



TELIKOM PNG LIMITED

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20th December, 2013

Mr. Charles S. Punaha
Chief Executive Officer
National Information & Communication Technology Authority
P.O Box 8444
BOROKO
N.C.D

Dear Mr. Punaha,

REF: DRAFT REGULATION AND PROCEDURES FOR UNIVERSAL ACCESS AND SERVICES (UAS)

Telikom PNG Limited refers to NICTA's request for views, comments and submission regarding the above matter and hereby submits its views and comments accordingly.

Telikom PNG accordingly has gone through the draft regulation and procedures for universal access and services (UAS) has provided its views in the attached submission for NICTA's consideration and subsequent adoption.

However, should you require further clarification and/or explanation on any aspect of the submission, please do not hesitate to contact us.

Yours Sincerely,

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Phillip AEAVA
Chief Legal Officer

SUBMISSION ON DRAFT REGULATION AND PROCEDURES FOR UNIVERSAL ACCESS AND SERVICES (UAS)

Telikom PNG's (TPNG) sets out its comments according to the headings in the draft regulation and procedures.

DRAFT REGULATION FOR UNIVERSAL ACCESS AND SERVICES (UAS)

1. Objective

- (1) TPNG is of the view that the objective should be broadened to capture the government's overarching ICT policy framework and other international conventions. That provides a pathway for the UAS to measure its deliverables against the overarching ICT policy framework of the government.

TPNG is fully aware that this is not a policy document but a regulation. We also not what NICTA has covered in (1) but we are of the firm view that our suggestion should be captured in the objective. What has been covered, in our view, is confined to only the UAS.

- (2) The term "competitive" appears confusing. Does it imply that the operating environment will be competitive? We thought, these areas are uneconomic areas so there will not be any competition in services in these parts of the country.

If TPNG's view is correct then remove or delete this term.

2. Interpretation

No comments

3. Universal service principles to guide projects

TPNG suggest that regulation (3)(1)(a) should be covered under the objective under regulation (1) at the top. That will give some prominence to the government policy whilst under regulation (3), the universal service principles can be confined to the services only.

Regulation (3)(1)(f) is too long, TPNG suggest that you make it short with clarity.

Proposed changes from "information communication" to "ICT" under regulation (3)(1)(g).

4. Implementation of USA Policies and Projects

Refer to the proposed changes to regulation (4)(b).



The term “recovery” under regulation (4)(g) requires further clarification as it is too ambiguous. Does this term mean recovery of unspent or misused funds or unpaid contributions?

5. Functions of NICTA and the UAS Board

TPNG recommend that the functions of NICTA be removed and retain UAS Board’s functions because the functions of the UAS Board is independent from that of NICTA as specifically set out in Section 91 of the NICTA Act.

In our view, the UAS Board manages the administrative and operational functions of the UAS Secretariat, whilst NICTA governs the operations of its own and that of UAS as the supreme Authority under the NICTA Act and it cannot be seen as operating equal to UAS Board.

However, the UAS Secretariat can work together with NICTA as set out under section 99 of the NICTA Act.

TPNG is mainly concerned because we do not to see a duplication of functions and make it administratively cumbersome as the net effects could potentially result in project delays, mismanagement of funds and may deferring opinions on projects etc...

6. Review

Replace the term subscribe with the term consumers under regulation (6)(1).

TPNG proposes the following new clause as (c)

“(C) whether the provision and use of such services pose general danger and health hazard to the consumers, general public and the environment, such that there exist a public concern that such services should not exist under normal commercial and or technical circumstances”.

7. Mandatory facility and Spectrum sharing for UAS Projects

- TPNG agree that the operators (Licencees and non Licencees) should share the facilities and spectrum for the UAS Projects on a commercial basis and it should not be forced by the UAS Board or NICTA.

NICTA or the UAS Board may impose mandatory sharing should all commercial negotiation avenues are exhausted and a dead lock is reached by the parties.

TPNG is concerned because the Term “mandatory” should not preclude any potential commercial arrangements that may be entered into by the resource owner and the new user, therefore they should be given every opportunity to enter any commercial agreement.

Mandatory Sharing of facilities and spectrum should not be restricted to licensees only.

- TPNG proposes the following sentences as continuation of the of the sentence under regulation (7)(1).

“...or for reason that such arrangement will greatly compromise it’s corporate “privacy” and security as well as the national security of PNG. Under such circumstances, an operator may seek redress under Item 7 of this Clause”.

