



**A Public Consultation Document**

**on**

**A draft Rule**

**setting out terms and conditions for  
temporary operator licences for  
trials, demonstrations, and research and  
development purposes**

Issued by NICTA, Port Moresby on 8<sup>th</sup> July 2011

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## 1 INTRODUCTION

The National Information and Communications Technology Authority (NICTA) has prepared a draft Rule setting out a process by which NICTA may grant a Special Temporary Authorisation in lieu of an Operator Licence.

The proposed Special Temporary Authorisations would be reserved for circumstances where a facility or service that would otherwise need to be covered by an Operator Licence is being used or supplied solely for the purpose of a trial, demonstration, or research and development.

The use of Special Temporary Authorisations in such circumstances is provided for in subsection 47(2)(c) of the *National Information and Communications Technology Act 2009* (the Act). That subsection also envisages that NICTA will specify in a rule the detailed terms and conditions that will govern such Special Temporary Authorisations.

NICTA has therefore prepared the draft Rule at Annex A for that purpose. As required under section 219 of the Act, NICTA is engaging in a public consultation process before finalising the Rule.

### 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 content and implications of the draft Rule.

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 Special Temporary Exemptions  
National ICT Authority  
PO BOX 8444  
BOROKO NCD

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.

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## Annex A: Draft Rule

This is a draft of the Rule that NICTA proposes to make under section 218 of the Act for the purposes of clause 47(2)(c) of the Act.

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### ***Terms and Conditions for Special Temporary Licences Rule, 2011***

#### **1. Name of rule**

- (1) This rule is the *Terms and Conditions for Special Temporary Licences Rule, 2011*.

#### **2. Preliminary**

- (1) This Rule is made by NICTA pursuant to its powers and responsibilities under sections 218 and 55 of the *National Information and Communications Technology Act 2009*.
- (2) This Rule is made for the purposes of clause 47(2)(c) of the *National Information and Communications Technology Act 2009*.

#### **3. Commencement**

- (1) This Rule commences on the date on which it is notified in the National Gazette.

#### **4. Interpretation**

- (1) In this Rule, unless the contrary intention appears:

“Act” means the *National Information and Communications Technology Act 2009* and includes any regulation made under that Act;

“Eligible Applicant” means a corporation registered in either Papua New Guinea, or an individual that is resident of Papua New Guinea, or a public body that is established under a law of Papua New Guinea.

“Rule” means the *Terms and Conditions for Special Temporary Licences Rule, 2011*;

- (2) Each of the following terms used in this Rule has the meaning given to it by the Act:

- *Applications Service*
- *Content Service*
- *Facility*
- *Facility Access Service*
- *Facility Right*
- *Network*
- *Network Service*
- *NICTA*
- *Operator Licence*
- *Operator Licensee*
- *Public Register*
- *Retail Customer*

#### **5. Special temporary authorisations**

- (1) NICTA may grant a Special Temporary Authorisation to an Eligible Applicant in relation to a Facility, Network or service that, in NICTA's opinion, will be used solely for the purpose of:
  - a) testing or trialling a:
    - (i) Facility;
    - (ii) Network;
    - (iii) Network Service;
    - (iv) Applications Service; and/or
    - (v) Content Service;
  - b) the demonstration of a technology, Facility, Network or service; or
  - c) specific research and development.
- (2) The grant of a Special Temporary Authorisation removes any obligation on the holder to also hold:
  - a) a network licence under section 49 of the Act;
  - b) an applications licence under section 50 of the Act; and/or
  - c) a content licence under section 51 of the Act:in relation to the activities and other matters specifically covered in the Special Temporary Authorisation.
- (3) A Special Temporary Authorisation does not bestow all of the powers or rights of an Operator Licensee under the Act.

