Exhibit 1:

Telecommunications Act (No. 20) 2005, as amended

SAMOA

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2005, No.20

AN ACT to establish a new legislative framework for the telecommunications sector, and to repeal and harmonize certain provisions of the Post Office Act 1972, the Postal and Telecommunications Services Act 1999 and the Post and Telecommunications Internet Act 1997. *[29th June 2005]*

BE IT ENACTED by the Legislative assembly of Samoa in Parliament assembled as follows:

PART I
PRELIMINARY

1. Short Title and commencement-(1) This Act may be cited as the Telecommunications Act 2005.

(2) This Act shall commence, in whole or parts or sections or paragraphs thereof, on a date or dates nominated by the Minister.

(3) Notice of commencement of this Act, in whole or parts or sections or paragraphs, shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Interpretation-(1) In this Act, unless the context requires otherwise:

"Act" means the Telecommunications Act 2005;

"Affiliate" means, in relation to any one person, any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person;

"Broadcasting service" means the transmission of radio or video programming to the public on a free, pay, subscription or other basis, whether by cable television, terrestrial or satellite means, or by other electronic delivery of such programming;

"Class licence" means a licence issued pursuant to sections 13 and 15 to a defined class of service providers and which applies to a person falling within the defined class without that person having to apply for the licence;

"Commencement date" means the date or dates on which this Act commences, in whole or parts or section or paragraphs, as specified in section 1(2);

"Control" means the power to determine the actions of another person in any manner, whether directly through the ownership of shares or other securities or indirectly through an agreement or arrangement of any type;

"Exemption order" means an order made by the Regulator pursuant to section 14;

"Government" means the Government of the Independent State of Samoa;

"Individual licence" means a licence issued pursuant to sections 13 and 15 to an individual person upon the application of that person;

"Interconnection" means the physical and logical linking of telecommunications networks used by the same or a different service provider in order to allow the users of one service provider to communicate with users of the same or another service provider, or to access the facilities and/or services of another service provider, and includes 'access', meaning the making available of telecommunications facilities or services by one service provider to another for the purpose of providing telecommunications services;

"Licence" means an individual licence or a class licence issued pursuant to this Act, but does not include a radio spectrum licence or a licence issued prior to the coming into force of this Act;

"Licensee" means a person who holds a licence under this Act;

"Minister" means the Minister responsible for Communications and Information Technology;

"Ministry" means the Ministry responsible for Communications and Information Technology;

"Office of the Regulator" means the entity established by section 9;

"Order" means a written order made by the Regulator pursuant to this Act, a regulation or rule;

"Public voice telephony services" means the commercial provision to the public of the direct transport and switching of voice telephony in real time from and to network termination points;

"Prior licence" means an authorization for the operation of a telecommunications network or provision of a telecommunications service issued prior to the coming into force of this Act;

"Radio spectrum licence" means a licence issued pursuant to section 22;

"Reference interconnection offer" has the meaning assigned to it in section 37;

"Regulation" means a regulation made pursuant to the Ministry of Communications and Information Technology Act 2005;

"Regulator" means the person appointed pursuant to section 6 to head the Office of the Regulator;

"Rule" means a rule made by the Regulator pursuant to this Act;

"Samoa" means the Independent State of Samoa;

"Service provider" means a person that provides a telecommunications service to the public or that owns or operates a telecommunications network used to provide telecommunications services to the public;

"Telecommunications equipment" means equipment intended to be connected directly or indirectly to a telecommunications network in order to send, transmit or receive telecommunications services;

"Telecommunications facility" means any facility, apparatus or other thing that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications;

"Telecommunications network" means any wire, radio, optical or other electromagnetic system for routing, switching or transmitting telecommunications services between network termination points;

"Telecommunications service" means any form of transmission of signs, signals, text, images or other intelligence by means of a telecommunications network, but does not include a broadcasting service;

"Terms of Service" means the general terms and conditions upon which a service provider shall provide telecommunications services to customers and which are set out in a document prepared in accordance with Part IX of this Act. Once approved by the Regulator, the Terms of Service shall, together with this Act, the regulations, rules, orders and approved tariffs, be binding upon a dominant service provider and its users; and

"Universal Access Fund" means the fund established pursuant to section 21.

3. Objectives of this Act-The objectives of this Act are to;

(a) facilitate the development of the telecommunications sector in order to promote social and economic development;

(b) promote universal access to telecommunications services at a affordable prices;

(c) promote the efficient and reliable provision of telecommunications services, relying as much as possible on market forces, such as competition and private sector investment, to achieve this objective;

(d) promote the introduction of advanced and innovative information and communications technologies to meet the needs of the people of Samoa;

(e) encourage sustainable foreign and domestic investment in the telecommunications sector;

(f) establish a framework for the control of anti-competitive conduct in the telecommunication sector;

(g) promote efficient interconnection arrangements between service providers;

(h) protect the interests of subscribers and other customers of telecommunications services;

(i) define and clarify the institutional framework for policy development and regulation of the telecommunications sector, as well as the separation of government policy and regulatory functions from those of providing telecommunications services;

(j) promote efficient management and use of radio spectrum and other scarce resources;

(k) establish a fair, objective and transparent licensing regime for service providers;

(l) establish and efficient approvals regime for telecommunications equipment; and

(m) establish measures to enforce the implementation of this Act and to prohibit certain types of conduct contrary to the orderly development and regulation of the telecommunications sector.

4. Application of this Act-(1) This Act shall bind the State.

(2) This Act applies to any act or omission or event which occurs in Samoa or any other place.

5. Repeal of Acts-The Acts, or parts or sections of the Acts, listed in the Schedule are repealed.

PART II
THE REGULATOR

6. Appointment of Regulator-Subject to sections 7 and 8 and this section:

(1) There shall be appointed by the Head of State, acting on the advice of Cabinet, a Regulator who shall have and exercise the responsibilities, functions and powers conferred by this Act an any applicable law.

(2) The appointment of the Regulator shall be for a term of three years, which term may be renewed by the Head of State, acting on the advice of the Cabinet, for additional terms of three years.

(3) A person may not be removed as Regulator prior to the completion of a three year term of an appointment unless the person:

(a) at the time of appointment and while holding the position of Regulator, has a conviction or is convicted for any offence, in Samoa or elsewhere:

(i) involving dishonesty or corruption; or

(ii) where the penalty for such offence includes imprisonment for one year or longer (irrespective of whether such penalty has been or is imposed concerning such conviction); or

(b) is an undischarged bankrupt; or

(c) is determined by a medical practitioner to be unable to perform the Regulator's responsibilities, functions, duties and powers due to any physical or mental incapacity; or

(d) breaches the Code of Conduct detailed in section 19 of the Public Service Act 2004.

(4) The Head of State, acting on the advice of Cabinet, may appoint the Minister or another person to exercise the responsibilities, functions and powers conferred by this Act and any applicable law on the Regulator, on an interim basis, during:

(a) the period until the first Regulator is appointed;

(b) any period of time after a Regulator ceases to hold office and before a replacement is appointed; and

(c) a period of temporary absence or incapacity of the Regulator

(5) A person appointed under subsection (4) may exercise all of the responsibilities, functions and powers conferred on the Regulator by this Act and any applicable law notwithstanding any other provision of this Act.

(6) An appointment under subsection (4) may not continue for a period longer than six months.

7. Disqualification-(1) Subject to this section, a person is not eligible to be appointed or to continue as the Regulator or as a member of the professional staff of the Regulator if the person, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, has any pecuniary or proprietary interest in:

(a) a service provider; or

(b) a manufacturer or supplier of telecommunications equipment, except where the supply is incidental to the general merchandising of goods by wholesale or retail.

(2) Where any interest prohibited by subsection (1) vests in the Regulator or a member of the professional staff by will or succession for the benefit of the Regulator or a member of the professional staff, as the case may be, such interest shall be

absolutely disposed of within three months of vesting, and any failure to act in accordance with this subsection shall make the Regulator or member of the professional staff, as the case may require, liable under subsection (1).

(3) For the purpose of this section:

(a) a pecuniary or proprietary interest shall include, but is not limited to, a pecuniary or proprietary interest held by a spouse or parent or child or brother or sister of the Regulator or member of the professional staff, as the case may require; and

(b) the professional staff of the Regulator shall be any member of staff of the Regulator nominated as such by the Regulator, as a class of such persons or individually, or both.

8. Responsibilities, Functions and Powers of the Regulator-(1) The Regulator shall:

(a) advise the Minister on policy for the telecommunications sector;

(b) implement this Act, the regulations and other elements of the legal and regulatory framework for the telecommunications sector;

(c) issue individual and class licences, and design and run the process for issuance of such licences;

(d) monitor and enforce compliance by licences with the conditions of their licences;

(e) amend or revoke licences in accordance with this Act and the regulations;

(f) define network termination points, if required for the proper interpretation and administration of this Act, the regulations and rules;

(g) prescribe procedures for the approval of telecommunications equipment for attachment to telecommunications networks in Samoa, using the least onerous method available, such as approval of equipment previously approved for attachment in specified countries or regions;

(h) establish a radio spectrum plan and manage radio spectrum allocated to the telecommunications sector;

(i) regulate interconnection between telecommunications networks of different service providers;

(j) establish and manage a numbering plan and assign numbers to service providers;

(k) resolve disputes between service providers, and between customers and service providers.

(l) institute and maintain appropriate measures for the purpose of preventing dominant telecommunications service providers from engaging in or continuing anti-competitive practices;

(m) represent Samoa in international telecommunications organizations, in cases where the Minister decides the Regulator is the appropriate representative;

(n) carry out any responsibilities, functions and powers assigned to the Regulator in any universal access program or arrangements established pursuant to Part IV of this Act;

(o) maintain records of licences and licence applications, equipment approvals and applications and interconnection agreements and, except where the Regulator considers it justified for reasons of commercial confidentiality, make the documents in such records available to the public;

(p) publish procedures, guidelines and interpretations to facilitate the implementation of this Act;

(q) make rues for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof by the Regulator;

(r) make orders respecting any matter or thing within the jurisdiction of the Regulator under this Act, a regulation or rule, including orders to compel a person to comply with or implement the purposes of this Act, a regulation, rule or licence,

and, upon publication by the Regulator such orders shall have the same legal force as a rule;

(s) on the initiative of the Regulator or upon request by another person, investigate complaints against licencesees or other service providers, and conduct such other investigations as the Regulator deems necessary to ensure compliance with this Act, a regulation, rule or order, and issue an order in respect of anything prohibited, required or permitted to be done under this Act, a regulation, rule or order;

(t) comply with the Code of Conduct detailed in section 19 of the Public Service Act 2004;

(u) in exercising the Regulator's powers and performing duties under this Act, a regulation or rule, determine any question of law or fact, and despite any other law, the Regulator's determination on a question of fact is binding and conclusive for all purposes, including but not limited to any proceedings in any Court, tribunal or other adjudicative body; and

(v) take such other actions as are reasonably required to carry out this Act, the regulations and rules, and to perform such other responsibilities, functions, and powers conferred on the Regulator under any other law.

(2) The Regulator shall carry out the responsibilities, functions and powers of the Regulator with a view to implementing the objectives set out in section 3 of this Act.

(3) The Regulator shall act independently in performing the responsibilities, functions and powers of the Regulator set out in this Act and other laws, and in this regard:

(a) the Regulator shall act in a manner that is separate from, and not accountable to, any service provider, including a service provider owned by the Government;

(b) the orders and rules made and the procedures used by the Regulator shall be impartial with respect to all service providers and other market

participants; provided however that nothing in this section shall be interpreted to prevent the Regulator from:

(i) consulting with any person or organization on any matter related to the Regulator's responsibilities, functions and powers; or

(ii) making a decision that is in accordance with this Act but that has a differential or prejudicial impact on a service provider or other market participant.

9. Office of the Regulator-(1) There is hereby established an Office of the Regulator, which shall function in accordance with this section.

(2) The Regulator shall be responsible for the management of the Office of the Regulator.

(3) The Office of the Regulator shall consist of the Regulator, the staff of the Office of the Regulator and employees and such other persons as may be seconded or appointed in accordance with this section.

(4) Except as provided in this Act, the Regulator and the Office of the Regulator shall function in accordance with the laws governing the public service and the finances of the Government of Samoa, and in particular:

(a) the staff and employees of the Office of the Regulator shall be appointed or employed under the Public Service Act 2004;

(b) the Public Service Commission shall appoint such staff and employees on the recommendation of the regulator; and

(c) the budget of the Office of the Regulator shall be approved pursuant to the national budgetary process for the Government taking into account any fees collected pursuant to a regulation made under sections 10(1) and (3).

