



CONSULTATION PAPER

Proposed Universal Access and Service Levy for 2019

Issued on 22 October 2018

Introduction

NICTA has had considerable and extended discussions with operator licensees about the introduction of a Universal Access and Service (UAS) levy in recent years. The current paper concerns the UAS levy for 2019 only.

Legislative Requirements

Section 107 of the *National Information and Communications Technology Act, 2009* ("the Act") sets out the procedure that NICTA must follow in levying charges on operator licensees for the Universal Access and Service (UAS) Fund.

NICTA is required under subsection (2) to set the levy as a percentage of the net revenues of each operator licensee at a level, to be determined annually, to apply from the beginning of each fiscal year –

- (a) to achieve the desired level of funding for the Fund for that year as advised to NICTA by the UAS Board, less any amounts paid by NICTA in the previous year; and
- (b) not exceeding a maximum percentage as prescribed by the regulations.

NICTA has not made any decision about the amount of a UAS Levy for 2019 and notes there are further steps being taken in relation to 2019 UAS matters, including Project review and approvals. Prior to finalising all such steps, and at an early stage, NICTA is issuing this Consultation Paper to obtain views of interested parties as to the possible amount of a 2019 UAS Levy.

The process to date

Section 108(1) of the Act identifies certain tasks for relating to the UAS Projects and Levy.

To date the UAS Board has engaged with NICTA to undertake the following tasks as set out in Subsection 108(1) of the Act:

- (a) identify, develop and estimate the indicative cost of UAS Projects for 2019
- (b) seek and receive stakeholder submissions on proposals for UAS Projects – identifying in the process ongoing multi-year projects that would carry over into 2020
- (c) undertake public consultation
- (d) estimate the proposed aggregate budget for all UAS Projects to be undertaken for the relevant period identified by the UAS Board
- (e) rank the UAS Projects in order of priority having regard to the criteria in paragraph 108(1)(d)
- (f) prepare for consideration by the UAS Board a report summarising the UAS Projects under consideration, their respective indicative costing, their proposed ranking and the proposed aggregate budget.

NICTA has taken steps (a) – (e) and is finalising the report referred to in step (f).

UAS Projects in 2019

Following public consultation on the 2019 UAS Projects which closed on 7 September 2018, NICTA is preparing a report for consideration by the UAS Board. The UAS Projects for 2019 which were the subject of public consultation were well received and agreed to in principle by the majority of the respondents to the Consultation Paper.

In summary, the cost of the Projects proposed by NICTA and included in the public UAS consultation for 2019 is K27 million, made up of:

Project	PGK (million)	Ranking
Mobile Broadband Network Upgrade and Expansion	20.0	1
Community and Institutional Broadband Networks	3.0	2
ICT Platform for Future Growth	2.0	3
Extension of broadcasting network coverage	2.0	4
Total	27.0	

UAS Levy

These Projects will presently be the subject of consideration by the UAS Board, which then will prepare its own Report and Project recommendations to the Minister for his approval.

NICTA invites public comment on the Levy that would be appropriate based on these Projects, if approved, and also invites more generally, comments as to the amount of a 2019 UAS Levy. For this purpose, NICTA also has prepared and invites comments on a draft UAS Levy Determination enclosed as Attachment A. This draft includes an estimated 2.00% of net revenue of operator licensees, and takes account of any known surpluses that may arise in the Fund from 2018.

Consultation

NICTA invites operator licensees and other stakeholders to consider and comment on the above matters and Draft UAS Levy Determination enclosed at Attachment A to this paper. Written submissions should be submitted via email to

consultation.submission@nicta.gov.pg and must be received by **4.30 pm on Monday, 4 November, 2018.**

Copies of all submissions received will be published on NICTA's Public Register, notwithstanding that consultation is not required by the Act in this case. Additional procedural information is set out in the *Guidelines on the submission of written comments to public consultations and public inquiries*, which are available on NICTA's Public Register.

Contact

If you have any enquiries relating to this consultation please address them to the above email address in the first instance or Kila Gulo-Vui on 3033 227 email kgulovui@nicta.gov.pg.

ATTACHMENT 'A'

DRAFT DETERMINATION - 2019 UNIVERSAL ACCESS AND SERVICE LEVY

I. EXECUTIVE SUMMARY

1. Part 5 of the National Information and Communications Technology Act, 2009 ("the Act") provides for the implementation of a "Universal Access and Service Regime."
2. The UAS Regime includes a "Universal Access and Service Fund" with the purpose of promoting "the long-term economic and social development of Papua New Guinea by funding approved UAS Projects".
3. UAS Projects generally provide telecommunications or other ICT services to communities or areas that are unserved or under-served.
4. The Universal Access and Service Fund ("UASF") may be funded from various sources, including an annual "Universal Access and Service Levy" ("UAS Levy") paid by operator licensees.
5. In this Draft Determination, NICTA proposes that the 2019 UAS Levy be set at 2.0 % of the net revenues of operator licensees, and seeks written submissions, comments and relevant documents or information from operators on this Draft Determination by 4 November, 2018.
6. A levy of 2.0 % of net revenues of operator licensees has been proposed having regard to the UAS projects proposed for 2019, the estimated cost of which is 27 million Kina.
7. This Draft Determination does not involve any binding or other decision by NICTA on any matter, or any other action by NICTA that is subject to appeal or judicial review. NICTA will make its decision relating to a 2019 UAS Levy only after the close of the comment period referred to above, and consideration of submissions received.
8. NICTA also advises that submissions or comments should be made with adequate substantiation or evidentiary support. Contentions made without such support may not be given significant weight, or be accepted by, NICTA.