- Regulation (7)(7) states that NICTA may regulate the rates, terms and conditions for access to

TPNG is concerned with NICTA regulating the rates, terms and conditions It is clearly understood that NICTA’s intervention will only be upon invitation by the concerned parties should they reach an impasse. During this period, NICTA should not impose the rates, terms and conditions but arbitrate the parties to reach an amicable resolution on the rates, terms and conditions.

Whatever the resolution reached, NICTA should leave it to the market and avoid regulation of the rates, terms and conditions as this will only restrict competition. Applying rates regulation, as we all know, occurs in a monopoly environment, in our industry, there is already stiff competition so there is no need to apply or impose rates regulation.

PART III - PROJECT SELECTION MECHANISMS

8. Principles of UAS Projects

No comments

9. Mechanisms to Distribute Funds

- TPNG proposes that the term “qualified” be replaced by the term “successful” under regulation (9)(1).
- Regulation (9)(1) requires competitive bidding, TPNG agrees with it, our only concern is the type of bidding process the UAS Board/Secretariat intends to undertake. We suggest that you reflect that in the current regulation or on a separate document and be made available publicly for public inspection and scrutiny.
- TPNG strongly recommends that the Licencees must be the “first right of refusal” to bid on all projects as the major funding operators to this UAS Projects.
- Regulation (9)(2) requires NICTA to determine the procedures and criteria for competitive bidding...

TPNG disagree with it. It should be the UAS Board or its secretariat and not NICTA. NICTA’s should establish the secretariat and the board for the operation of the UAS as required under the Act.

Therefore, replace NICTA with the UAS Board or UAS Secretariat.

- Regulation (9)(3)(4)&(5) remove NICTA and replace it with UAS Board.

10. Submissions of proposals for projects

No comments

11. Identification of UAS Projects

No comments

12. Identification of UAS Projects by UAS Board

No comments

13. Eligibility to bid on UAS Projects

No comments

14. Awarding of funding

No comments

15. Projects Implementation

No comments

16. Enforcement of Project implementation

- TPNG suggest that you replace NICTA with the UAS Board.
- In regulation (16)(1), it mentions the term “compensate”, we understand that NICTA intends to seek compensation as a penalty for non-completion of UAS projects. If that is correct then we are of the view that this is adequately covered in regulation 50 of the UAS Procedures.

Appropriately, it would be the UAS Board and not NICTA, we suggest amendments to it by replacing NICTA with the UAS Board.

PART IV AMINISTRATION OF UNIVERSAL ACCESS AND SERVIC FUNDS

17. Separate account

TPNG suggest that the contributed funds intended for the UAS Projects should be parked under a dedicated account independent from NICTA operating account. That fund should be independently managed by the UAS Board and not NICTA. NICTA must ensure that the funds are expended on projects by the UAS Board or its secretariat consistent with its Annual Operating Plan.

18. Separate budgets



Performance Bond is a penalty if the contractor fails to deliver the project, therefore need clarification.

19. Audit of the fund administration

20. Reporting requirements of the UAS Board

DRAFT PROCEDURES FOR UNIVERSAL ACCESS AND SERVICES (UAS)

1. Objective

No comments

2. Interpretation

No Comments

PART II—ADMINISTRATION—UAS BOARD

3. Quarterly meeting of the UAS Board

No Comments

4. Quorum and votes of the UAS Board

No comments

5. UAS Board member compensation

No comments

6. Submission of recommendation for standing orders

No comments

7. Approval of standing orders

No comments

8. Provisions of standing orders

No comments

9. Resignation of UAS Board members

No comments

10. Withdrawal procedure



No comments

11. Vacancy in the Board

No comments

12. Filling of vacancy

No comments

13. Conflict of interest

No comments

14. Prohibition from vote

No comments

15. Waiver

No comments

16. Interpretation of this Part

No comments

PART III—UAS OPERATING PLANS

17. UAS Programs and Projects

No comments

18. Strategic Management Plan

No comments

19. Annual Operating Plans

No comments

20. Preparation of an operating plan

No comments

21. Provisions of an operating plan

No comments

22. Initial operating plan

No comments

23. Approval of an initial operating plan.

No comments



24. Provisions of an initial operating plan.

No comments

25. Basic UAS terms

No comments

26. Interpretation of certain basic terms of this part

No comments

27. Scope of the UAS Fund

No comments

28. Analysis and decisions making

No comments

29. Revision of operating plans

No comments

PART IV—COMPETITIVE SELECTION PROCESS

30. Requirement to use competitive selection processes

No comments

31. Use of minimum subsidy auctions

No comments

32. Publicity

No comments

33. Criteria for evaluation

No comments

34. Development of specific qualification criteria

No comments

35. Evidentiary requirements

TPNG proposes that the term “Evidentiary requirements” to be replaced by the term “Prequalification requirements”. This is to be consistent with the procurement process adopted in PNG. TPNG proposes the following prequalification requirements to be considered for inclusion;



