



RESPONSE TO COMMENTS REPORT

**NICTA's response to stakeholder comments on the
Consultation Paper on the Proposed Universal
Access and Service Levy for 2018, UAS Strategic
Plan (2018-2022), and Projects and Operating
Plan 2018**

Issued on 25 May

1. INTRODUCTION

On 8 December 2017, NICTA commenced a public consultation seeking submissions on a Discussion Paper entitled "Proposed Universal Access and Service Levy for 2018, UAS Strategic Plan (2018-2022), and Projects and Operating Plan 2018" (the "UAS 2018 Discussions Paper").

NICTA also conducted a public Workshop on this on 17-18 January 2018, along with in-person meetings with interested stakeholders.

The deadline for submissions was set as 15 January 2018, and then extended to 16 February 2018 in response to a request from Digicel.

Written submissions, in alphabetical order of organisation, were received from:

- Bmobile-Vodafone PNG Limited ("Bmobile")
- Digicel (PNG) Limited ("Digicel")
- Telikom PNG Limited ("Telikom")
- Internet Society, Pacific Island Chapter ("ISOC")
- Catholic Bishops Conference

A further written submission subsequently was received and considered from Digicel.

All comments and submissions made during this Consultation Process have been considered.

In Part 2, this Response Report provides a summary of key comments and issues raised by operators and other stakeholders in this Consultation Process, and some responsive comments from NICTA after consultation with the UAS Board.

NICTA also wishes to clarify that no final decision or reporting relating to 2018 UAS Projects or a 2018 UAS Levy had occurred at the time of the UAS 2018 Discussion Paper. Instead, the UAS Board had approved NICTA releasing Attachments "A" – "C" to the UAS 2018 Discussion Paper as draft documents for the purpose of consultation with interested parties. To the extent that pp.1-2 (or any other part) of the UAS 2018 Discussion Paper suggests otherwise, NICTA hereby withdraws and corrects this.

Having considered the comments made, the draft Attachments "A" and "B" to the UAS 2018 Discussion Paper (Strategic Planning Report and 2018 UAS Projects Report) have been revised. and approved by the UAS Board. These revised documents are provided with this Response Paper.

The revisions include clarification that the RFPs for UAS Projects (and resulting contracts with successful bidders) will provide for appropriate sharing of UAS funded facilities and compliance with relevant requirements of the NICT Act, which deems these to be declared

services to which specified access requirements apply . The definition and description of some of the identified 2018 UAS Projects also has been enhanced, and it has been confirmed that the UAS 2018 – 2022 Strategic Planning document is a background document for informational purposes, to assist with planning and decision-making related to UAS Projects, and does not involve any proposed or actual decision about UAS Projects or funding over this planning horizon.

NICTA thanks the operators and other stakeholders who attended the workshop on UAS planning and who contributed to the consultation process.

Having due regard to the comments made by stakeholders, the UAS Board and NICTA will proceed to complete the processes under the Act for the 2018 UAS Projects and Levy. This will include the Report of the UAS Board to the Minister under Section 108(2)-(3) to the Minister as to proposed 2018 UAS Projects, and determination of the 2018 UAS Levy.

2. OVERVIEW OF PRIMARY COMMENTS RECEIVED AND NICTA STAFF'S CONSIDERATION OF AND RESPONSE TO THOSE COMMENTS

The table below summarizes some of the key comments and responsive views of NICTA. Where some specific points or language may not be directly addressed, all comments received were considered and have been taken into account.

