UAS Board has clear responsibility for delivering against the Government's Policy and it is NICTA's role to support the UAS Board as it carries out its functions. Importantly, it is not clear from the draft Regulations or the Public Notice that accompanied them whether the draft Regulations have been prepared at the request of the UAS Board, or if NICTA is acting independently of the UAS Board. If it is the latter, then Digicel respectfully requests that this process is put on hold until such time as the UAS Board is able to convene and consider the matter for itself.

In any case and as noted above, the Act already provides for comprehensive and prescriptive processes and procedures for the establishment of the institutional and procedural arrangements in relation to the provision of the UAS. In such circumstances Digicel suggests that the proposed regulations are largely superfluous and may have the unintended effect of making the UAS more complex and less certain for all parties concerned. That is because the draft Regulations repeat or attempt to interpret the provisions of the Act and, in some cases, appear to contradict the law. For example, the draft Regulations attempt to introduce new objectives for the UAS, including to create competitive markets. However this is not included in the objectives that are set out in section 90 of the Act. The Board is also permitted under section 94(7) of the Act to "*regulate its own procedure*". However, the draft Regulations provide extensive rules for the UAS Board to follow.

Digicel respectfully suggests that the draft Regulations are either withdrawn for the time being or are revised to ensure that they only include matters that are specifically contemplated by the Act. Many of the procedural matters contemplated by the draft Regulations could perhaps be better incorporated into "internal" procedural guidelines for the UAS Board.

UAS Fund

Digicel submits that it should be clarified that seeking UAS funding through the imposition of levies on operators will and should be considered as a last resort in the event that funding from other sources (direct funding from Government, aid funding, etc.) is insufficient to meet the needs of the actual UAS Projects that are required to be implemented. This is particularly appropriate since Digicel would be disproportionately affected by the imposition of any revenues-based levy. Digicel should not be penalised for having already met and exceeded its own coverage obligations and built its customer base as a result of that. In fact, Digicel has previously submitted that its coverage beyond its license obligations is a de facto UAS and should be considered if levies on the industry are contemplated.

Digicel also notes that UAS levies are not permitted to be applied until such time as the funding requirements of specific UAS Projects are known. In particular Digicel draws NICTA's attention to section 107(2) of the Act which clearly indicates that levies are to be set out each year on the basis of the actual needs that are determined by the UAS Board. That is, a "standard" annual levy is inappropriate and may not be applied by NICTA.

Facilities and Spectrum Sharing

Digicel submits that Facilities and Spectrum sharing are not appropriate matters to be the subject of new Regulations. Digicel notes that these matters are already expressly provided for under the Act and no additional regulatory clarification is required. For example, section 131 of the Act already provides that "*all facilities access services that may be supplied by means of any facility constructed under a Project Agreement for the life of that facility*" are deemed to be declared services for the purposes of the Act.

Conclusion

Finally, Digicel respectfully encourages NICTA and the UAS Board to fully engage with the industry as the UAS regime develops. Digicel believes that the success of the regime will be highly dependent on the active involvement of industry in the scoping and implementation of proposed projects, especially as the UAS regime becomes established. We look forward to being a part of the process and would welcome further dialogue on this important issue.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'J. Mangos', written in a cursive style.

John Mangos
CEO