(5) The Minister, acting on the advice of the Chief Executive Officer of the Ministry and of the Regulator, may by notice in writing:

(a) designate one or more persons employed by the Ministry or other Ministries or Government organizations to work with the Office of the Regulator on a secondment basis. Such secondments may be part-time or full time, and shall last for such period of time as indicated in the notice; and

(b) determine that the Office of the Regulator may share or otherwise utilize support staff, office premises and other resources of the Ministry, or another Government organization.

(6) A person who has been appointed or seconded to the Office of the Regulator and to whom the Regulator delegates a responsibility or function or power in writing, shall perform such of the responsibilities, functions and powers of the Regulator, as are specified in the delegation, and a delegation under this subsection may:

(a) authorize a person to make orders or issue licences;

(b) restrict the delegation to specific types of matters, or to a specific period of time;

(c) be subject to terms, conditions or restrictions; and

(d) be revoked by notice in writing.

(7) In addition to the persons appointed or seconded to the Office of the Regulator under this section, the Regulator may appoint such consultants as may be necessary for the efficient performance of the functions of the Regulator.

(8) all persons appointed or seconded under this section shall work under the direction of the Regulator in the discharge of their functions, powers and duties.

(9) The Regulator shall conduct the affairs of the Office of the Regulator in an open and transparent manner. To this end, the Regulator shall, from time to time, publish or cause to be published, notices, rules and procedures governing the operation of the Office of the Regulator and the Office's dealings with the public.

(10) The regulator shall cause the Office of the Regulator to establish an official web site to increase the transparency of the Office's affairs to persons inside and outside of Samoa.

(11) All rules, orders, notices and other important documents issued by the Office of the Regulator regarding the regulation of the telecommunications sector shall be posted on the Regulator's official web site, and published in any other media that the Regulator considers necessary or appropriate to provide adequate notice to interested persons.

(12) Within six months after June 30th of each year the Regulator shall cause the Office of the Regulator to prepare and provide to the Minister an annual report on the work of the Office of the Regulator, such report to include:

(a) a summary of the activities of the Office of the Regulator;

(b) financial statements and accounts and audit report on such statements and accounts (including the Universal Access Fund) in a form approved and audited by or under the direction and control of the Controller and Chief Auditor;

(c) a list of licences in force and issued;

(d) a list of interconnection agreements filed with the Regulator;

(e) a summary of material litigation involving the Regulator;

(f) a report on the Universal Access Fund;

(g) a summary of rules and major orders made in the period since publication of the last annual report;

(h) a description of major procurement and outsourcing activities undertaken by the Regulator;

(i) a list of staff, employees and consultants appointed or seconded to the Office of the Regulator; and

(j) such other information as the Minister may determine by notice in writing.

(13) The Minister shall table the annual report in the Parliament at the fist available opportunity.

10. Licence, Radio Spectrum and Numbering Fees- (1) The Regulator may propose a regulation to establish:

(a) licence fees, including licence application fees and annual licence fees;

(b) radio spectrum usage fees; and

(c) fees for the use of telecommunications numbers.

(2) The fees provided for in subsection (1) shall not come into effect until assent by the Head of State, acting on the advice of Cabinet, of a regulation establishing the fees and related payment and administration procedures.

(3) A regulation made under this section may provide that licence fees and fees for radio spectrum usage and telecommunications numbers shall be collected from all licensees taking into account the following principles.

(a) such fees may be used to fund, in whole or in part, the responsibilities, functions and powers of the Regulator and the operations of the Office of the Regulator under this Act and other laws;

(b) funding of the Regulator and the Office of the Regulator may be made indirectly, with fees payable in the first instance to the Treasury Fund, and then taken into account by the Ministry of Finance in funding the budget of the Regulator through the normal Government budgetary process;

(c) fees shall be levied on different licensees and users of spectrum and numbers in an impartial and competitively neutral manner; and

(d) licence fees may be based on a percentage of the revenues of licensees from the provision of their licenced telecommunications services.

(4) Fees required to be paid under this section constitute a debt due to the Government and may recovered in a court of competent jurisdiction.

11. Appeal and Review of Orders of the Regulator-(1) An appeal from an order of the Regulator may be made only:

(a) on any question of law; and

(b) to the Supreme Court with the leave of the Court.

(2) An application for leave to appeal shall be made within thirty days after the date of the order appealed from.

(3) An appeal shall be brought within sixty days after the day on which leave to appeal is granted.

(4) On an appeal under this section the Supreme Court may draw any inference that is not inconsistent with the findings of fact made in the order.

(5) Despite any other law, on hearing an appeal under this section the Supreme Court shall have only the jurisdiction and power to:

(a) Determine the applicable law; and/or

(b) Declare the order subject to appeal, or part of the order, to be lawful or unlawful; and/or

(c) Remit the order to the Regulator for further determination by the Regulator in accordance with any determination and/or declaration made under paragraphs (a) and/or (b).

PART III
TELECOMMUNICATIONS LICENCES

12. Requirement to Hold Licence-(1) No person shall:

(a) provide a telecommunications service to the public for direct or indirect compensation; or

(b) own or operate a telecommunications network used to provide a telecommunications service to the public for direct or indirect compensation, except under and in accordance with a licence or an exemption order issued by the Regulator:

(2) For the purposes of this section:

(a) the public includes persons in Samoa or elsewhere; and

(b) the provision of telecommunications services to the public includes the provision or offering of such a service to any segment of the public, including the resale of telecommunications services obtained from another person, even if only one person is provided or offered such a service.

(3) All telecommunications services and telecommunications networks, other than those described in subsection (1), may be provided without a licence.

13. General Provisions Related to Licences-(1) Licences shall be issued by the Regulator, and shall be signed by the Regulator or a delegate of the Regulator to whom authority has been delegated under section 9.

(2) A licence is a unilateral grant of permission from the Regulator to provide a telecommunications service or operator a telecommunications network, and for all purposes it shall not be regarded as a contract or bilateral agreement.

(3) Licences shall be in writing, and the Regulator shall make copies of them available for inspection by the public.

(4) In all circumstances where a licence is required, the following shall be made publicly available by the Regulator:

(a) the applicable licensing procedures and licensing criteria; and

(b) the period of time normally required to reach a decision concerning an application for a licence.

(5) The reasons for denial of a licence shall be provided in writing by the Regulator to an applicant upon request.

(6) Licences for service providers that provide the same telecommunications services or own or operate the same telecommunications networks shall not unfairly discriminate between such licensees.

(7) The Regulator may issue licences under section (1) notwithstanding:

(a) any law, including but not limited to this Act, the Post Office Act 1972 and the Postal and Telecommunications Services Act 1999; or

(b) any agreement, contract, arrangement, licence or other provision in existence at the commencement date.

(8) Where:

(a) the Regulator has issued a licence under subsection (1); and

(b) the Attorney General and the Chief Executive Office of the Ministry of Finance have advised Cabinet in writing that the grant of such licence has adversely affected the rights of a party under an existing agreement, contract, arrangement, licence or other provision,

Cabinet, in its absolute discretion, may authorize the provision of compensation to such party in the form of money, concessions, benefits or otherwise in such amount and/or form as the Attorney General and the Chief Executive Officer of the Ministry of Finance in writing may recommend.

14. Exemption Orders-(1) The Regulator may issue an order (an "exemption order") exempting specified activities or classes of persons from the requirement to hold a licence.

(2) An exemption order may be made subject to such conditions as the Regulator deems necessary and that are consistent with this Act; the regulations and rules.

15. Types of Licences-(1) The Regulator may issue two types of licences:

(a) individual licences; and

(b) class licences

(2) The rules shall specify which type of telecommunications services require individual licences and class licences. Until such a rule comes into force, the Regulator may issue an order prescribing which types of telecomuunications services require individual licences and class licences.

16. Licensing Procedures-(1) The procedures for issuing licence shall be fair and objective.

(2) The procedures and criteria for issuing licences shall be:

(a) published in Samoan and English in the Savali and one other newspaper circulating in Samoa; and

(b) posted on the Regulator's official web site.

17. Licence Conditions-(1) The Regulator shall establish the conditions of all licences.

(2) Licence conditions shall be kept to a minimum and used only where rules of general application cannot adequately provide regulatory controls that the Regulator considers necessary to implement this Act.

18. Amendment and Revocation of Licences-(1) The Regulator may amend or revoke a licence if:

(a) the amendment or revocation has been requested or agreed to by the licensee;

(b) the licensee has been in breach of a material licence condition or this Act or a regulation, rule or order made under this Act;

(c) changes to international treaties, commitments, recommendations, standards or the laws of Samoa require an amendment or a revocation; or

(d) the Regulator decides that the amendment or revocation is required to implement this Act in a manner consistent with the objectives listed in section 3.

(2) Prior to amendment or revocation of a licence pursuant to this section, the Regulator shall notify the licensee in writing that the Regulator in considering the relevant action, and shall consider any comments made by the licensee in a timely manner.

(3) Notice under subsection (2):

(a) shall give the licensee at least 14 days from service of the notice to prepare comments on the relevant actions;

(b) shall set out any procedures the Regulator will use in considering the relevant action; and

(c) may invite comments from other interested parties or the public.

(4) If the Regulator amends or revokes a licence pursuant to this section, the Regulator shall provide the licensee with reasonable time to comply with the amendment or revocation.

(5) Where a licence is revoked the Regulator shall take into account continuity of service to customers and include in the revocation order such terms and conditions as the Regulator deems appropriate.

(6) Further procedures related to the amendment or revocation of a licence may be set out in rules or orders.

19. Term and Renewal-(1) The term of a licence shall be stated in the licence.

(2) Subject to subsection (3), upon application of the licensee, a licence shall be renewed by the Regulator on the same conditions.

(3) The Regulator may renew a licence on new conditions or deny the renewal of a licence if:

(a) the licence has been in breach of one or more material licence conditions, or this Act, or a regulation, rule or order made under this Act; or

(b) changes to:

(i) any international treaty to which Samoa is a party; or

(ii) any commitment or recommendation or standards applicable to the Government or Samoa; or

(iii) any applicable law, require a renewal on new conditions or denial of a renewal, as the case may require; or

(c) the Regulator decides that a renewal on new conditions or the denial of a renewal is required to implement this Act in a manner consistent with the objectives listed in section 3.

PART IV
UNIVERSAL ACCESS

20. Universal Access Policy-(1) The Regulator may propose, and the Minister may approve, a policy setting out specific objectives and related principles and service obligations relating to the provision of universal access to telecommunications services in Samoa.

(2) The Minister may establish an advisory body, in accordance with Part VI of the Ministry of Communications and Information Technology Act 2005, to advise the Regulator and the Minister on the preparation of a universal access policy.

(3) In preparing a universal access policy, the Regulator shall consider:

(a) the objectives for the development of universal access;

(b) the basic telecommunications services to be included in universal access obligations;

(c) the geographical areas in which specified levels of universal access should be achieved; and

(d) the costs of the universal access service obligations.

(4) In preparing a universal access policy, the Regulator shall ensure that any universal access obligations of service providers:

(a) are administered in a transparent, non-discriminatory and competitively neutral manner; and

(b) are bit more burdensome than necessary for the universal access objectives to be achieved.

(5) The Regulator shall consult with interested parties when preparing a universal access policy.

(6) Part III of the Public Bodies (Performance and Accountability) Act 2001 relating to Community Service Obligations shall not apply to Part IV of this Act

21. Universal Access Fund-(1) Following approval of a universal access policy, the Minister, by notice in writing, may establish a Universal Access Fund to be used to subsidize the net costs of providing universal access.

(2) A Universal Access Fund established under this section shall be administered by the Regulator and in accordance with any financial and administrative directors issued in writing by the Chief Executive Officer of the Ministry of Finance.

(3) The Universal Access Fund shall be operated out of a separate account from the Ministry or the operational accounts of the Regulator.

(4) Subject to subsection (5), where the Minister has established a Universal Access Fund under subsection (1), the Minister, by notice in writing from time to time, shall:

(a) Require all licencees to contribute to the Fund; and

(b) Determine the contribution obligations of licencees and the disbursement procedures of the Fund.

(5) The disbursement procedures of the Universal Access Fund shall be competitively neutral and market-oriented.

PART V
RADIO SPECTRUM MANAGEMENT

22. Spectrum Management Functions-(1) The Regulator shall be responsible for the orderly and efficient management, allocation and assignment of frequencies in the radio spectrum.