No	Sub-mission	Reference or subject	Summary of comment	Summary Comments In Response
1	Bmobile-1	UAS infrastructure sharing	"... the mobile infrastructure deployed/implemented by the Levy must be capable of being shared by all operators." Proposes that mobile infrastructure must: 1) Function as a Multi-Operator Radio Network (MORAN), and 2) Allow [other] mobile operator(s) to roam on the network.	The draft Strategy does require the operator implementing a UAS mobile network project to share access to all infrastructure built with UAS Fund subsidies. The NICT Act already provides certain access obligations for UAS facilities as "declared services." NICTA also will revise RFP and project documentation (TOR) to provide for appropriate facility sharing. For example, NICTA agrees that it is desirable to require that operators of UAS mobile networks should, where feasible, allow roaming for subscribers of other licensed operators in areas covered by UAS funded services.
2	Digicel	Consultation Paper "Introductory Document"	(para 24) Digicel disagrees that all required processes under section 108(1) of the NICTA Act have been undertaken. Specifically, Digicel claims that NICTA has not engaged in public consultations to seek proposals for UAS Projects, consulted with Digicel on indicative costing for such Projects, sought to calculate net benefits, determined sustainability with a one-time capital subsidy, or ascertained whether such Projects would occur without subsidy.	NICTA refers to its comments and clarifications in Section 1 of this Report, and notes that it and the UAS Board are complying with all relevant requirements, and that the processes to finalise the 2018 UAS Levy and UAS Projects are ongoing.

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3	Digicel	Consultation Paper "Introductory Document"	(para 25-27) Digicel is concerned that NICTA and the UAS Board "appear to have predetermined the outcome of this Consultation" citing a statement that the Board "has approved" a report on UAS Projects. Digicel asserts that the UAS Board cannot approve such a report until the consultation process is complete.	NICTA had not predetermined any outcomes at the time of the 2018 UAS Discussion Paper, and notes its comments in Section 1 of this Report clarifying these matters.
4	Digicel	Consultation Paper "Introductory Document"	(para 28) Digicel claims that NICT Act prohibits any UAS Levy for 2018 until relevant UAS Projects have been approved by the Minister pursuant to Act section 108(5)."	NICTA does not believe this requirement is contained in the NICT Act, or that it would be consistent with the Act, (including Section 107).
5	Digicel	Consultation Paper "Introductory Document"	(para 29-33) Digicel believes that NICTA has erred in its interpretation of "UAS Project" under the Act. The categories of Projects identified don't fit the proper meaning and are at odds with the bidding and other processes defined in sections 109-116, which are "predicated on an expectation that each UAS Project be discrete in its formulation and assessed, funded and implemented within a fiscal year." Digicel objects to UAS programmes which "do not reflect the dynamic nature of the ICT industry."	NICTA believes that Digicel's claims as to how specifically and rigidly projects must be defined, funded and completed, are not consistent with the terms, or remedial purpose, of the NICT Act. For example, there is no provision in the Act which requires that all or any individual UAS Projects be fully implemented within a given fiscal year, or using funding coming solely from the UAS Levy in that year. NICTA also has provided some more specific information as to the nature and locations of the proposed projects in its updated 2018 UAS Projects Report.
6	Digicel	UAS Strategic Plan, NICTA's role	(para 34-39) Digicel believes that NICTA "may have misunderstood its role" under Part V, of the Act. It is acting as policy maker rather than providing support to the Board as mandated by section 99. Any policy decisions by NICTA have no legal standing, and the Board should only be providing advice to the Minister.	NICTA believes that Digicel has misunderstood and mischaracterised the steps being taken by NICTA, which are consistent with and implement the NICT Act.

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			NICTA's statement that "NICTA will utilize the UAS Fund..." is concerning, and highlights that NICTA is "assuming control of the UAS Fund to use for its own purposes."	
7	Digicel	UAS Strategic Plan, non-infrastructure projects	(para 40) Digicel claims that NICTA intends to use the Fund to support activities, such as content and human resource development, that are not contemplated by Part V of the Act. Digicel points to section 108(4), which it says means that all UAS Projects should be "sustainable with a one-time capital subsidy."	NICTA believes the projects referred to are appropriate UAS Projects, and that implement the objective of Section 90(1) of the Act "is to promote the long-term economic and social development of Papua New Guinea by funding approved UAS Projects that will encourage the development of ICT infrastructure and improve the availability of ICT services." NICTA is confident that projects to promote digital literacy, ICT content, and human resource capacity will help accomplish these objectives, by increasing demand for, and beneficial utilization of, ICT infrastructure and services. The reference to one-time capital subsidy in Section 108(f) also is not a mandatory requirement for all projects, it is an evaluation criteria that NICTA has considered.
8	Digicel	UAS Strategic Plan, Market Gap Analysis	(para 41-44) Digicel disagrees with the findings of the Market Gap Analysis, and objects to being unable to review the full details of the consultants' analytical model. Digicel acknowledges that more detailed summary results were provided, but claims this is still not sufficient.	NICTA has provided all relevant assumptions and detailed results of the gap analysis methodology. Operators may offer alternative estimates of the projected net costs to provide network access to any or all districts, based on their internal plans and information, and NICTA will take these into account when designing specific implementation project RFPs. Regardless, the analysis only guides high-level Fund budget allocation planning, and the costs and subsidies associated with any given project will be determined by operators' competitive bids.