## **6. Applications for Special Temporary Authorisations**

- (1) An Eligible Applicant may apply to NICTA for a Special Temporary Authorisation.
- (2) An application for a Special Temporary Authorisation must include:
  - a) relevant background about the applicant, including
    - i) a copy of the certificate of incorporation;
    - ii) a diagram explaining its organisation structure;
    - iii) a statement identifying any foreign ownership or control of the applicant;
    - iv) an explanation of any relationship between the applicant and any other person involved in the activity for which the Special Temporary Authorisation is requested;
    - v) an explanation of any relationship with any Operator Licensee;
  - b) a detailed description of the purpose for which the Special Temporary Authorisation is sought, including:
    - i) the proposed start and end dates;
    - ii) its geographic location;
    - iii) objectives and measures of success;
    - iv) a description of the Facilities, Network and technology that is proposed to be used;
    - v) a description of the type of Facility Access Services, Network Services, Applications Services, and/or Content Services that are proposed to be supplied;
    - vi) a diagram of the proposed network configuration, including an indication of any facilities that are not owned or controlled by the applicant or which are located outside Papua New Guinea;
    - vii) identification of the type of radio spectrum to be used (if applicable) or if the applicant is already authorised to use radio spectrum, details of the relevant licence or authorisation;
    - viii) identification of the types and number of users or customers that will be supplied with services under the Special Temporary Authorisation and, if any charges are to be levied on those users or customers, the approximate amount of those charges;
    - ix) an explanation of the types of Customer Equipment, if any, that will be supplied to users or customers;
    - x) an explanation of the arrangements that have been, or are intended to be made, with Operator Licensees in relation to the use of, or access to, those licensees' Facilities, Networks, Network Services, Applications Services, and/or Content Services;

- xi) details about the arrangements that the applicant will put in place to protect the interests of any users and customers;
    - xii) details about the arrangements that will be put in place to manage and address any complaints from users or customers;
  - c) a statement acknowledging that that if the applicant is granted a Special Temporary Authorisation, it will not have the same rights and immunities under the Act as an Operator Licensee and will be subject to certain obligations under the Act.
- (3) An application for a Special Temporary Authorisation must be in the form specified by NICTA.

### **7. *Criteria for granting a Special Temporary Authorisation***

- (1) In deciding whether or not to grant an Eligible Applicant a Special Temporary Authorisation, NICTA will consider:
- a) the duration of the trial, demonstration or research and development;
  - b) the reasons for the trial, demonstration or research and development;
  - c) the potential effects on competition;
  - d) the extent to which Retail Customers will be involved in the trial, demonstration or research and development and the charges, if any, that will be levied on them;
  - e) whether the size of the trial would unreasonably affect the revenue of a carrier;  
and
  - f) any other matters that NICTA considers relevant
- (2) NICTA will endeavour to complete its assessment of an application for a Special Temporary Authorisation within 45 working days from the date on which a completed application, including additional information sought by NICTA, is received.
- Additional time may be necessary if the NICTA requires additional information from the applicant or wishes to consult further with the applicant.
- (3) NICTA will not charge an application fee for the consideration of an application for a Special Temporary Authorisation.

### **8. *Maximum duration of a Special Temporary Authorisation***

- (1) A Special Temporary authorisation comes into force on the date that it is issued by NICTA.
- (2) A Special Temporary Authorisation will remain in force until the expiry date specified by NICTA in the Special Temporary Authorisation.

- (3) The duration of a Special Temporary Authorisation must not exceed six months.
- (4) NICTA may grant an extension to a Special Temporary Authorisation once only. Any such extension must be for a period less than three months and will take effect from the date of expiry of the original Special Temporary Authorisation.
- (5) In considering whether or not to grant an extension to a Special Temporary Authorisation, NICTA will consider the factors specified in clause 7.
- (6) The NICTA may grant a new Special Temporary Authorisation after the expiry of a Special Temporary Exemption or the expiry of an extension to a Special Temporary Authorisation.

### **9. *Conditions of a Special Temporary Authorisation***

- (1) It is a condition of all Special Temporary Authorisations that the holder:
  - (a) Subject to paragraph (b) of this sub-section, fulfil the obligations and requirements of the Act, to the extent that is practicable to do so, as if it were an Operator Licensee;
  - (b) Comply with the following sections of the Act as if it were an Operator Licensee:
    - a) section 70;
    - b) section 72;
  - (c) take all proper and adequate safety measures to safeguard life or property in respect of all apparatus, equipment and installations possess, operated, maintained or used under the licence, including exposure to any electrical emission or radiation emanating from the apparatus, equipment or installation so used;
  - (d) indemnify NICTA against any claims or proceedings arising from any act or omission on the part of the holder, its staff, agents and others acting in any capacity on its behalf
  - (e) Provide a report to NICTA within 30 days of the expiry of the Special Temporary Authorisation, or any extension thereto, summarising the outcomes of the activities that were conducted under the Special Temporary Exemption, including:
    - a) the conclusions regarding the technical, commercial or other viability of the activity, Facility, technology or service; and
    - b) whether it is likely to lead to the deployment of the technology, Network or service under an Operator Licence or to the applicant applying for such a licence.

### **10. *Public register***

- (1) NICTA will record the grant of a Special Temporary Authorisation in the Public Register.