(2) In relation to radio spectrum management, the Regulator shall:

(a) advise the Minister on matters relating to the use or management of the radio spectrum;

(b) conduct public inquiries relating to the use or management of radio spectrum, where the Regulator determines such inquiries to be necessary or useful for the Regulator's management of the radio spectrum;

(c) prepare and publish a national radio spectrum plan and any other required radio spectrum plans, frequency band plans, marketing plans and plans for the migration of spectrum users to different bands;

(d) ensure that the use of the radio spectrum is consistent with any applicable international treaties, commitments, protocols and standards;

(e) intervene in and resolve interference disputes, where such disputes are not resolved by the disputing parties to the satisfaction of the Regulator;

(f) make advisory guidelines relating to the use of radio spectrum, where the Regulator determines such guidelines to be necessary or useful for the Regulator's management of the radio spectrum;

(g) issue radio spectrum licences to authorize persons to use the radio spectrum and make transmissions by radio;

(h) administer matters related to radio spectrum fees, including fees established by regulation under section 10;

(i) determine, allocate and assign frequency bands or any other matters relating to the transmission of

radio communications (whether by satellite, terrestrial or other transmissions); and

(j) perform such other radio spectrum-related functions as are conferred on the Regulator by another Act or by a regulation or rule.

23. Radio Spectrum Regulation-(1) The Regulator shall develop a rule to implement an efficient approach to management of the radio spectrum in Samoa. this rule may provide, among other things:

(a) classes or other types of radio spectrum and radio equipment;

(b) requirements for radio spectrum licences authorizing the use of the radio spectrum;

(c) requirements for authorization for the use of radio apparatus;

(d) technical requirements and standards in relation to radio equipment, interference-causing equipment and radio-sensitive equipment; and

(e) procedures, conditions and restrictions applicable to the use of the radio spectrum and radio equipment.

(2) The rules under subsection (1) shall be binding on all users of the radio spectrum or radio apparatus in Samoa.

24. Interference Disputes and Coordination-(1) In resolving radio spectrum interference disputes, the Regulator may:

(a) appoint an arbitrator to settle the dispute in accordance with the provisions of the Arbitration Act 1976;

(b) assign staff or technical experts retained by the Regulator to mediate the dispute, and failing successful mediation, to report to the Regulator on possible resolutions of the dispute; or

(c) issue an order to resolve the dispute, with or without receipt of a report pursuant to paragraph (b).

(2) The Regulator shall consult with and coordinate the use of the radio spectrum with other countries, international users

and international organizations, such as the International Telecommunications Union, as required by law or treaty in force or as other wise determined by the Regulator.

PART VI
COMPETITION POLICY

25. Functions and Duties of Regulator Regarding Competition-(1) The Regulator shall perform the following functions and duties in relation to competition among service providers in telecommunications markets in Samoa:

(a) promote efficient and sustainable competition for the benefit of end-users;

(b) establish an open and transparent regulatory framework that minimizes regulatory and other barriers to entry into telecommunications markets;

(c) make orders defining markets and relevant markets for the purpose of this Act;

(d) make orders designating dominant service providers in relevant markets in Samoa, based on their market share and other factors as determined in accordance with section 26;

(e) monitor and prevent abuses of a service provider's dominant position, pursuant to section 27;

(f) monitor and prevent practices that would restrict competition, in accordance with section 28;

(g) review and decide upon proposed transfers of control of service providers, in accordance with section 31;

(h) undertake market reviews from time to time to evaluate market conditions and the state of competition in those markets; and

(i) dispose of complaints and resolve disputes related to anti-competitive practices in a timely and impartial manner.

(2) Wherever a conflict arises between the provisions of this Act and the provisions of any other legislation regulating

competition in telecommunications markets in Samoa, including but not limited to the Fair Trading Act 1998, the provisions of this Part shall prevail.

(3) The Regulator may issue an order that authorizes a person to provide a telecommunications service and to construct and operate telecommunications facilities, notwithstanding that a service provider has been granted exclusive rights by licence, agreement or other wise, to engage in such service provision, construction or operation, provided that:

(a) the Regulator has given the service provider with exclusive rights notice of:

(i) the Regulator's intention to issue an order under this subsection; and

(ii) at least 21 days to comment before such an order is made; and

(b) after taking into account any comments received under paragraph (a), the Regulator has made an order that the service provider with exclusive rights has unreasonably failed or refused to provide such services, or to construct and operate such facilities.

26. Designation of Dominant Service Providers-(1) Every service provider whose gross revenues in a specific telecommunications market constitutes forty per cent (40%) or more of the total gross revenues of all service providers in that market, shall be designated a dominant service provider in that market, unless and until the Regulator specifies otherwise in an order.

(2) The Regulator may designate a service provider with less than forty per cent (40%) of the total gross revenues in a specific telecommunications market as a dominant service provider if, either individually or acting together with others, the service provider enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors or customers.

(3) The Regulator shall post and maintain on its official web site a current list of all dominant service providers

specifying the markets in which such providers have been designated to be dominant.

(4) Orders designating dominant service providers shall specify and define the relevant markets for which a service provider is designated to be dominant and the circumstances relied on by the Regulator to support any findings regarding dominance.

27. Abuse of Dominance-A dominant service provider is prohibited from undertaking activities or actions that abuse the service provider's dominant position, and for the purposes of this section the following types of actions and activities shall be considered an abuse of dominant position:

(a) failing to supply essential facilities to a competitor within a reasonable time after a request and on reasonable conditions, or discriminating in the provision of interconnection or other telecommunications service providers; except under circumstances that are objectively justified based on differences in supply conditions, including different costs or a shortage of available facilities or resources;

(b) bundling of telecommunications services, whereby the service provider requires, as a condition of supplying a service to a competitor, that the competitor does not require;

(c) offering a competitor more favourable terms or conditions that are not justified by cost differences if the competitor acquired another service that the competitor does not require;

(d) pre-emptively acquiring or securing scarce facilities or resources, including but jot limited to rights of way, required by another service provider for the operation of such service provider's business, with the effect of denying the use of the facilities or resources to such service provider;

(e) supplying competitive telecommunications services at prices below long run average incremental

costs or such other cost standard as may be established by the Regulator;

(f) using revenues or the allocation of costs from one telecommunications service to cross-subsidize a competitive telecommunications service with the objective of lessening competition, except where such cross subsidy is specifically approved by order of the Regulator or by approval of tariffs for relevant telecommunications services;

(g) failing to comply with the interconnection obligations of a dominant service provider specified in Part VII of this Act;

(h) performing any of the following actions, where such actions have the effect of impeding or preventing a competitor's entry into, or expansion in, a market:

(i) deliberately reducing the margin of profit available to a competitor that requires wholesale telecommunications services from the dominant service provider, by increasing the prices for the wholesale telecommunications services required by that competitor, or decreasing the prices of the retail telecommunications services in markets where they compete, or both;

(ii) requiring or inducing a supplier to refrain from selling to a competitor;

(iii) adopting technical specifications for networks or systems to deliberately prevent interoperability with a network or system of a competitor;

(iv) failing to make available to other service providers on a timely basis technical specifications, information about essential facilitie or other commercially relevant formation which is required by such other service providers to provide telecommunications services and which is not available from other sources; and

(v) using information obtained from competitors for purposes related to interconnection of supply of telecommunications services by the dominant service provider to compete with such competitors;

(i) any other action or activity engaged in by a dominant service provider that the Regulator determines in accordance with section 29 to have the effect, or likely to have the effect, of materially restricting or distorting competition in a telecommunications market

28. Other Anti-Competitive Practices-No person shall engage in a practice restricting or distorting competition in telecommunications markets, including the following:

(a) arrangements between two or more service providers that directly or indirectly fix the prices or other terms or conditions of telecommunications services in telecommunications markets;

(b) arrangements between two or more service providers that directly or indirectly determine which person will win a contract or business opportunity in a telecommunications market; and

(c) arrangements between two or more service providers to apportion, share or allocate telecommunications markets among themselves or other service providers.

29. Determination of Abuse of Dominance and Anti-Competitive Practices-The Regulator may, on application by any person, or on the Regulator's own initiative, determine:

(a) whether or not the actions or activities of a dominant service provider constitute an abuse of the dominant service provider's dominant portion within the meaning of section 27;

(b) whether or not the actions or activities of any service provider amount to an anti-competitive practice within the meaning of section 28; and

(c) that an action or activity of a service provider under sections 27 or 28 are authorized and shall not be considered to contravene this Act, on the grounds that such actions or activities are in the public interest and are otherwise consistent with the objectives set out in section 3.

30. Remedies for Abuse of Dominance and Anti-Competitive Practices-(1) If the Regulator determines that the actions or activities of a service provider constitute an abuse of the service provider's dominant position or an anti-competitive practice within the meaning of this Act or a regulation or rule, the Regulator may issue an order to:

(a) require one or more persons named in the order to take one or more of the following actions:

(i) cease the actions or activities specified in the order immediately, or at such time specified in the order, and subject to such conditions specified in the order;

(ii) make specific changes in actions or activities specified in the order, as a means of eliminating or reducing the abusive or anti-competitive impact; and/or

(b) impose a financial surcharge not exceeding SAT$100,000 on a service provider whose actions constitute:

(i) an abuse of the service provider's dominant position; or

(ii) an anti-competitive practice; and/or

(c) require the service provider involved in the abusive action or activity or anti-competitive practice and any persons affected by such action, activity or practice to meet and attempt to determine remedies to prevent or eliminate continuation of such action, activity or practice, and to resolve any remaining dispute; and/or

(d) require the service provider responsible for the abusive or anti-competitive action or activity specified in the order to publish an

acknowledgement and apology for such action, activity or practice in Samoan and English in the Savali and one other newspaper circulating in Samoa, in such a form and at such time as the Regulator specifies in the order; and/or

(e) require the service provider to provide periodic reports to the Regulator to assist in determining whether the action or activity is continuing and to determine their impact on telecommunications markets, competitors and customers.

(2) A financial surcharge imposed under subsection (1)(b) shall be payable to the Treasury Fund.

(3) For the purpose of removal of doubt, the Regulator may revoke a licence where a licensee fails to pay a financial surcharge imposed under subsection (1)(b).

31. Transfers of Control of Service Providers-(1) Subject to this section, no approvals shall be required for the transfer of control of a service provider.

(2) No transfer of control of a service provider shall be effected without the prior approval of the Regulator if:

(a) a dominant service provider or an affiliate of a dominant service provider is:

(i) the person ultimately acquiring control of the service provider; or

(ii) the person whose control is being transferred; or

(b) as a result of the transfer, a person, alone or with affiliates, would control service providers whose gross revenues in a specific telecommunications market constitutes forty per cent (40%) or more of the total gross revenues of all service providers in that market.

(3) No transfer of control that requires approval under subsection (2) shall be completed or have any legal force or effect unless the person applying for approval of the transfer has received written approval for the transfer from the Regulator.

(4) Applications for transfers of control that require approval under subsection (2) shall include such information on

the proposed transfer transaction as the Regulator may require. Such information shall, at a minimum, include:

(a) the identification of all persons involved in the transfer transaction, including buyers and sellers, their shareholders and affiliated companies, and any other persons that have a greater than five per cent (5%) ownership interest in all such persons;

(b) a description of the nature of the transaction and a summary of its commercial terms;

(c) financial information on the persons involved in the transaction, including their annual revenues from telecommunications markets, identified by specific markets, value of assets devoted to telecommunications business and copies pf any recent annual or quarterly financial reports; and

(d) a description of the relevant telecommunications markets in which the persons involved in the transaction operate.

(5) The Regulator may request additional information regarding an application for a transfer of control that requires approval under subsection (2) at any time.

(6) Subsection to subsection (7), within ninety (90) days of receipt of a duly completed application for a transfer of control that requires approval under subsection (2), the Regulator shall:

(a) approve the transfer of control without conditions; or

(b) approve the transfer of control with such conditions as are reasonably related to promotion the development of open and competitive telecommunications markets in Samoa and maximizing the benefits of the transaction for telecommunications customers; or

(c) deny the transfer of control; or

(d) issue a notice initiating an investigation of the proposed transfer of control, and following such investigation the Regulator shall take one of the actions set out in paragraphs (a), (b) and (c).

(7) The Regulator shall only deny a transfer of control or attach conditions to a transfer of control under this section if the Regulator determines, acting reasonably, that the transfer would have serious anti-competitive effects which would outweigh any positive effects for telecommunications customers.