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9	Digicel	UAS Strategic Plan, Market Gap coverage, costs	(para 45-48) From the information provided, Digicel believes that NICTA's estimates of the degree to which gaps will already be covered are too low, but also that the costs to deploy new and upgraded network facilities are underestimated. For example, Digicel has already its Eastern Highlands network to 3G, and has plans to upgrade most of its remaining 2G sites, so much of the identified subsidy requirements will not be needed.	There appears to be a contradiction in Digicel's comment, as it states that NICTA underestimates how much of the gaps will be covered by operators themselves, but <u>also</u> underestimates the costs to deploy new and upgraded facilities. Perhaps Digicel meant to state that NICTA has <u>over</u>-estimated average facility costs – which would be consistent with the claim that the market will cover more of the gaps than forecast. In any event, NICTA continues to encourage operators to deploy networks and services to fill existing gaps wherever they choose, and any such locations will not be included within UAS Projects. NICTA will continue to prepare UAS Projects that address gaps that appear to be commercially unattractive, and will adjust its targets over time as market conditions warrant. NICTA encourages all operators to provide continuing current information on their rollout plans so that UAS planning can remain current.
10	Digicel	UAS Strategic Plan, Cost of backhaul	(para 49) Digicel disagrees with the assumption that fiber optic backhaul is appropriate for remote 3G networks, saying wireless backhaul is more cost-effective.	Operators selected to implement UAS mobile network infrastructure and service projects can deploy any backhaul network technology that will provide adequate capacity to support minimum quality of service specifications and demand expectations. NICTA will not prescribe a specific technology platform for such projects. For cost forecasting purposes, NICTA has relied on experience of technical experts to estimate approximate backhaul costs for remote 3G+ networks. If operators can support such networks for lower costs, these amounts should be reflected in their competitive bids for such projects.

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11	Digicel	UAS Strategic Plan, overestimate of subsidy	(para 50-53) In summary, Digicel believes that NICTA has materially overestimated the amount of subsidy required, and claims that a 2% Levy will deter investment. NICTA must adopt a more transparent approach. Moreover, the Act requires that projects be identified discretely on an annual basis. NICTA's budget estimates in the Strategic Plan overstate the amount of funding required.	NICTA has considered these comments of Digicel and other operators. Digicel's comments include that it believes there should not be any UAS Levy in 2018 – despite the fact no such levy ever has been paid by any operator from 2011, when the Levy requirements of the NICT Act became operative. NICTA also does not agree with Digicel's views that any UAS implementations should be nil or minimal. NICTA also has made revisions to the proposed funding and levy amounts, as shown in the revised documents provided with this Response Report.
12	Digicel	UAS Operating Plan	(para 54-59) Digicel claims that the draft 2018 UAS Operating Plan is fundamentally flawed for similar reasons as the Strategic Plan. Proposed initiatives cannot possibly be completed within the fiscal year. They are called "programs" rather than Projects. The timetable indicates that implementation could not occur until 2019, so no 2018 funds are needed.	There is no requirement in the Act that UAS Projects be fully implemented within the same fiscal year that the Levy is collected. Indeed section 105 explicitly contemplates the likelihood that the Fund may reach a surplus in any given year, which amounts are to be retained "for the purpose of funding UAS Projects in future years." This is inconsistent with any interpretation that funding and expenditure must be limited to each separate year.
13	Digicel	UAS Levy 2018	(para 60-65) Digicel submits that NICTA is not in a position to assess whether a UAS Levy may be required in 2018. No specific projects have been approved by the Minister, and there is no realistic prospect of a project being implemented in the 2018 fiscal year. Digicel cites Act section 107(2), and interprets it to mean that "any UAS Levy for 2018 would be determined prior to the commencement of the 2018 fiscal year to fund UAS Projects to be implemented within 2018."	NICTA does not agree with such a rigid interpretation of the UAS scheme, which appears to have the intended effect of frustrating or preventing UAS Levy and project implementation. NICTA notes, for example, that the Levy is to be set by NICTA under section 107(2)(a) ("to achieve the desired level of funding for the Universal Access and Service Fund for that year as advised to NICTA by the UAS Board") and the processes by which UAS Projects are to be determined under section 108.

