

INTERNET SERVICE PROVIDER DRAFT CODE OF PRACTICE

INTRODUCTION TO DRAFT FOR PUBLIC COMMENTS

The Independent Consumer and Competition Commission (**Commission**) is the principal economic regulatory agency for Papua New Guinea (PNG), through the *ICCC Act 2002*, and is also the principal regulator for the telecommunications industry under the *Telecommunications Act 1996* (except for technical regulation, which is the responsibility of PANGTEL).

Section 40 of the *ICCC Act* enables the ICCC to make codes or rules relating to the conduct of operations of a participant in a regulated industry¹, while section 66A of the *Telecommunications Act* allows the Commission to determine Codes of Practice to be followed by carriers in the course of their operations.

The internet is an increasingly important part of business and social life, and PNG as well as the rest of world wider and the Commission is keen to encourage the further development and use of internet services in PNG. The demand for access to internet services in PNG is strong and growing rapidly. While efforts are being made to improve the situation, carrier capacity limitations and other factors are preventing the existing internet service providers from fully satisfying the demand and from supplying internet services of the desired speed, reliability and bandwidth.

To ensure that internet services are made available to the widest range of customers in PNG at competitive prices and on reasonable terms and conditions, and to ensure that those customers know what they are getting and how much they are paying for it, the Commission is proposing to make a code of practice for internet service providers (ISPs) to comply within their supply of internet and internet related services.

The Internet Code of Practice will be made by the Commission as a code under section 40 of the *ICCC Act* and as a Carrier Code of Practice under section 66A of the *Telecommunications Act*. This means that the ISPs, as participants in the telecommunications industry, will be required to comply with the Code, as will the license carrier Telikom and its subsidiaries Pacific Mobile Communications and Tiare (which currently operates the sole ISP gateway and is itself an ISP, though not a major one).

At the same time, PANGTEL will make a Technical Code of Practice under section 66B of the *Telecommunications Act*, dealing with engineering and related technical aspects of telecommunications services supplied by ISPs.

Internet services are a kind of value added service and as such, all ISPs will be required to obtain a value added service licence from the Commission. Those licences will require the licence holder to comply with the Internet Code of Practice and with the Technical Code of Practice. Before finalizing the Code, the Commission is issuing the attached draft Internet Code of Practice² for consultation with the carrier and other interested parties.

¹Telecommunications has been declared to be a regulated industry by section 19A of the *ICCC Act* and Telikom PNG Ltd is subject to regulation by the Commission as a regulated entity declared under the *ICCC Act*.

Please provide any comments to the Commission within 30 days from the date of this discussion draft, to the following address:

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Authorised By

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²The draft has been drawn from a number of sources, including *Industry Guideline for Internet Service Providers*, a guideline developed by the industry for the Australian Communications Authority in 2002.



INDEPENDENT CONSUMER AND COMPETITION COMMISSION

**INTERNET SERVICE PROVIDER'S
CODE OF PRACTICE (DRAFT)**

Draft

26th August 2005

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The Independent Consumer and Competition Commission (Commission) is a statutory body, established under the provisions of the *Independent Consumer and Competition Commission Act 2002 (the Act)*. The Commission has been given responsibility for the promotion of competition and fair-trading, the regulation of prices for certain goods and services, and the protection of consumers' interests, and other related purposes.

The Commission has three Commissioners:

Thomas Abe, Commissioner
Paul Baxter, Associate Commissioner (Non-Resident)
Chris Gideon, Associate Commissioner (Resident)

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A. Executive Summary

The Independent Consumer and Competition Commission (“**Commission**”) was established by the *Independent Consumer and Competition Commission Act 2002* (“the Act”) to be the premier economic regulator in Papua New Guinea (PNG) as a result of economic reform in 2000 - 2001. The ICCA Act and Price Regulation Act (amended) provide power for the Commission to perform its function as the economic regulator. Also specific legislation provided power for the Commission to regulate service industries (“regulated industries”) provided by the State Owned Enterprises namely telecommunications, electricity, postal, ports and harbours, third party insurance except water and sewerage which is regulated under the Price Regulation Act.

The Commission is required by Section 40 of the Act and Part VIA of the *Telecommunications Industry Act 2002* to make codes and rules relating to the conducts or operations of participants in regulated industries to facilitate and/or make services provided by the regulated industries readily available and/or accessible in PNG by the general population.

The Commission recognises that the Internet technology within the telecommunication services allows the transportation of multimedia (voice, data and video) and therefore considers this segment of the telecommunication service as a value added services.