PART VII
INTERCONNECTION

32. Functions and Duties of the Regulator Regarding Interconnection-The Regulator shall perform the following functions and duties in relation to interconnection of telecommunications networks:

(a) promote adequate, efficient and cost-oriented interconnection of telecommunications networks and access by service providers to telecommunications facilities of other service providers, in order to permit interoperability of telecommunications services that originate or terminate in Samoa and to promote the development of competitive telecommunications service market;

(b) establish an open, non-discriminatory and commercially viable regulatory framework for interconnection and access with a view to minimizing regulatory and other barriers to entry into telecommunication markets;

(c) promote interconnection arrangements, including by facilitating negotiations between parties to reach interconnection agreements;

(d) ensure that interconnection agreements otherwise meet the objectives of this Act;

(e) determine which service providers are dominant service providers in a telecommunications market for interconnection;

(f) if considered appropriate by the Regulator, regulate the prices for interconnection and access services by dominant service providers in a telecommunications market for interconnection;

(g) ensure that dominant service providers in a telecommunications market for interconnection publish a reference interconnection offer in accordance with section 37 of this Act and any regulations, rules and orders applicable to interconnections;

(h) resolve disputes related to interconnection in a timely and impartial manner; and

(i) make orders specifying the terms of interconnection that shall be provided by one or more service providers, including direct, indirect and virtual interconnection arrangements.

33. Interconnection by All Service Providers-(1) Upon receipt of a written request by another service provider, a service provider shall enter into good faith negotiations to enter into an interconnection agreement to:

(a) connect and keep connected the telecommunications networks of both service providers; and

(b) provide access to such telecommunications facilities, including but not limited to central officers and other switching equipment locations, mast sites, towers, poles, subscriber access lines and underground facilities, as are reasonably requested in order for the service providers to provide telecommunications to their customers. any co-location of facilities shall also be subject to section 68.

(2) The Following actions or practices shall be deemed to violate the duty in subsection (1) to negotiate in good faith:

(a) obstructing or delaying negotiations, or failing to make reasonable efforts to resolve outstanding disputes;

(b) refusing to provide information about a service provider's own telecommunications services or telecommunications network or other facilities that are necessary for the interconnection arrangements;

(c) misleading or coercing a party into reaching an agreement the party would not otherwise have made;

(d) interfering in any way with a service provider's ability to communicate with the Regulator, including having a service provider sign a non-disclosure agreement that preludes the service provider from providing information requested by the Regulator; or

(e) refusing to permit amendment of the interconnection agreement to take into account changes in circumstances, including changes to this Act, a regulation or rule.

(3) Where the Regulator has not made an order otherwise, a service provider shall not be required to enter into an interconnection agreement on terms that would, in the service provider's reasonable opinion:

(a) cause or be likely to cause material danger, damage or injury to any person or to any property;

(b) cause material damage or otherwise interfere with the operation of the service provider's facilities or the provision of the service provider's telecommunication services; or

(c) not be reasonable, having regard to technical or economic constraints.

(4) Service providers and other interested parties may at any time request the Regulator to issue an order that clarifies or interprets the interconnection rights or obligations set out in this Act, a regulation, rule or order.

34. Interconnection by Dominant Service Providers-(1) Sections 35, 36, 37 and 38 apply only to service providers that the Regulator has designated as dominant service providers for interconnection purposes in one or more telecommunications markets.

(2) The Regulator may issue an order to designate a service provider as being a dominant service provider for interconnection purposes in one or more telecommunications markets if the Regulator considers that:

(a) the service provider is a dominant service provider within the meaning of this Act; or

(b) the service provider, either individually or jointly with others, enjoys a position equivalent to that of a dominant service provider.

35. Requests for Interconnection-(1) Interconnection arrangements which are offered by dominant service providers designated in accordance with section 34, in addition to meeting the requirements of section 33, shall:

(a) be consistent with this Act and any rules and orders made by the Regulator before the date of the offer, including any guidelines prescribed therein relating to interconnection charges and quality of service;

(b) be no less favourable than any reference interconnection offer that has been approved by the Regulator for the service provider;

(c) meet all reasonable requests for interconnection with the dominant service provider's telecommunications network at any technically feasible point; and

(d) in all other respects, incorporate reasonable terms and conditions, including technical standards and specifications.

(2) Every dominant service provider designated in accordance with section 34 shall ensure that the dominant service provider:

(a) applies similar conditions to all interconnecting service providers under similar circumstances;

(b) provides interconnection to interconnecting service providers under substantially the same conditions and of substantially the same quality as it provides for the dominant service provider's own telecommunications services, or those of the dominant service provider's affiliates;

(c) makes available on request all necessary or reasonably required information and

specifications to service providers requesting interconnection; and

(d) only uses information received from a service provider seeking interconnection for the purposes for which such information was supplied and does not disclose the information or otherwise use the information to obtain a competitive advantage.

36. Interconnection Charges-(1) Interconnection charges of dominant service providers designated in accordance with section 34 shall be cost-based. The Regulator may approve a plan to phase in this requirement over time, taking into account the financial impact on the affected dominant services providers.

(2) In establishing charges for interconnection, dominant service providers designated in accordance with section 34 shall comply with any rules or orders applicable to interconnection, including any pricing, costing and cost separation guidelines established by order of the Regulator.

(3) The Regulator may require the interconnection charges of any dominant service provider designated in accordance with section 34 to be approved by the Regulator in advance, including the power to direct such dominant service provider to implement charges determined by the Regulator.

37. Reference Interconnection Offers-(1) Every dominant service provider designated in accordance with section 34 shall:

(a) prepare a reference interconnection offer for approval by the Regulator within the time period specified by order of the Regulator;

(b) periodically update the reference interconnection offer as determined by order of the Regulator; and

(c) publish its approved reference interconnection offer by:

(i) filing a copy with the Regulator, who shall publish the reference interconnection offer on the Regulator's official web site;

(ii) making a copy available to the public in the dominant service provider's principal business offices; and

(iii) sending a copy to any service provider on request.

(2) Every reference interconnection offer shall:

(a) comply with any rules or orders applicable to interconnection, including any applicable guidelines for the form and content of a reference interconnection offer established by order of the Regulator; and

(b) include a full list of services to be supplied to service providers, setting out the associated terms and conditions, including the charges for each service.

38. Publication of Interconnection Agreements-(1) Every dominant service provider designated in accordance with section 34 shall, within ten (10) days after execution of an interconnection agreement, file a copy of the agreement with the Regulator.

(2) Subject to subsections (3), (4) and (5), the Regulator shall place a copy of all interconnection agreements filed with the Regulator in accordance with subsection (1) on the Regulator's official web site.

(3) Subject to subsections (4) and (5), a service provider may designate information contained in an interconnection agreement that the service provider has filed with the Regulator in accordance with subsection (1) as confidential, and request that such confidential information be excluded from the copy of the interconnection agreement placed on the Regulator's official web site.

(4) For the purposes of this section:

(a) details of interconnection charges shall not be considered confidential unless they are within a

range that has previously been approved by the Regulator; and

(b) essential terms and conditions of interconnection, other than interconnection charges, shall not be considered confidential.

(5) The Regulator shall determine what other information shall be treated as confidential under this section and resolve in a final and binding manner all disputes regarding disclosure of information designated as confidential in interconnection agreements submitted to the Regulator under this section.

39. Non-compliant Interconnection Agreements–If the Regulator decides that an interconnection agreement is not in compliance with this Act, or the requirements of any regulation, rule, order or licence, the Regulator may issue an order requiring one or more of the parties to the interconnection agreement to amend the agreement in accordance with any directions or other requirements specified in the order.

PART VIII
TARIFFS

40. Tariff Filing and Approval-(1) Dominant service provider shall file with and obtain the approval of the Regulator for all tariffs, rates or charges for telecommunications services in markets the Regulator has designated then as dominant.

(2) The Regulator may issue an order to remove any requirement for dominant service providers to file and obtain approval of tariffs under this Part where the Regulator determines that:

(a) competitive market forces will be sufficient to protect the interests of customers;

(b) there is not a significant risk of harm to competitive markets as a result of the removal of the requirement to file and obtain approval of tariffs;

(c) in the case of Telecom Samoa Cellular Limited, tariffs are not required to be filed for services that company was licensed to provide under a licence issued before the coming into force of

this Act, if the licence provides that the tariffs are not subject to regulatory approval.

(3) Tariffs for telecommunications service provided by the dominant service providers shall be based on the cost of efficient service provision and shall not contain excessive charges which are made solely as a result of the service provider's dominant position.

(4) The Regulator may issue an order to require a change in the tariffs for telecommunications services provided by a dominant service provider where such tariffs are in contravention of subsection (3). Such an order shall nominate the new tariff amount and give reasons for the required change.

(5) Tariffs that are subjects to filing with and approval by the Regulator under this section shall enter into force only after they have been approved by an order of the Regulator. Any agreement or arrangement between service providers and any customer to apply such a tariff, other than one approved by the Regulator, is prohibited and, despite any other law, shall be regarded for all purposes as null and void.

(6) Unless the Regulator makes an order to the contrary, a dominant service provider shall not be required to file or obtain approval of tariffs for services that are provided in markets where the service provider is not designated to be a dominant service provider.

(7) A service provider shall not charge for a accept tariffs, rates, charges, other consideration or impose terms or conditions that are contrary to the provisions of an applicable tariff approved by the Regulator.

41. Publication of Tariffs-(1) Unless the Regulator orders otherwise, when a dominant service provider files a tariff or schedule of tariffs with the Regulator, the service provider shall:

(a) from the date on which the tariff or schedule of tariffs is filed until the tariff is approved:

(i) publish an electronic copy on the service provider's web site; and

(ii) maintain a paper copy available to the public at the service provider's main business offices; and

(b) within ten (10) days from the day on which the tariff or schedule of tariffs is filed, place a notice in Samoan and English in the Savali and one other newspaper circulating in Samoa detailing the tariff or schedule of tariffs and advising that such tariff or schedule is subject to the Regulator's approval.

(2) Unless the Regulator orders otherwise, a dominant service provider shall maintain a complete and up to date schedule of its Regulator approved tariffs:

(a) in an electronic copy on the dominant service provider's web site; and

(b) in a paper copy available to the public at the dominant service provider's main business offices.

42. Tariffs for Services to Other Service Providers – Tariffs charged by a dominant service provider to other service providers:

(a) shall be filed with and subject to approval by the Regulator in accordance with section 40; and

(b) shall comply with any orders made by the Regulator in relation to such tariffs.

43. General Principles for Tariff Regulation-(1) The Regulator may issue an order to adopt any approach to tariff regulation of service providers that is consistent with this Act, including, but not limited to, price cap regulation, rate-rebalancing and other forms of cost-based regulation.

(2) The Regulator shall not regulate the tariffs of a service provider so as to deny that service provider the right to earn a reasonable return on the service provider's investment for the service provider's tariff-regulated services.

44. Cost Studies-(1) Subject to subsection (3), the Regulator may issue an order to require a dominant service provider and other specified service providers to prepare, file or otherwise participate in the development of a cost study of the dominant service provider's telecommunications services if the

Regulator determines that a cost study would be an effective and necessary means of preventing anti-competitive conduct or would otherwise be effective and necessary in implementing any scheme of tariff regulation.

(2) Where the Regulator requires a service provider to prepare or file or otherwise participate in the development of a cost study:

(a) the service provider shall file with the Regulator a study of the service provider's costs of providing the different categories of service;

(b) the Regulator shall issue an order on the cost categories, form, approach, procedures and timing of the cost study; and

(c) the purpose of the cost study shall be to determine the costs to the service provider of providing different types of telecommunications services.

(3) The Regulator shall consult with any service provider the Regulator proposes to be required to prepare or file a cost study before the regulator makes an order under subsection(1)

45. Price Cap Regulation Method-(1) subject to subsection (4), the Regulator may issue an order to require a service provider to propose or otherwise participate in the development of a method of price cap regulation.

(2) where the Regulator requires a service provider to propose a method of price cap regulation:

(a) the service provider shall file with the Regulator a proposal for implementation of a method of price cap regulation of the service provider's service tariffs; and

(b) the proposal shall identify the proposed starting tariffs for relevant services, proposed groupings or baskets, the application of price cap formulas and the specific proposed price cap formulas for price cap regulation.

(3) The Regulator may issue an order:

(a) prescribing guidelines for the development of a proposal for a method of price cap regulation; or

(b) setting out directions for the further development of a proposal that has been filed with the Regulator.

(4) The Regulator shall consult with the service provider the Regulator proposes to be required to propose a method of price cap regulation before the Regulator makes an order under subsection (1).

PART IX
RELATIONS BETWEEN SERVICE PROVIDERS AND CUSTOMERS

46. Application-(1) Subject subsection (2), the provisions of the following sections of this Part shall apply only to SamoaTel and its successor entities and to any other licensee of fixed public voice telephone services.

(a) Section 52 - Customer Complaints;
(b) Section 54 - Terms of Service;
(c) Section 55 - Information on Terms of Services;
(d) Section 56 – Telephone Directories;
(e) Section 57 – Quality of Service; and
(f) Section 58 – Access to Customer Premises.