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				Moreover, section 107(2) only provides that the Levy is "to be determined annually, to apply from the beginning of each fiscal year." This does not mean that the collected funds must be determined before the fiscal year begins, but rather that the amounts to be collected shall apply to each operator's entire fiscal year revenues.
14	Digicel	Proposed way forward	(para 66-73) Digicel proposes an alternative UAS policy and process, akin to a "Pay or Play" system, in which Digicel would negotiate directly with NICTA to identify projects that Digicel would undertake directly to fulfil the objectives of increasing access to services.	Digicel's proposed approach is in direct contradiction to Part V of the Act, as it would circumvent the establishment of the UAS Fund and Digicel's statutory obligation to contribute to that Fund. The NICT Act also requires the same percentage levy to apply to all operators, which is not a feature of the proposed "Pay or Play" scheme.
15	Telikom	Introduction, UAS funding and objectives	Telikom states that the level and method of funding for UAS remains a significant concern, should take into account each operator's financial situation. The implementation of ICT UAS to cover most remote areas is practicably not achievable in a short time.	The terms of the Act are clear that the Fund shall be established, and that operators are obligated to contribute according to its terms. Telikom cannot be released from these obligations. The extent to which remote areas of PNG can be covered through use of the Fund will be determined by implementing UAS Projects.
16	Telikom	Past UAS consultations and experience	Telikom notes the adverse reaction of the industry to past NICTA efforts relating to the UAS Levy, and urges NICTA to be mindful of Digicel's lawsuit against 2016 levy, which is still unresolved. Similarly, Telikom recalls its objections to the 2017 1% Levy, asking that NICTA consider the affordability to each operator, based on financial conditions. Telikom wishes to present its individual case in detail.	The Act does not allow for differential treatment of operators with regard to the amount of the Levy, which would be discriminatory. NICTA will continue to apply the Levy according to the terms of the Act and the advice of the UAS Board.

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17	Telikom	Sharing of NICTA Analysis Data	Telikom asserts that NICTA has not provided enough detail on the Gap Analysis model. It would assist Telikom's analysis if NICTA shared the data used by the consultant.	NICTA has provided all relevant assumptions and detailed results of the gap analysis methodology. Operators may offer alternative estimates of the projected net costs to provide network access to any or all districts, based on their internal plans and information, and NICTA will take these into account when designing specific implementation project RFPs. Regardless, the analysis only guides high-level Fund budget allocation planning, and the costs and subsidies associated with any given project will be determined by operators' competitive bids.
18	Telikom	Funding Capex and Opex	Telikom raises concerns about past projects that were funded for buildout only (i.e., capex), but not for operational expenses.	The UAS Fund is designed to provide one-time subsidies based on competitive bidding. Bidders may include the net value of capex and opex in their bid amounts, if they believe such amounts are necessary to achieve sustainable projects (and will be competitively successful).
19	Telikom	Stakeholder consultations	Telikom asserts that there is a need for improved inter-stakeholder consultation on project prioritisation. Such consultations could limit the number of projects and thus the Levy, as some projects may be unnecessary.	This consultation process, including both the Consultation Paper and the related workshop, represent the opportunity for stakeholders to identify priority projects, costs, plans, and other information to guide project identification. This should be done publicly, rather than in private inter-stakeholder discussions, which could amount to collusion. NICTA notes that Telikom has not proposed any priority UAS Projects in its submission. Telikom and all stakeholders will have the opportunity to comment and bid on UAS Project RFPs prepared by NICTA in keeping with the UAS Strategic and Operating Plans.