The need for developing appropriate Policies or Code of Practise is to protect the interest of both the supplier and the consumers of these services.

This Code of Practise document will be finalised after comments and/or suggestions from all stakeholders are received and analysed. Such an approach is targeted towards producing a practical and/or workable Policy that recognises and safeguards the interest of stakeholders.

B. Background

Recent statistics show that PNG has one of the Pacific’s poorest levels of access to information technology. For example, Internet is available to less than one percent of the population, and customer charges are among the most expensive within the South Pacific region.

The importance of Internet technology in all sectors of the government and the industry, *including the* academic and research institutions, the public and private business houses and the community at large needs to be recognized and appreciated.

The Commission having recognised the importance of Internet technology in all sectors of the country, have subsequently determined internet service as a Value Added Service (VAS) to be suitable for grant of a value added service licence under Part VI of the Act.

As such all citizen or eligible Corporation intending to or are engaged in provision of internet service are required to apply for a VAS license from the

Commission and adhere to the code of practise guidelines outlined herein concurrently with PANGTEL's Technical Code of Practise. The Commission may take appropriate action against violators of this Code of practise of any other relevant Acts.

Penalties may range from stern warning to revocation of the VAS License.

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1. Introduction

This code of practice is made under section 40 of the *Independent Consumer and Competition Act 2002* relating to the conduct or operations of internet service providers (ISPs) and internet service gateway operators (ISGs) in the telecommunications industry. This code is also determined to be a Code of Practice under section 66A of the *Telecommunications Act 1996*, to be followed by carriers in the course of their operations.

This code should be read in conjunction with the Internet Technical Code of Practice determined by PANGTEL under section 66B of the *Telecommunications Act* for carriers. That technical Code of Practice shall also apply to ISPs and/or ISGs which are not licensed carriers, to the extent that the technical Code is applicable or relevant to those ISPs' or ISGs' operations and activities.

Internet services are value added services so ISPs and ISGs must therefore obtain a value added services licence from the Commission, in accordance with Part VI.2 of the *Telecommunications Act*, in order to operate as an ISP or ISG. It will be a condition of each ISP or ISG value added services licence, that the licensee complies with this Internet Code of Practice and with the Internet Technical Code of Practice.

2. Objectives of the Code

The Code seeks to provide a framework for ISPs to provide information to consumers in a form that will allow them to compare information from different ISPs about prices and factors relating to the capability, quality and reliability of internet services. The Code also seeks to establish a framework for operations of ISPs and ISGs which will provide internet services to the widest range of consumers throughout Papua New Guinea at competitive and affordable prices, and with access to high speed, reliable, data transmission and downloading and uploading. At the same time, the Code also seeks to help make sure that the internet is not used for criminal or other illegal purposes.

3. Consumer Information

ISPs shall make sure that the price of each service they offer is set out in a way that makes clear all the components of charging for the service, including:

- up-front and recurrent fees;
- the relationship between the price and the quantity of services received (usually time online and the amount of data downloaded, or downloaded and uploaded);
- any limits on upload and/or download, and the cost of exceeding those limits;
- any data or time limits on individual sessions;
- the length of time of the contract between the ISP and the customer; and
- the technology used to connect the customer to the ISP.

Where internet services are bundled together with other products or services, this should be clearly stated and all elements of the bundled service should be listed.

Customers shall be informed of the geographic location of the ISP's Point of Presence (PoP), or each of the PoPs if more than one, to enable the customer to select the minimum call cost to dial in to the ISP and to avoid long distance call charges, if possible.

If the customer's contract with the ISP is for a minimum or set period, the ISP must first inform the customer of any fees or penalties applying if the customer chooses to terminate the service before the end of the contract period.

Billing of customers must be accurate and in accordance with the contract terms, and bills must be clearly set out to enable the customer to easily determine what services he is paying for, what is the charge for those services, and whether particular services are being charged in advance or in arrears. Bills and other communications from the ISP to its customers shall include contact telephone numbers for customers to discuss billing or other issues with the ISP.

4. Customer Assistance

ISPs shall provide its customers with:

- details of the computer operating systems and hardware which the ISP will assist the customer with;
- contact points for fault reporting;
- contact points for customer technical and other assistance, including the times that help desk is operating, any charges which may apply and, if a set-up disk is used as part of the installation process, a description of the impact which installation of the disk may have on the customer's computer system.

5. Security of Service and Privacy

ISPs should inform customers whether the ISP backs up the data it holds, and if so, what kind of data is stored, for how long, and if it can be retrieved, what charges, if any, might apply for retrieval.