(2) Where the Regulator considers that an amendment or requirement is consistent with the provisions of this Act, the Regulator may, by order:

(a) amend the provisions of this Part which apply to SamoaTel and its successor entities and any other licensee of fixed public voice telephone services; and/or
(b) require any service provider to comply with nominated provisions of this Part and, in such an order, may determine the types of services to which such nominated provisions shall apply.

47. Fair Dealing Practices-(1) A service provider shall only charge a customer for the specific telecommunications service or equipment that the customer has ordered. The customer shall have no liability to pay for any telecommunications service or equipment that the customer has not ordered.

(2) Service providers shall provide customers with invoices:

(a) in writing (although invoices may be provided electronically if the customer consents);

(b) on a regular basis;

(c) in a plain and simple format;

(d) that provide accurate information on the services provided and the amounts due for each service;

(e) that clearly indicate the method of calculation of tariffs for any service for which invoices are based on the length of calls or other measure of usage; and

(f) that comply with this Act and any regulations, rules and orders dealing with customer invoices.

(3) Service providers shall retain accurate records of all customer invoices for a period of at least 6 months from the billing date and make such records available to the Regulator upon request.

(4) Where the Regulator has a concern about billing systems or practices, the Regulator may require service providers to public information on billing systems or practices or to take such other steps relating to a service provider's billing systems or practices as the Regulator may consider appropriate.

(5) No service provider shall make, or cause to be made, any false or misleading claim or suggestion regarding:

(a) the availability, price or quality of the service provider's telecommunications services or equipment; or

(b) the telecommunications services or equipment of another service provider.

(6) For the purposes of section 47(5), a claim or suggestion is misleading if, at the time the claim or suggestion was made, the service provider knew or reasonably ought to have known that such claim or suggestion was false or misleading in any material respect or that such claim or suggestion was reasonably likely to confuse or mislead the person to whom the claim or suggestion was made.

(7) The Regulatory may issue an order to regulate or prohibit the use by any person, whether or not that person is a

service provider, of the telecommunications network of a service provider to provide unsolicited telecommunications, to the extent that the Regulator considers such order necessary to reduce or eliminate the nuisance caused by such telecommunications.

(8) Wherever a conflict arises between the interpretation or application of any provision of this Act and the Consume Information Act 1988 or the fair Trading Act 1998, the provisions of this Act shall be interpreted and applied to prevail over such Acts.

48. Confidentiality of Customer Information-(1) Subject to this Act, a service provider shall not disclose information concerning a customer without the customer's written consent or unless disclosure is required or permitted by the Regulator or by law.

(2) Upon request, a customer is permitted to inspect any service provider's records regarding the customer's service. A customer shall have the right to require that any customer information about such customer contained in a service provider's records that the customer can demonstrate is incorrect, be corrected or removed by the service provider.

(3) Subject to subsection (4), all customer-specific information, and in particular billing-related information, shall be retained by a service provider only for billing purposes or other lawful purpose, and retained only for so long as is permitted by rule made by the Regulator, or as otherwise permitted by law.

(4) A service provider may, with the written approval of the Regulator, use customer-specific information for purposes other than those set out in subsection (3), including, but not limited to, marketing and sales of additional services.

49. Confidentiality of Customer Communications-(1) Service providers shall take all reasonable steps to ensure the confidentiality of customer communications.

(2) Service providers shall not intercept, monitor, alter or modify the content of a customer communication, except as

provided for in subsection (3) or sections 69 and 70 or otherwise in this Act.

(3) For the purposes of tracing and locating a source of harassing, offensive or illegal calls, or as otherwise provided under the laws of Samoa:

(a) a customer may make a direct request to a service provider to monitor calls to the customer's telephone;

(b) where a customer is not satisfied that a service provider is monitoring calls to the customer's telephone in response to a request to do so by the customer, the customer may request that the Regulator issue an order that directs a service provider to monitor calls to the customer's telephone;

(c) the Regulator or other duly authorized authority in Samoa may direct a service provider to monitor calls to and from a customer's telephone and the service provider shall comply with any such direction;

(d) the service provider shall provide the Regulator or other duly authorized authority in Samoa the information resulting from the service provider's monitoring of the customer's telephone, including the telephone numbers that are the source of the harassing, offensive or illegal calls and the times and dates of occurrence of such calls; and

(e) the Regulator may undertake any appropriate action to protect the public from harassing, offensive or illegal calls in accordance with this Act, and if necessary refer the matter to other appropriate authorities for further action.

50. Protection of Personal Information-(1) A service provider shall be responsible for customer information and customer communications in the custody or control of the service provider or the service provider's agents.

(2) A service provider shall operate the service provider's telecommunications network with due regard for the privacy of the service provider's customers. Except as permitted or required by law, or with the consent of the person to whom the personal information relates, a service provider shall not collect, use, maintain or disclose customer information or customer communication for undisclosed purposes.

(3) The purposes for which customer information is collected by a service provider shall be identified at or before collection, and a service provider shall not, subject to this section, collect, use, maintain or disclose customer information for undisclosed purposes.

(4) Service providers shall ensure the customer's information is accurate, complete and up to date for the purposes for which the information is to be used.

(5) Service providers shall ensure that customer information and customer communications are protected by security safeguards that are appropriate to the sensitivity of such information and communications.

51. Access by Government Authorities–Nothing in this Act shall be interpreted to prohibit or infringe upon the rights of the Government, Government Agencies and Authorities to exercise their rights to access otherwise confidential information or communications relating to a customer. Such access shall be made in accordance with the laws of Samoa.

52. Customer Complaints-(1) Service providers shall identify a specific person or group of persons to receive complaints from customers other than service providers.

(2) Service providers shall establish procedures to deal with complaints of customers other than service providers. The procedures, and any amendments thereto, shall be subject to approval by the Regulator. The procedures shall be published in a suitable manner that is approved by the Regulator.

(3) Disputes between a service provider and a customer, or between service providers, which the parties cannot resolve among themselves, shall be subject to sections 71, 72 and 73.

(4) Service providers shall not disconnect or otherwise change any of the telecommunications services then being provided to a customer and which are the subject of a complaint or dispute, other than in accordance with the Terms of Service approved by Regulator pursuant to section 54 or as permitted by order made by the Regulator.

53. No Unjustified Discrimination-(1) Unless otherwise specifically permitted by the Regulator, dominant service providers shall offer all customers the same terms and quality of service, including tariffs charged, unless different terms are objectively justified, based on differences in supply conditions, including different costs or a shortage of available facilities or resources.

(2) A dominant service provider shall be obliged to justify any different terms and quality of service under subsection (1) to the satisfaction of the Regulator, or to cease the practice upon receipt of an order from the Regulator requiring the dominant service provider to do so.

54. Terms of Service-(1) The Regulator may issue an order requiring a service provider to submit draft Terms of Service to the Regulator for approval. The order shall specify the schedule for preparation, approval and implementation of the Terms of Service.

(2) Draft Terms of Service must be consistent with this Act, the rules, licence conditions and orders made by the Regulator, and shall describe the basic terms of the business relationship between the service provider and the service provider's customers in the provision and use of telecommunications services

(3) The Regulator shall approve all draft Terms of Service, with or without changes made by the Regulator, after consultation with the service provider and other interested parties, as determined by the Regulator. Once approved, these Terms of Service will replace the customer Terms of Service then in use by a service provider and shall become binding on the service provider and the service provider's customers.

(4) The Regulator may issue an order discontinuing a requirement for service providers to submit draft Terms of Service to the Regulator for approval where the Regulator determines that such approval is no longer required to protect the interests of customers.

55. Information on Terms of Service-(1) A service provider designated pursuant to section 46 shall at all times maintain on the service provider's web-site, in both Samoan and English, the following information:

(a) the current version of the service provider's Terms of Service;

(b) all of the service provider's approved tariffs and proposed tariff changes which have been filed with the Regulator, in accordance with section 40;

(c) the official web site address and other contact information for the Regulator, together with a clear statement that the service provider is regulated by the Regulator under this Act and that customers and other service providers may contact the Regulator if they are unable to resolve disputes with the service provider; and

(d) an easy to follow navigation system that allows a customer to locate the above information.

(2) A service provider designated pursuant to section 46 shall maintain current paper copies of the service provider's Terms of Service, all of its approved and pending tariffs and the other information described in subsection (1)(c) at all of the service provider's business offices, and such document shall be made available for public inspection, without charge, during normal business hours.

(3) If required by an order of the Regulator, a service provider shall include the current version of the service provider's Terms of Service, a reference to copies of the service provider's approved and pending tariffs being available for inspection at the service provider's business offices and the other information described in subsection (1)(c) in the

introductory pages to every telephone directory published by the service provider or on behalf.

(4) A service provider designated pursuant to section 46 shall provide, upon request and at a reasonable charge, paper copies of the service provider's schedule of approved tariffs to any customer who requests them.

56. Telephone Directories–If required by an order of the Regulator, a service provider shall provide customers with a telephone directory in accordance with terms and conditions as the Regulator may nominate in the order from time to time.

57. Quality of Service-(1) A service provider designated pursuant to section 46 shall provide telecommunications services that meet specific quality of service standards. These standards shall be developed by the Regulator in consultation with the service provider and may be included in the service provider's licence or established by order of the Regulator.

(2) The Regulator may amend, add or delete quality of service standards established pursuant to subsection (1), following consultation with the affected service provider.

(3) When quality of service standards have been established pursuant to subsection (1), a service provider shall deliver written reports to the Regulator each quarter, in accordance with the following:

(a) Quality of service reports shall:

(i) be in a form determined by the Regulator; and

(ii) set out the service provider's actual results for each quality of service standard; and

(b) Where a quality of service report indicates that a standard has not been achieved, the service provider shall provide an explanation to the Regulator as to why the standard was not achieved and what specific steps the service provider has taken or intends to take to achieve the standard.

(4) The Regulator shall advise a service provider, within thirty (30) days of receipt of any quality of service report, whether the Regulator accepts the explanation provided for any standard that was not achieved. If the Regulator does not reply within in the thirty (30) day period, the explanation provided is deemed accepted.

(5) If the Regulator does not accept the explanation under subsection (4), the Regulator shall issue an order setting out the additional steps that the service provider shall take and the time within which those steps shall be taken for the service provider to achieve such standards, including but not limited to:

(a) any additional reporting requirements the service provider shall adhere to until the standard is achieved; and

(b) what, if any, specific refunds or other customer remedies are to be implemented by the service provider as a result of the service provider's failure to meet such standard.

(6) When a service provider files a quality of service report or any additional related material with the Regulator, the service provider shall also publish the report on the service provider's web site. Upon receipt of a quality of service report or any additional related material from a service provider, the Regulator shall also post the report on the Regulator's reporting requirements.

(7) Where the Regulator concludes that it is in the public interest, the regulator may require a service provider to publish in Samoan and English in the Savali and one other newspaper circulating in Samoa all or parts of the service provider's quality of service reports and the Regulator's reporting requirements.

58. Access to Customer Premises-(1) The service obligations of a service provider designated pursuant to section 46 shall extend to the installation, operation, maintenance and repair in good working order of all telecommunications facilities that are owned or provided by the service provider and located on the customer's property.

(2) A service provider shall have the right to enter a customer's premises or property if the service provider's telecommunications facilities are located within the customer's premises on the following conditions:

(a) the service provider has given the customer notice that is reasonable in the circumstances;

(b) the service provider dispatches only properly identified and qualified personnel;

(c) the service provider has received the consent of the customer for such access; and

(d) the service provider's personnel interfere as little as possible with the customer's activities, premises and property.

59. Liability, Refunds and Damages–The Regulator may issue an order or rule establishing provisions concerning the liability of, refunds by and damages to be paid by service providers to customers.

PART X
TELECOMMUNICATIONS EQUIPMENT

60. Telecommunications Equipment-(1) The Regulator may issue an order to do one or more of the following:

(a) decide that certain types of telecommunications equipment proposed to be attached to telecommunications network that are used to provide telecommunications service to the public require approval for such attachment;

(b) publish criteria for certification and establish standards for approval of telecommunications equipment for use in connection with telecommunications services or telecommunications networks;

(c) identify domestic or foreign organizations or testing facilities for approval pf telecommunications equipment for use in connection with telecommunications service or telecommunications networks; and

(d) maintain a register of certified or approved types of telecommunications equipment, criteria for certification and standards for approval.

(2) Marketing or selling telecommunications equipment is not subject to authorized except as provided in this section.

(3) The Regulator may enter into mutual recognition agreements with authorities in other countries to provide for mutual recognition of, certification and approval of telecommunications equipment in other countries and/ or Samoa.

PART XI
NUMBERS

61. National Numbering Plan-(1) By order the Regulator shall prepare, publish and manage a National Numbering Plan and shall assign numbers and number ranges to service providers and customers in accordance with the National Numbering Plan.