- Financial and technical capacity
- Experience and skill
- Recent annual financial report
- Company profile
- Evidence of IPA Registration

36. Evaluation, award and notification

No comments

36. Prequalification Process

No comments

38. Termination and revocation of UAS Licence without compensation

No comments

39. Declaration of a bidder as ineligible

No comments

40. Written notice to be sent to the bidder by the UAS Board before disqualification-etc.

No comments

41. Cancellation of competitive selection process

No comments

42. UAS Secretariat to undertake a review in respect of an insufficient number of qualified bids submitted

No comments

PART V—COMPETITIVE SELECTION PROCESS DOCUMENTS

43. Document requirements

No comments

44. Public notice

No comments

45. Request for Proposals

TPNG is of the strong view that the NICTA Licencees should be given the first right of refusal on all projects that the UAS Board intends to undertake throughout the country.

Non Licencees can be given the opportunity to bid for any projects should the licences fail to meet the bid requirements.

46. Bid Bond

TPNG disagree with a bid bond of 5% under Regulation 46(2)(a) as it is too high. TPNG suggest that it should be less than 1% and it should be refundable if the bidder is considered unsuccessful.

47. UAS Project Agreement

No comments

48. UAS Licence

No comments

49. Co-ordination by the UAS Board and UAS Secretariat on matters relating to the licensing of service providers.

No comments

50. The Performance Bond

No comments

51. Timetable

No comments

PART VI—FINANCING OF THE UAS FUND

52. Establishment of UAS Annual Levy

TPNG understands that the operating licensing regulations specify 2% of the net revenue, that is mandatory, and TPNG has no objection.

However, it is of the view that whilst the UAS is at this establishment phase, it would be appropriate to consider an amount less than 2% and it is suggested that a contribution of 1% or less would be a reasonable contribution by all licencees towards the establishment phase, ideally for the next two or three years.

The actual cost could potentially be realised at that time so the UAS Board could consider fully implementing the 2% or could continue to apply in stages or phases until the full project(s)' cost and operational cost are realised.

At this initial stage, a 2% levy is so much. For example, $0.02 \times K300\text{mil}$ equates to K6mil and you have three (TPNG, Bemobile & Digicel) major operators at the moment, they can contribute to more than K18mil in one year. It may increase to well over K20mil with contributions from the other licencees.

It is with this view that TPNG is suggesting a contribution that is less than 2%, preferably 1%.

53. UAS Fund surpluses

Annual inflows of funds to fund the UAS projects will continue to increase as the



operators' revenue continue to increase. With this pool of fund, TPNG is of the view that the UAS Board may have some difficulty in spending all the money it receives in a fiscal period and the funds could continue to accumulate and that could potentially lead to misuse and abuse of fund.

To avoid this situation, TPNG is proposing that any surplus fund although should be retained; it should be apportioned on a pro rata basis between Licencees as part of their contribution (whatever the percentage) of that year. That will be a penalty to the regulator (NICTA) for not spending the money on the projects, either NICTA or the UAS Board should not be encouraged to save the funds intended for the projects. For the preceding year, the licencees should pay the balance of the surplus retained.

54. Estimation of UAS Fund's administrative and operational expenses

No comments

55. Investment of UAS Fund assets

TPNG does not support NICTA or the UAS Board in venturing into portfolio or asset investments, unless is considered absolutely necessary. The whole intention of contributing the funds is to rollout only ICT related projects into remote and rural parts of PNG that do not have ICT coverage or sufficient ICT coverage. Therefore, the funds should not be diverted to other areas that are unrelated to ICT projects in remote and rural communities of PNG.

As a major contributor to the fund, it our strongest desire not to see UAS Board or NICTA making investments or try to make savings from this fund. It is our wish to see funds rolled out in the form of ICT projects and to be parked in any investment accounts such as the treasury bills, securities, bonds and any other form of investments. That will indeed defeat the entire purpose of the existence of the UAS Fund.

TPNG therefore strongly recommend that the entire Regulation 55 to be deleted. TPNG will have an issue with this clause should you fail to consider our recommendation.