Customers should be informed about security arrangements including passwords, password protection and the availability of measures by which customers can control access to their accounts by other users.

The information sent or received by customers through ISPs is confidential to the customer and ISPs must ensure that the privacy of that information is fully protected from disclosure except as required by law. This privacy protection, which is in compliance with section 49 of the Constitution, includes the ISP ensuring that it does not itself examine the customer's information or internet content, except when requested to assist law enforcement agencies or for essential technical reasons.

6. Internet Crime and Assistance to Law Enforcement Agencies

The internet can be used to assist criminal enterprises, so ISPs shall provide assistance to law enforcement agencies and government regulatory agencies to assist in preventing criminal activity. That assistance includes the provision of information, upon lawful request by the Royal Papua New Guinea Constabulary and other law enforcement

agencies, or if required by order of a court, notwithstanding the general obligation to protect customers' privacy. An ISP shall close down or block access to an internet site or sites if required in writing to do so by a law enforcement agency or by the Commission, for the reason that the internet site or sites is or is reasonably suspected of being used for criminal activity, for propagating computer viruses, or for other activities contrary to the laws of Papua New Guinea.

ISPs shall also block access to or close down any website in respect of which the ISP has been notified in writing by the Censorship Board of PNG that pornographic or seditious material, or material of an offensive or defamatory nature, is being distributed from that website and where the ISP is lawfully obliged to terminate access to that website following delivery of that notice from the Censorship Board.

Other than in the circumstances described above, ISPs and ISGs will take no action to block access to any website or internet or IP addresses.

7. Quality of Service

ISPs shall endeavour to provide internet services which conform to internationally accepted technical and performance standards, though it is recognised that ISPs capacity to provide performance to those standards may be affected by limitations or outages in the Papua New Guinea telecommunications network which are beyond the ISP's control.

In providing that quality service, each ISP shall maintain current information recording the total number of minutes in the previous week, for each PoP if the ISP has more than one, when customers were unable to gain access to the ISP because its modems or access servers were fully utilised or were inoperative, together with an indication of the time or times of day when the customer would be most likely to be unable to access the ISP for those reasons. The ISPs shall provide this information to the Commission on request, and will also make that information available to its customers on request.

ISPs shall also maintain records of those times when the ISP was unable to offer a quality service to its customers because of the ISP being denied access to the ISG arising from congestion or for other reasons, or where the ISP was unable to provide internet services to its customers, or those services were disrupted, because of other problems with carriers supplying telecommunications services to the ISP. The ISPs shall also provide this information to the Commission on request, and will also make that information available to its customers on request.

8. Domain Name Registration

Domain names being a scarce resource, ISPs and ISGs shall not use their position to acquire, allocate or refuse access to any domain name to gain unfair commercial, social or other advantage. All top level domain names in PNG shall have a generic form such as www.xxx.com.pg, www.xxx.net.pg, www.xxx.org.pg, www.xxx.gov.pg or www.xxx.edu.pg, as appropriate. Domain names which are calculated to mislead or confuse the public about the origin, affiliation or association of a website shall not be allocated or if already allocated, may be withdrawn.

Domain names shall be administered by the Papua New Guinea University of Technology (Unitech) in association with ISPs and ISGs. Domain names and IP addresses are not portable and shall be relinquished to Unitech when connection of the website or service to which the domain name or IP address has terminated.

9. Community Service Obligation

While ISPs do not have any legislated community service obligation, ISPs and ISGs are encouraged to establish PoPs in regional areas outside Port Moresby, and beyond the other major towns, to enable more distant customers to have access to the internet without needing to connect through a long distance charged call.

10. Internet Connection and Interconnection

Interconnection arrangements between ISPs and ISGs shall be on mutually agreed terms and conditions. This includes cost sharing agreements for peering interconnection

arrangements and other arrangements such as transit interconnection arrangements. In the event of the parties not being able to reach agreement on the terms of an interconnection agreement, the provisions of Part XI of the *Telecommunications Act* shall be taken to apply to those interconnection arrangements, as if the ISP and ISG parties to those interconnection arrangements were both interconnecting carriers.

ISP and ISG interconnection arrangements shall be organised so as to allow ISPs to establish PoPs in geographically diverse locations, to enable the ISPs customers to access the internet from as many towns within PNG as possible without needing to dial up a long distance call.

ISPs and ISGs shall make every effort to ensure that sufficient bandwidth, domestically and internationally, is made available to ISPs, and that ISPs lease sufficient bandwidth from ISGs or carriers, to provide quality, reliable, high speed internet access to all customers at all times.

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