(2) In preparing and managing the National Numbering Plan, the Regulator shall have due regard for the existing allocation and assignment of numbers.

(3) The National Numbering Plan shall take into account any existing or proposed regulation for the establishment of fees for telecommunications numbers under section 10.

(4) The Regulator may modify the National Numbering Plan by publishing a notice to customers and service providers at a reasonable time prior to the date when the modification is to me into force.

(5) The National Numbering Plan shall be consistent with the requirements of international agreements, commitments, conventions, regulations and recommendations to which Samoa has subscribed or is otherwise subject to.

(6) All service providers shall be required to use numbers assigned to them by the Regulator in accordance with the National Numbering and shall ensure that these numbers are used efficiently and in accordance with the National Numbering Plan.

62. Use of Numbers-(1) Service providers and customers shall not have any property rights in numbers.

(2) A service provide shall only change a customer's number:

(a) on request of the customer;

(b) if a fixed service customer's location changes;

(c) if the change is required by the National Numbering Plan; or

(d) if the service provider has reasonable grounds for doing so and if the service provider has given reasonable advance written notice to the customer in question, stating the reason for and anticipated date of the change. In cases of emergency, oral notice with subsequent written confirmation shall be sufficient.

63. Number Portability-(1) The Regulator may, after consultation with affected service providers and other interested parties, issue an order directing one or more service providers to develop or to assist in the development of a number portability implementation plan, for approval and implementation by order of the Regulator.

(2) In considering whether to implement number portability, the Regulator shall have due regard to the costs of such portability and the availability of technology that permits such portability in Samoa on a cost-effective basis.

(3) The costs of the Regulator in developing introducing number portability and the ongoing costs of administering number portability shall be recovered from service providers in accordance with applicable rules or orders.

64. Service Provider Selection-(1) The Regulator may, after consultation with the affected service providers and other interested parties, issue an order directing one or more service providers to develop or to assist in the development of a service provider selection or service provider pre-selection plan, for approval and implementation by order of the Regulator.

(2) In considering whether to implement service provider selection or service provider pre-selection, the Regulator shall

have due regard to the costs of such capabilities and the availability of technology that permits the intended capabilities on a cost-effective basis.

(3) The costs of the Regulator in developing and introducing service provider selection or service provider in accordance with applicable rules or orders.

PART XII
ACCESS TO PROPERTY

65. Access to Government Land and Facilities-(1) Where a service provider cannot, on commercially reasonable terms:

(a) obtain the consent of the Government or a Government Agency or Authority having jurisdiction over government land or a government facility to construct, maintain or operate telecommunication network facilities on such land or facility; or

(b) gain access to a pole, duct, tower or other supporting structure of a telecommunications, electrical power or other utility transmission system constructed on Government land or a Government facility, or which is owned or controlled by the Government or a Government Agency or Authority,

the service provider may apply to the Regulator for assistance.

(2) Upon receipt of an application for assistance in accordance with subsection (1), the Regulator shall consult with the Government, Government Agency or Authority and attempt to find a solution acceptable to both service provider and the Government, Government Agency or Authority, as the case may require.

(3) If the Regulator's actions under subsection (2) fail to produce an agreement between the parties involved:

(a) the Regulator may exercise such other powers under this Act or other Acts, as the Regulator considers appropriate to resolve the matter; or

(b) the matter may be submitted by the Regulator or a party to the Ombudsman for an order by the Ombudsman to grant or refuse the required consent or access, as the case may be, on such terms and conditions as the Ombudsman may determine. In determining the matter the Ombudsman shall have regards to:

(i) the objectives of the Act set out in section 3;

(ii) any submission provided by the Regulator or the parties;

(iii) the likely effect and consequences of any decision to grant or refuse the required consent or access on the parties, the public and any customers of the service provider; and

(iv) any other relevant matter.

(4) The parties to any order made by the Ombudsman under subsection (3) shall comply with such order as if the order had been made by the Regulator.

(5) Where the Ombudsman issues an order granting the use of or access to Government land or facilities under subsection (3), the Ombudsman shall include in the order the amount which the service provider shall pay to the Government as compensation for the service provider's use of or access to Government land or facilities

66. Access to Private Land and Facilities-(1) Where a service provider:

(a) requires access to private land or private facilities (other than customary land or facilities located on customary land) to provide telecommunications services: and

(b) cannot, on commercially reasonable terms, reach an agreement for such access with the owner of the private land or private facility, the service provider may apply to the Regulator for assistance either in reaching an agreement with the owner of the

private land or private facility or for the exercise of other powers to obtain the required access.

(2) Upon receipt of an application for assistance in accordance with subsection (1), the Regulator shall take the steps the Regulator deems necessary to mediate between the concerned parties.

(3) If the Regulator's mediation under subsection (2) fails to produce an agreement between the parties involved:

(a) the Regulator may exercise such other powers under this Act or other Acts, as the Regulator considers appropriate to resolve the matter; or

(b) the matter may be submitted by the Regulator or a party to the Supreme Court or District Court for such court to make an order granting or refusing the required access on such terms and conditions as the court may determine, having regard to:

(i) the nature of the private land or private facilities;

(ii) the nature of the access required;

(iii) the importance of such access in maintaining or improving telecommunications services for Samoa;

(iv) whether any payment or other consideration can compensate the owner if access is ordered by the Court;

(v) the impact on the owner and other residents on the land or facilities if such access is ordered;

(vi) the objectives of the Act set out in section 3;

(vii) any submission provided by the Regulator or the parties; and

(viii) such other matters as the Court considers relevant.

(4) Subject to subsection (5), where the Supreme Court or District Court makes an order granting access under subsection (3), the Court shall include in the order what compensation (if any) the service provider shall pay to the owner of the private land or private facility.

(5) The provisions of the Taking of Land Act 1964 shall apply to this section with such adaptations and modifications as necessary.

67. Access to Customary Land and Facilities-(1) Where a service provider:

(a) requires access to customary land or facilities located on customary land to provide telecommunications services, and

(b) cannot, on commercially reasonable terms, reach an agreement with the person responsible for the customary land or facilities,

the service provider may apply to the Regulator for assistance either in reaching an agreement with the person responsible for the customary land or facilities or for the exercise of other powers to obtain the desired access.

(2) Upon receipt of an application for assistance in accordance with subsection (1), the Regulator shall take the steps the Regulator deems necessary to mediate between the concerned parties.

(3) If the Regulator's mediation under subsection (2) fails to produce an agreement between the parties involved:

(a) the matter may be submitted by the Regulator or a party to the Ministry of Natural Resources and Environment or the Land and Titles Court for resolution under this Act or the Alienation of Customary Land Act 1965 or the Taking of Land Act 1964, or other Acts and procedures dealing with customary land;

(b) if the matter is dealt with under paragraph (a), the Regulator may provide such reasonable assistance the Regulator deems necessary as part of the process of dealing with the customary land, including the madding of an order certifying whether the purpose for which the land or facilities is required is a public purpose under the Taking of Land Act 1964; and

(c) the Regulator may exercise such other powers under this Act or other Acts as the Regulator considers appropriate to resolve the matter.

(4) Despite any other law, if the matter is before the Land and Titles Court, the Court shall have the jurisdiction to make an order granting or refusing the required access on such terms and conditions as the Court may determine, having regard to:

(a) the nature of the customary land or facilities;
(b) the nature of the access required;
(c) the importance of such access in maintaining or improving telecommunications services for Samoa;
(d) whether any payment or other consideration can compensate the owner if access is ordered by the Court;
(e) the impact on the owner and other residents on the land or facilities if such access is ordered;
(f) the objectives of the Act set out in section 3;
(g) any submissions provide by the Regulator or the parties; and
(h) such other matters as the Court considers relevant.

(5) Subject to subsection (5), where the Land and Titles Court makes an order granting access under subsection (3), the Court shall include in the order what compensation (if any) the service provider shall pay to the person responsible for the customary land or facilities.

(6) The provisions of the Taking of Land Act 1964 shall apply to this section with adaptations and modifications as necessary.

68. Co-location-(1) Service providers with existing telecommunications network facilities shall allow other service providers to co-locate their telecommunications network facilities on those existing facilities, including but not limited to exchange premises and other switching equipment locations, land, roof tops, mast sites, towers, conduits and poles, where such co-location is economically feasible and no major additional construction work is required.

(2) The party requesting co-location shall compensate the party required to provide co-location for such an amount as the parties may agree or, where the parties are unable to agree, as may be determined by the Regulator.

(3) Where the parties are unable to agree on the conditions of co-location, either or both parties may apply to the Regulator to mediate and, if mediation fails, the Regulator may issue an order to resolve any outstanding issues between the parties.

(4) Prior to making an order under subsection (3), the Regulator shall take into account any comments submitted by the parties, including any issues raised in those comments relating to safety or interference with the parties' networks and personnel.

PART XIII
NATIONAL SECURITY AND PUBLIC EMERGENCIES

69. National Security-(1) Despite any other law, a service provider shall comply with any written request, direction or other requirement of the Attorney General regarding access to any part of the service provider's telecommunications network or telecommunications services or related information in connection with national security requirements or the prevention, detection or prosecution of any breach of the laws of Samoa.

(2) A service provider shall provide any facilities or capabilities, required for compliance with subsection (1) at the service provider's expense, but may apply to the Regulator for an order dealing with the treatment of any substantial additional expense. The Regulator may consider such application in connection with any tariff approval application or recovery of the costs of universal access obligations, and make an order regarding the recovery of such additional expense.

(3) For the purposes of subsection (1), the Attorney General may determine that any event or matter concerns national security or the prevention, detection or prosecution of any breach of the laws of Samoa.

70. Public Disaster and State of Emergency-(1) In case of a public disaster or state of emergency, service providers shall comply with any directions issued by the Commissioner of Police and/or the Chief Executive Officer of the Ministry responsible for disaster co-ordination to respond to or alleviate problems faced by the public or the Government related to such disaster or emergency.

(2) Service providers may apply to the Regulator for compensation or other assistance with the demonstrated costs of complying with subsection (1), but not for loss of revenues during any period of service suspension. The Regulator shall consider any such application in accordance with this Act and other applicable laws of Samoa, and may make an order regarding the recovery of such costs.

(3) For the purposes of subsection (1), the Commissioner of Police and/or the Chief Executive Officer of the Ministry responsible for disaster co-ordination may determine that any event or matter is a public disaster.

PART XIV
DISPUTES, OFFENCES AND ENFORCEMENT

71. Service Provider Disputes-(1) Where service providers have been unable to agree on the resolution of a matter that is related to the Regulator's powers under this Act or other laws of Samoa, then following reasonable efforts to reach an amicable settlement, one or more service providers may apply to the Regulator for assistance in resolving the dispute.

(2) In response to any referral under subsection (1), the Regulator may:

(a) assign a member of the Regulator's staff or consultant to attempt to mediate the dispute;

(b) refer the dispute to the Supreme or District Court; or

(c) issue an order to resolve the dispute.

72. Customer Disputes-(1) Where a customer, other than a service provider that the parties have been unable to resolve among themselves, by means of the service provider's customer complaint process or otherwise, including any process approved

by the Regulator pursuant to section 52, either party may refer the dispute to the Regulator for assistance.

(2) In response to any referral under subsection (1), the Regulator may:

(a) assign a member of the Regulator's staff or consultant to attempt to mediate the dispute;

(b) refer the dispute to the Supreme or District Court; or

(c) issue an order to resolve the dispute.

73. Alternative Dispute Resolution-(1) Parties to a dispute may agree to refer a dispute a dispute to private mediation or arbitration.

(2) The Regulator's costs under subsection (1), including but not limited to any travel or other expenses incurred by or on behalf of the Regulator in connection with the Regulator's assistance or intervention, shall be paid to the Regulator by the parties to the dispute.

