



NATIONAL INFORMATION & COMMUNICATION TECHNOLOGY AUTHORITY

Inter Office Memo

To: CEO (Mr. Charles S. Punaha) *Noted* **Date:** 26th October, 2018
CEO 26/10/18

From: DECIA & A/DUAS **Our Ref:** 515/2/2

CC: MRCP

Subject: UAS Levy Determination 2018

Enclosed is the UAS Levy Determination for 2018 for your approval.

In determining the levy for a particular year, Section 107(2) of the Act requires that it is determined as a percentage of the net revenues of the licensed operators, less any amounts paid by NICTA in the previous year (2017 in this case) under Section 32(2)(a). No contribution was made to the Fund by NICTA in the 2017. However, in 2018 there was a contribution of 2,626,058 million Kina from NICTA and this amount has been fully committed to the 2017 "Connect the Schools" Project. This contribution even though for a 2017 UAS Projects was made this year and therefore does not need to be taken into account, under Section 107(2)(a) of the Act, until the Levy for 2019 is under consideration. In any case the amount is paid directly to contractors and does not help with UAS payment cashflows.

Having considered UAS Board advice and Ministers approval for the 2018 Projects and taking into other relevant circumstances, the 2018 UAS Levy is therefore recommended to be set at 0.72% of operator net revenues for an overall amount of K11 million.

Submitted for your approval.

Kila Gulo-Vui

*Approved for the
2018 UAS Levy
to be set at 0.72%*

CEO 26/10/18



National Information and Communications Technology Authority

DETERMINATION: 2018 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. NICTA hereby determines that the 2018 UAS Levy be set at 0.72% of the net revenues of operator licensees.
6. A levy of 0.72% of net revenues of operator licensees has been proposed having regard to the cost of UAS projects planned for 2018, and the current and projected balance of the UAS Fund.
7. This Determination has been made by NICTA after receipt of the formal advice on projects by the UAS Board and after careful consideration of the submissions and comments received from operator licensees and other stakeholders and members of the public in response to invitations to comment on an earlier discussion paper.

II. Key Background Information

A. Summary of Legal Framework

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8. In preparing this Determination 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 s.32(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.

- 9. NICTA also has had regard to the National Information and Communications Technology (Operator Licensing) Regulation, 2010, including Section 22 which states:



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"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. UAS Levy For 2018 - considerations

10. NICTA has collaborated with and received advice from the UAS Board as to 2018 UAS Projects and the amount of any 2018 UAS Levy. In this respect, the UAS Board has advised NICTA that:

"The Universal Access Services Board hereby resolves, pursuant to Section 107(a)(1) of the National ICT Act 2009, and after due consideration of reports and information received, to advise NICTA that the desired level of funding in the Universal Access Services Fund for 2018 is 11 million PNG Kina, in order to provide for the estimated 2018 UAS Project Implementation for this year, and a prudent reserve of 10%."

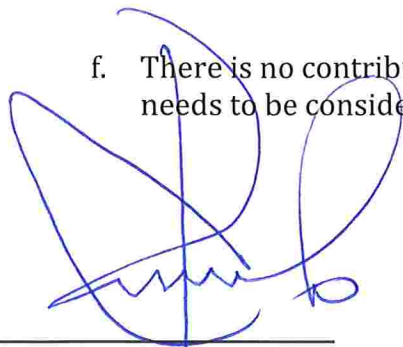
11. Having considered this advice, Minister's approval of the 2018 Projects and other relevant circumstances NICTA has determined that the 2018 UAS Levy should be set at 0.72% of operator net revenues.

12. The supporting considerations for this include that:

- a. This amount should allow implementation of the 2018 Projects approved by the Minister;
- b. NICTA considers that it is feasible to tender and award these projects during 2018;
- c. To the extent such projects and budget were not fully implemented in 2018, this UAS Levy amount would provide a prudent but modest level of reserve, contingency or surplus for continuation of these projects in subsequent years;
- d. The amount of the proposed 2018 UAS Levy (0.72%) is no more than the maximum percentage of 2% provided in the National Information and Communications Technology (Operator Licensing) Regulation, 2010 ;
- 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, and some major operators have not paid any UAS Levy; and



- f. There is no contribution from NICTA pursuant to Section 32(2)(a) that needs to be considered in setting the Levy for 2018 .



Charles S Punaha
Chief Executive Officer

**Authorised delegate for and on behalf of the
National Information and Communications Technology Authority**

26th October 2018