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20	Telikom	Taxation	Telikom urges that materials purchased (presumably in relation to UAS Projects) should be tax exempt.	Noted, however this is not a matter within NICTA's powers, functions or authority.
21	Telikom	Infrastructure sharing	Telikom calls for a workable infrastructure sharing policy intervention, to police its "use apart from ensuring adequate sizing of sites".	NICTA agrees that infrastructure sharing provisions of UAS Project contracts must be enforceable and monitored, and will adopt procedures to support effective sharing of UAS Project infrastructure.
22	Telikom	Project costing	It is necessary to realistically budget each site's costs, taking account of logistics, solar power, satellite, etc., including Opex.	NICTA's general cost and budget estimates for UAS Projects attempt to include all potential costs. Bidders for UAS Projects should include all costs needed to complete a project and make it sustainable.
23	Telikom	Conclusions and recommendations	Telikom believes that the current UAS process is not working considering the negative reactions from licensees. More effective consultation between stakeholders is needed. NICTA should put the 2018 Levy and project proposals on hold, and conduct further improved consultations.	NICTA has conducted extensive consultations and given all stakeholders ample opportunity to contribute to the UAS process. NICTA will continue to welcome stakeholder input, recommendations, and concerns throughout the implementation of the UAS Fund programs. However, there have been too many delays already in activating and implementing the Fund, with the effect that unserved populations of PNG have been forced to wait ever longer to receive the benefits of ICTs. Further delay for interminable consultations will not benefit the people or economy of PNG, and would be contrary to the objectives of the Act.
24	Internet Society	Terminology	The strategy document could benefit from a glossary, specifically definition of "broadband".	The Strategic Planning Report will be updated to clarify the meaning of "broadband" for UAS purposes, and other terms as appropriate.

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25	Internet Society	Market Gap	Accurate data is critical to the continuing success of UAS. Monitoring and Evaluation of UAS Project impacts should help enhance measurement of the Market Gap in the future, increasing investor confidence.	NICTA agrees, and will place high emphasis on continued data gathering and monitoring and evaluation of UAS Project impacts.
26	Internet Society	Targets	ISOC supports the goal of achieving 100% 3G+ quality service, and recommends that higher capacity service should be implemented wherever possible.	NICTA agrees, and will encourage UAS operators to implement the most advanced technologies possible.
27	Internet Society	Community and Institutional Networks	Institutional locations where copper telephone networks exist should not be ignored. Such infrastructure can be upgraded and better utilized, not only for institutions but to benefit entire communities.	NICTA agrees, and this is a foundation of projects under the Community and Institutional Networks program concept.
28	Internet Society	ICT Platform for Future Growth	ISOC supports and commends the proposed initiatives promoting local content and digital literacy, and recommends that these receive a higher proportion of the UAS Fund budget than the current PGK 10.0 M.	NICTA agrees as to the importance of this program and the significant need for resources in these areas. The budget allocations are somewhat flexible, and can be revisited as projects are implemented and their effectiveness is determined.
29	Internet Society	Funding	Fees should be "agreeable" and "done with a level of efficiency". Autonomy must be maintained with regard to Fund decision making. Other sources of funding, such as community contributions, should be sought. Fund recipients must be required to make infrastructure accessible to others.	NICTA agrees, and is following each of these recommendations.
30	Catholic Bishops Conference	Funding support for schools	The Catholic Bishops Conference PNG is seeking funding support from the UAS Fund for connection of four remote schools in rural regions.	The UAS Secretariat and Board will take into account the proposed locations in the design and selection of specific UAS projects.