74. Telecommunications and Computer Offences-(1) No person shall:

(a) fraudulently, maliciously, or with dishonest or otherwise unlawful intent, use or attempt to obtain any telecommunications service without payment of the lawful charge therefore;

(b) intentionally, without right and with dishonest or otherwise unlawful intent, access or attempt to access the whole or any part of a telecommunications network or computer system by infringing security measures, with the intent of obtaining telecommunications or computer data;

(c) intentionally, without right and with dishonest or otherwise unlawful intent, intercept or attempt to intercept a transmission not intended for public reception of telecommunications or computer date to, from or within a computer system;

(d) intentionally, without right and with dishonest or otherwise unlawful intent, damage, delete, deteriorate, alter or suppress or attempt to

damage, delete, deteriorate, alter or suppress telecommunications or computer date;

(e) intentionally, without right and with dishonest or otherwise unlawful intent, hinder or disrupt or attempt to hinder or disrupt the functioning of a telecommunications network or computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing telecommunications or computer data;

(f) intentionally, without right and with dishonest or otherwise unlawful intent, use, possess, produce, sell, procure for use, import, distribute or otherwise make available or attempt to use, possess, produce, sell, procure for use, import, distribute otherwise make available a device, including but not limited to a computer program, for the purpose of committing any of the offences established in paragraphs (a), (b), (c), (d) or (e);

(g) intentionally, without right and with dishonest or otherwise unlawful intent, use, possess, produce, sell, procure for use, import, distribute or otherwise make available or attempt to use, possess, produce, sell, procure for use, import, distribute or otherwise make available a computer password, access code or similar data by which the whole or any part of a telecommunications network or computer system is capable of being accessed with intent that such network or system be used for the purpose of committing nay of the offences established in paragraphs (a), (b), (c), (d) or (e);

(h) use, or cause or suffer to be used, or attempt to use or cause or suffer to be used, any telecommunications network for the purpose of disturbing, annoying, irritating, offending or harassing any person by any means, including but not limited to:

(i) a call or other contact, with or with or without speech or other sound; or

(ii) the transmission of data or images (video or otherwise); or

(i) willfully damage or attempt to damage any telecommunications network or related telecommunications facility.

(2) Every person who acts in contravention of any of the provisions in subsection (1) commits an offence and is liable to the penalties provided in section 75.

75. Other Offences and Penalties-(1) Every person who contravenes or attempt to contravene any of the provisions of this act or a regulation or rule made under this Act or breaches a licence condition or fails to comply with an order made by the Regulator or the Ombudsman under this Act is guilty of an offence and liable:

(a) in the case of a natural person, to a fine not exceeding 50 penalty units for a first offence and 100 penalty units for a subsequent offence;

(b) in the case of a company or other incorporated body, to a fine not exceeding 5,000 penalty units for a first offence and 10,000 penalty units for a subsequent offence; or

(c) in addition to paragraph (a) in the case of a natural person who is a director, manager, officer,, employee or agent of a company or other incorporated body and who is responsible for the contravention, breach or failure by the company or incorporated body, imprisonment for a term not exceeding two years.

(2) Every person who:

(a) knowingly makes or attempts to make any false or misleading or incomplete declaration, application, information, return or statement for the purpose of obtaining or assisting another person to obtain a licence, consent, permission or other act of authority under this Act;

(b) knowingly provides, supplies or otherwise gives, or attempts to provide, supply or otherwise give, to the Regulator or any person acting under or on behalf of the Regulator or any person acting under or on behalf of the Regulator any false, misleading or incomplete document, statement or information concerning this Act; or

(c) willfully obstructs or hinders or attempts to obstruct or hinder the Regulator or any person acting under or on behalf of the Regulator in the execution of any responsibility, duty or power of the Regulator under this Act,

is guilty of an offence and liable to the penalties provided under subsection (1).

(3) Where an offence under subsections (1) or (2) is committed or continued on more than one day, the person who committed the offence is liable for a separate offence for each day on which the offence is committed or continued.

(4) The Supreme Court and the District Court may, on the application of the Attorney General or Regulator, impose fines and terms of imprisonment on any person pursuant to this section.

76. Judicial Enforcement-(1) An order of the Regulator may be made an order of the Supreme Court under subsection (2) and may be enforced in the same manner as an order of the Court.

(2) An order of the Regulator may be made an order of the Supreme Court by filing with the Registrar of the Court a copy of the order certified by the Regulator.

(3) For the sake of removing any doubt:

(a) the Regulator may enforce any order of the Regulator whether or not the order has been made an order of the Supreme Court; and

(b) An order of the Regulator made an order of the Supreme Court under this section shall be enforced from the date of the order of the Regulator and not from the date of filing such order with the Court under subsection (2).

77. Monitoring and Enforcement-(1) Despite any other law, in addition to any other powers contained in this Act, the regulations, rules, licences or orders or under any other law, the Regulator shall, for the purposes of exercising the Regulator's responsibilities, functions and powers under this Act, have the power to make orders to:

(a) require the production of documents and information by licensees and any other persons;

(b) search premises and seize documents, equipment and other items;

(c) require attendance and examination of witnesses under oath or affirmation or otherwise; and

(d) require persons to undertake specific actions or to cease specific actions in the event of a breach of this Act, the regulations, rules or orders or under any other law.

(2) The Commissioner of Police and all police officers shall provide such reasonable assistance to the Regulator as the Regulator requires in undertaking the Regulator's responsibilities, functions and powers under this Act and any other law.

78. Civil Liability-(1) Subject to any limitation of or exemption from liability imposed in accordance with this Act or any other Act, a person who has sustained loss or damage as a result of any act or omission that is contrary to this Act, or a regulation, rule or order made under this Act may, in the Supreme Court or the District Court sue for an recover an amount equal to the loss or damage from any person who engaged in, directed, authorized, consented to or participated in the act or omission.

(2) An action may not be brought in respect of any loss or damage referred to in subsection (1) more than two years after the day on which the act or omission occurred.

(3) Nothing in subsections (1) or (2) applies to any action for beach of a contract to provide telecommunications services or any action for damages in relation to a rate charged by a service provider.

79. Jurisdiction of the Supreme Court and District Courts-(1) Subject to this Act, the Supreme Court and the District Court shall have jurisdiction to deal with all matters referred to such Court under the Act, including but not limited to civil actions brought under section 78 and disputes referred to the Court under sections 71 and 72.

(2) The Supreme and District Courts shall have jurisdiction to hear and determine any matter for which this Act provides such courts with jurisdiction irrespective of whether any act or omission or event occurs in Samoa or any other place.

PART XV
MISCELLANEOUS

80. Civil Protection for the Regulator-(1) Claims made by or against the Regulator shall be made pursuant to the Government Proceedings Act 1974.

(2) Despite any other law, save for the Constitution, no action, suit or proceedings for any act or omission in connection with the responsibilities, powers or duties imposed on the Regulator by this Act shall be brought or maintained against:

(a) any person who has been or is the Regulator where such person has been or is acting good faith; or

(b) any person who has been or is acting under the authority of the Regulator under the Act where such person has been or is acting in good faith.

81. Regulations-(1) The Head of State, acting on the advice of Cabinet, may make regulations for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the power conferred under subsection (1) regulations may be made for the creation of offences concerning this Act and to prescribe fines for such offences not exceeding 100 penalty units.

82. Evidence by Certificate – Despite any other law, in any proceedings under or concerning this Act, including but not

limited to a prosecution for an offence, a certificate signed by or on behalf of the Regulator and stating:

(a) that on any date a person was or was not the holder of a licence issued pursuant to the Act;

(b) that on any date the Regulator had made or otherwise issued or amended or revoked or cancelled a rule, order, licence, direction, guideline or other act of authority under this Act;

(c) the content of a rule, order, licence, direction, guideline or other act of authority made or otherwise issued or amended or revoked or cancelled by the Regulator under this Act,

shall be sufficient evidence of the facts stated in the certificate and such certificate shall be presumed to be so signed unless the contrary is proved.

83. Service of Notices etc-(1) Where under this Act a notice, order, letter, other document or act of authority is required or permitted to be served on any person, the notice, order, letter, other document or act of authority may be served:

(a) In the case of service on the Regulator; by

(i) delivering the notice, order, letter, other document or act of authority to the Office of the Regulator during normal business hours; or

(ii) sending the notice, order, letter, other document or act of authority by pre-paid post or facsimile transmission to the postal address or facsimile address, as the case may require, of the Office of the Regulator; and

(b) In the case of service on any other person, by:

(i) delivering the notice, order, letter, other document or act of authority to the person at the nominated address in Samoa of the person in any application made by the person to the Regulator or to the nominated address in Samoa of the person in any licence or other act of authority affecting the person

issued or signed by or on behalf of the Regulator;

(ii) delivering the notice, order, letter, other document or act of authority, during normal business hour, to the address in Samoa of any solicitor acting as legal representative for the person; or

(iii) sending the notice, order, letter, other document or act of authority by pre-paid post or facsimile transmission to the Samoan postal address or facsimile address, as the case may require, nominated by the person in any application made by the person to the Regulator or nominated in any licence or other act or authority affecting the person issued or signed by or on behalf of the Regulator; or

(iv) sending the notice, order, letter, other document or act of authority by pre-paid post or facsimile transmission to the Samoan postal or facsimile address, as the case may require, of any solicitor acting as legal representative for the person..

(2) For all purposes in the case of service by pre-paid post, service shall be deemed to have been effected two days after the date of postage.

(3) For all purposes in the case of service by facsimile transmission:

(a) service shall be deemed to have been effected upon completion of transmission without evidence of garbling or incomplete transmission;

(b) A printed or copied signature shall be sufficient for any notice, order, letter, other document or act of authority served by facsimile transmission.

84. Amendments to Schedule – The Schedule to the Act may be amended by the Minister, acting on the advice of Cabinet, by notice published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

85. Savings and Transitional Provisions-(1) All references in law or any document or act of authority to the Department of Post Office or Ministry of Posts and Telecommunications or successors shall be read as referring to the Ministry unless the context otherwise requires.

(2) Insofar as they are not inconsistent with the provisions of this Act, every regulation, order, document and act of authority under or concerning the legislation set out in the Schedule to this Act, so far as they are subsisting or in force at the time of the repeal of such legislation, shall continue and have effect under the corresponding provisions of this Act until such time as they are altered, amended or cancelled, as the case may require, under the provisions of this Act and, where there is any question or concern as to what is a corresponding provisions of this Act, the Minister by notice in writing may for all purposes declare a provision of this Act to be a corresponding provision.

(3) Despite the provisions of this Act, all applications and other matters arising out of or under the provisions of the legislative set out in the Schedule to this Act which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act shall be determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations and alterations as the Minister may determine in writing from time to time.

(4) Every advisory body existing at the time of the commencement of this Act relating to any legislation set out in the Schedule to this Act shall be deemed to be an advisory body established by the Minister under the Ministry of Communications and Information Technology Act 2005.

(5) Despite the provisions of this Act, where this Act does not provide or provides insufficient or inadequate provision for the transition from the legislation set out in the Schedule to this Act, the Minister, by notice published in Samoan and English in the Savali and one other newspaper circulating in Samoa, may make such provisions as the Minister deems necessary in order for all matters under or concerning the legislation set out in the Schedule and this Act to be properly and effectively determined or otherwise dealt with under the provisions of this Act.

86. Transitional Provisions for Prior Licences–Despite the provisions of this Act:

(1) At any time after the commencement of this Act, the holder of an existing licence (a "prior licence") issued prior to the coming into force of this Act may apply to the Regulator to revoke the holder's prior licence and apply to operate under a new licence issued in accordance with this Act.

(2) If the holder or a prior licence does not apply for conversion of a prior licence in circumstances where the holder is permitted to do so under this section within 6 months after the commencement of this Act, the Regulator may issue an order revoking the prior licence and issue a new licence in accordance with this Act.

(3) In all other respects, the operation of telecommunications networks and the supply of telecommunications services under prior licences shall be subject to the licencing and other requirements of this Act, and all applicable regulations, rules, orders and licensing procedures.

(4) The Regulator's powers to grant a licence under this Act shall apply notwithstanding any law, agreement, contract, arrangement or prior licence (howsoever called) issued to a person and in existence at the time of the commencement of the Post Office Amendment Act 2004.

(5) Where:

(a) the Minister has granted a licence under the Post Office Act 1972 or the Post Office Amendment Act 2004; or

(b) the Regulator has granted a licence under this Act; and

(c) the Attorney General and the Chief Executive Officer of the Ministry of Finance have advised Cabinet in writing that the grant of such licence has adversely affected the rights of a person under an existing agreement, contract, arrangement, licence or other provision (howsoever called),

Cabinet, in its absolute discretion, may authorize the provision of compensation to such person in the form of money,

concessions, benefits or otherwise in such amount and/or form as the Attorney General and the Chief Executive Officer of the Ministry of Finance in writing may recommend.

(6) In the event of any inconsistency between the provisions of this section and the provisions of section 85, the provisions of this section shall prevail.

(7) The Regulator shall issue forthwith any necessary licences and take all other necessary actions within the Regulator's powers under this Act to give effect to an agreement nominated by the Minister in writing and involving the Government, SamoaTel, Telecom Samoa Cellular Limited and Telecom Pacific Investments Limited.

SCHEDULE

Repealed Acts

1. Post and Telecommunications Internet Act 1997.

2. Post Office Act 1972 – Parts II, V, VI, IX, and X.

3. Postal and Telecommunications Services Act 1999 – Parts III and IV.

The Telecommunications Act 2005 is administered in the Ministry of Telecommunications and Information Technology.