II. Key Background Information

A. Summary of Legal Framework

9. In preparing this Draft Determination for comment by interested parties, NICTA has considered the relevant provisions of the Act, which include, but are not limited to, the following:

Section 90(1), which states: "The objective of Universal Access and Service Fund is to promote long-term economic development by funding approved Universal Access Service Projects."

Sections 102 – 104, which provide for the establishment of a Universal Access and Service Fund Trust ("Fund") and trust account, for NICTA to be the Fund Manager, and that the responsibilities of NICTA, as Fund Manager, include:

- (a) receiving funds collected from operator licensees as Universal Access and Service Levies imposed pursuant to Section 107; and
- (b) directing the disbursement of funds from the Universal Access and Service Fund in accordance with Section 107; and
- (c) collaborating with the UAS Board to determine-
 - (i) the amount of annual revenue required to ensure that the Universal Access and Service Fund remains fiscally sound; and
 - (ii) the calculation of the rate of assessment for the Universal Access and Service Levy imposed pursuant to Section 107."

Section 101(2), which provides that payment or contributions to the Fund are tax deductible.

Section 105(1), which provides that NICTA, as Fund Manager, "may establish reserves from surpluses resulting from the Universal Access and Service Levy or other sources of funding for the purpose of funding UAS projects in future years."

Section 107, which relates to NICTA's setting of a UAS Levy. It provides:

- (1) "Subject to Subsection (2), NICTA may levy charges on operator licensees for the Universal Access and Service Fund, to be known as the Universal Access and Service Levy;
- (2) NICTA shall set the Universal Access and Service Levy as a percentage of the net revenues of each operator licensee at a level, to be determined annually, to apply from the beginning of each fiscal year –
 - a. to achieve the desired level of funding for the UASF for that year as advised to NICTA by the UAS Board, less any amount paid by NICTA in the previous year under Section 32(2)(a); and
 - b. not exceeding the maximum percentage as prescribed in the regulations;
- (3) Each operator licensee shall fully co-operate with NICTA, including through the provision of relevant information requested by NICTA, in order to enable NICTA to make the calculation identified in Subsection(2);

- (4) Upon receiving notification of the amount owed as its Universal Access Service Levy, an operator licensee shall submit payment of the Universal Access Service Levy to the Universal Access Service Trust Fund Account;
- (5) The Universal Access Service Levy is a debt owed to the State and may, in addition to other avenues, be recovered in a court of competent jurisdiction;
- (6) Without limiting any other action or remedy available to it if an operator licensee fails to pay an amount owing in accordance with Subsection (4) NICTA may recover the outstanding amount of the Universal Access and Service Levy from funds otherwise payable under Section 115;
- (7) Subject to Subsection (8), any regulations made under s32(4) may determine the timing for payment of the Universal Access and Service Levy and the manner of calculation of any late payment charges; and
- (8) No Universal Access and Service Levy may be charged prior to 1 January 2011."

Section 108, which provides, among other things, for NICTA to report to the Universal Access and Service Board ("the UAS Board") as to proposed UAS Projects, for the UAS Board to provide the Minister with a report recommending and ranking proposed UAS Projects, and for the Minister (under Section 108(5)(b)), to determine which of the proposed projects will be carried out within the proposed aggregate budget.

Section 109, which provides, among other things, that NICTA "shall develop and carry out a competitive selection process, in order to select a successful bidder for each UAS Project determined by the Minister under Section 108(5)(b)"; and

Section 115, which provides for NICTA to enter into 'Project Agreements' with successful bidders for the implementation of UAS Projects.

- 10. NICTA also has had regard to the National Information and Communications Technology (Operator Licensing) Regulation, 2010, including Section 22 which states:
"For the purposes of Section 107(2)(b) of the Act, the Universal Access and Service Levy shall be set by NICTA at a level that does not exceed 2 percent of net revenues."

II. Proposed UAS Levy For 2019 - considerations

- 11. The Universal Access Strategic Planning Report 2018 to 2022 (Report) was taking into the planning and budgeting of the 2019 Projects. The Report is available on NICTA's website www.nicta.gov.pg
- 12. NICTA is in consultation with the UAS Board as to 2019 UAS Projects and the amount of any 2019 UAS Levy.

13. Having considered other relevant circumstances and on the basis that the currently proposed Projects were to receive all required approvals, a reasonable and appropriate UAS Levy for 2019 would be 2.00% of operator net revenues.
14. The supporting considerations for this include that:
 - a. This amount should allow implementation of the 2019 Projects which were the subject of public consultation that closed on 7 September 2018;
 - b. NICTA considers that it is feasible to tender, award and substantially implement these projects and budget during 2019;
 - c. To the extent such projects and budget were not fully implemented in 2019, this UAS Levy amount would provide a prudent but modest level of reserve, contingency or surplus for continuation of these projects in 2020;
 - d. The amount of the proposed 2019 UAS Levy (2.00%) is the maximum percentage provided in the National Information and Communications Technology (Operator Licensing) Regulation, 2010; and
 - e. Operator licensees have known since the enactment of the Act in 2009 that, from January 2011, they will be subject to an annual UAS Levy, from at least late 2014, NICTA advised operators that it believed there was a large access gap and expected for one or more years to impose the maximum 2% annual levy to seek to close that gap, no levies were imposed prior to 2016.