Prinited by the Clerk of the Legislative Assembly,
by authority of the Legislative of Samoa

SAMOA

Arrangement of Provisions

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4. Repeal and substitution
5. Requirement to hold a licence
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10. Universal Access Fund
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34. Savings and transitional provisions
35. Transitional provisions for prior licences

2007, No. 23

AN ACT to amend the Telecommunications Act 2005.

[13th July 2007]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement-(1) This Act may be cited as the Telecommunications Amendment Act 2007.

(2) This Act shall come into force on the date of assent of the Head of State.

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Principal Act – In this Act, "Principal Act" means the Telecommunications Act 2005.

3. Interpretation – Section 2 of the Principal Act is amended:

(a) by omitting the definitions of "class licence", "interconnection", "order" and "regulation" and substituting:

"'class licence' means a licence issued under sections 13 and 15 without the need for persons to whom the licence applies having to apply for that licence;

'interconnection' means the physical and logical linking of telecommunications networks used by the same or a different service provider in order to allow the users of the one service provider to communicate with users of the same or another service provider and includes the making available of telecommunications facilities or services by one service provider to another for the purpose of providing telecommunications services;

'order' means a written order made by the Regulator under this Act;

'regulations' means regulations made by the Head of State under section 81 of this Act;"; and

(b) by omitting the definition of "Public voice telephony services"; and

(c) by inserting the following definitions:

"'exemption order' means an order issued by the Regulator under section 14;

'this Act' includes regulations and rules made under the Act;".

4. Repeal and substitution - Section 10 of the Principal Act is repealed and the following section is substituted:

"10. Licence, radio spectrum and numbering fees-(1) The Head of State, acting on the advice of the Cabinet may make regulations prescribing:

(a) licence fees, including licence application fees and annual licence fees; and

(b) radio spectrum usage fees; and

(c) fees for the use of telecommunications numbers.

(2) In prescribing the level of fees for the purposes of subsection (1) the following principles must be taken into consideration:

(a) licence fees must be levied on different licensees and users of spectrum and numbers in an impartial and competitively neutral manner; and

(b) licence fees may be based on a percentage of the revenue obtained by the licensee in providing the licensed telecommunications service; and

(c) the licence fees may be used in whole or part to cover the costs of the Office of the Regulator.

(3) Fees required to be paid under this section constitute a debt due to the Government and may be recovered in a court of competent jurisdiction.".

5. Requirement to hold a licence - Section 12 of the Principal Act is amended by omitting subsection (1) and substituting:

"(1) A person shall not:

(a) provide a telecommunications service to the public for direct or indirect compensation; or

(b) own or operate a telecommunications network used to provide a telecommunications service to the public for direct or indirect compensation,

except in accordance with a licence or an exemption order.".

6. General provisions related to licences - Section 13 of the Principal Act is amended:

(a) by omitting from subsection (2) "operator" and substituting "operate"; and

(b) by omitting subsection (8).

7. Exemption orders - Section 14 of the Principal Act is amended by omitting subsection (1) and substituting:

"(1) The Regulator may make an order exempting specified activities or classes of persons from the requirement to hold a licence.".

8. Licensing procedure - Section 16 of the Principal Act is amended by omitting subsection (1) and substituting:

"(1) The Regulator may determine the procedures and criteria for issuing a licence.

(1A) The procedures and criteria determined under subsection (1) must be fair and objective.".

9. Universal access policy - Section 20 of the Principal Act is amended:

(a) by omitting subsection (2); and

(b) by omitting paragraph (4)(b) and substituting:

"(b) are not more burdensome than necessary for the universal access objectives to be achieved.".

10. Universal Access Fund - Section 21 of the Principal Act is amended:

(a) by omitting from subsection (2) "directors" and substituting "directions"; and

(b) by omitting subsection (4) and substituting:

"(4) Subject to subsection (5), where the Minister has established a Universal Access Fund under subsection (1), the Minister by notice in writing may:

(a) require individual licensees to contribute to that fund and determine the amount of contributions to be made by those individual licensees; and

(b) determine the disbursement procedures of that fund.".

11. Designation of dominant service provider - Section 26 of the Principal Act is amended by omitting from subsection (1) "shall be designated" and substituting "is deemed to be designated".

12. Transfer of control of service provider - Section 31 of the Principal Act is amended by omitting from paragraph (6)(b) "promotion" and substituting "promoting".

13. Functions and duties of Regulator regarding interconnection - Section 32 of the Principal Act is amended:

(a) by omitting from paragraph (a) "market" and substituting "markets"; and

(b) by omitting from paragraph (e) "for interconnection".

14. Interconnection by all service providers – Section 33 of the Principal Act is amended by omitting from paragraph (1)(b) "officers" and substituting "offices".

15. Interconnection by dominant service provider – Section 34 of the Principal Act is amended by omitting paragraph (2)(a) and substituting:

"(a) the service provider is a dominant service provider designated under section 26; or".

16. Publication of interconnection agreements – Section 38 of the Principal Act is amended by omitting subsection (4) and substituting

"(4) For the purposes of this section, unless the Regulator determines otherwise:

(a) details of interconnection charges; and

(b) essential terms and conditions of interconnection, other than interconnections charges,

shall not be considered confidential.".

17. Tariff filing and approval – Section 40 of the Principal Act is amended:

(a) by omitting paragraph (2)(c); and

(b) by omitting subsection (7) and substituting:

"(7) A service provider shall not:

(a) charge for or accept tariffs, rates, charges or other consideration; or

(b) impose terms or conditions,

that are contrary to an applicable tariff approved by the Regulator.".

18. Repeal - Section 46 of the Principal Act is repealed.

19. Fair dealing practices - Section 47 of the Principal Act is amended:

(a) by omitting from subsection (4) "public" and substituting "publish"; and

(b) by omitting subsection (8).

20. Confidentiality of customer communications – Section 49 of the Principal Act is amended:

(a) by omitting paragraphs (3)(c), (d) and (e); and

(b) by adding at the end:

"(4) Where the Regulator has issued a direction under paragraph (3)(b) to a service provider, the service provider shall provide the Regulator with information obtained from the service provider's monitoring of the customer's telephone including the telephone numbers that are the source of the harassing, offensive or illegal calls and the times and dates of such calls.

"(5) The Regulator may refer any information obtained under subsection (4) to the police.".

21. Customer complaints - Section 52 of the Principal Act is amended:

(a) by omitting from subsection (1) "other than service providers"; and

(b) by omitting from subsection (2) "other than service providers".

22. Information on terms of service - Section 55 of the Principal Act is amended:

(a) by omitting from subsection (1) "A service provider designated pursuant to section 46 shall" and substituting "A dominant service provider shall"; and

(b) by omitting subsection (3) and substituting:

"(3) If required by an order of the Regulator, a service provider shall include in the introductory pages to every telephone directory published by, or on behalf of, the service provider:

(a) the current version of the service provider's Terms of Service; and

(b) a reference to copies of the service provider's approved and pending tariffs being available for inspection at the service provider's business offices; and

(c) the other information described in paragraph (1)(c).".

23. Quality of service – Section 57 of the Principal Act is amended

(a) by omitting from subsection (1) "A service provider designated pursuant to section 46 shall" and substituting "A dominant service provider shall"; and

(b) by omitting subsection (6) and substituting:

"(6) When a service provider provides the Regulator with a quality of service report under this section, the service provider shall also publish the report on the service provider's web site.".

24. Access to customer premises – Section 58 of the Principal Act is amended by omitting from subsection (1) "The service obligations of a service provider designated pursuant to section 46 shall" and substituting "The service obligations of a dominant service provider shall".

25. Telecommunications equipment – Section 60 of the Principal Act is amended by omitting subsection (2).

26. Number portability – Section 63 of the Principal Act is amended by omitting subsection (3) and substituting:

"(3) The Regulator can by order impose on a service provider a charge to meet the Regulator's costs in developing and introducing number portability and the ongoing costs of administering number portability.".

27. Service provider selection – Section 64 of the Principal Act is amended by omitting subsection (3) and substituting:

"(3) The Regulator can by order impose on a service provider a charge to meet the Regulator's costs in developing and introducing service provider selection or service provider pre-selection.".

28. Access to private land and facilities – Section 66 of the Principal Act is amended by omitting subsection (5).

29. Service provider disputes –Section 71 of the Principal Act is amended by omitting paragraph (2)(b) and substituting:

"(b) recommend that the dispute be brought before a court; or".

30. Customer disputes – Section 72 of the Principal Act is amended

(a) by omitting subsection (1) and substituting:

"(1) Where a customer other than a service provider is involved in a dispute that the parties to the dispute have been unable to resolve among themselves, either party may refer the dispute to the Regulator for assistance."; and

(b) by omitting paragraph (2)(b) and substituting:

"(b) recommend that the dispute be brought before a court; or".

31. Alternative dispute resolution – Section 73 of the Principal Act is amended:

(a) by omitting subsection (1) and substituting:

"(1) Parties to a dispute may agree to refer that dispute to private mediation or arbitration."; and

(b) by omitting from subsection (2) "The Regulator's costs under subsection (1)" and substituting "The Regulator's costs in respect of any dispute referred to private mediation or arbitration under subsection (1)".

32. Other offences and penalties – Section 75 of the Principal Act is amended by omitting subsection (4).

33. Insertion of new sections – After section 75 of the Principal Act the following sections are inserted:

"75A. Divulging information from telephone conversation-(1) Subject to subsection (2), an employee of a service provider who discloses without good and sufficient cause any information obtained from a telephone conversation overheard in the course of that employee's duties, commits an offence and is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 50 penalty units, or both.

(2) Subsection (1) does not apply where the disclosure is:

(a) reasonably necessary for the enforcement of the criminal law; or

(b) reasonably necessary for the protection of the public revenue; or

(c) otherwise required or authorised by or under law.

"**75B. Divulging personal information obtained in course of duties**-(1) Subject to subsection (2), an employee of a service provider who without good and sufficient cause discloses or uses any information or document:

(a) that relates to the affairs or personal particulars (including any unlisted telephone number or any address) of another person; and

(b) was obtained in the course of that employee's duties,

commits an offence and is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 50 penalty units, or both.

(2) Subsection (1) does not apply where the disclosure or use is:

(a) reasonably necessary for the enforcement of the criminal law; or

(b) reasonably necessary for the protection of the public revenue; or

(c) otherwise required or authorised by or under law.".

34. Savings and transitional provisions - Section 85 of the Principal Act is amended by omitting subsection (4).

35. Transitional provisions for prior licences - Section 86 of the Principal Act is amended by omitting subsection (7).

The Telecommunications Amendment Act 2007 is administered by the Ministry of Telecommunications and Information Technology

Printed by the Clerk of the Legislative Assembly, by authority of the Legislative Assembly.

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Alternative arrangements for appointing a Regulator
3. Appeal of orders of the Regulator
4. Telecommunications Tribunal
5. Additional grounds for revoking or refusing renewal of a licence
6. Interim interconnection charges
7. Consequential amendments
8. Civil liability

2008, No. 18

AN ACT to amend the Telecommunications Act 2005.

[12th June 2008]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement-(1) This Act may be cited as the Telecommunications Amendment Act 2008.

(2) This Act commences on the date of assent by the Head of State.

2. Alternative arrangements for appointment of a Regulator - The Principal Act is amended by inserting after section 7 the following section:

"7A. Alternative arrangements for the appointment of a Regulator-(1) Notwithstanding the provisions of sections 6 and 7, Cabinet may approve the appointment of a suitable regulatory body within or outside Samoa to act as Regulator for the purposes of this Act.

(2) An appointment made under this section shall be on such terms and for such period as Cabinet approves, and may be revoked by Cabinet at any time if the arrangement is no longer required or considered to be unsatisfactory in meeting the objectives of this Act.

(3) The appointment of a Regulator under this section shall be in accordance with the terms approved by Cabinet, and shall otherwise be implemented and administered in accordance with a contract approved for that purpose by the Attorney General."

3. Appeal of orders of the Regulator - The Principal Act is amended by deleting section 11 and replacing it with the following section:

"11. Appeal of orders of the Regulator to the Telecommunications Tribunal-(1) An appeal from an order, directive, decision, or exercise of discretion of the Regulator may only be made to the Telecommunications Tribunal by way of a Notice of Appeal and in accordance with the provisions of this Act.

(2) A Notice of Appeal must be served on the Minister and must be accompanied by:

(a) a bank cheque in the amount of $100,000 tala; and

(b) a signed written undertaking by the appellant to pay damages and all costs arising in any way from the convening of the Tribunal, the conduct of its proceedings and any subsequent order that is made by the Tribunal or the Regulator as a result of the appeal.

(3) The appellant must also serve, on the same date, copies of the Notice of Appeal and accompanying documents on the Regulator and the Attorney General and where relevant, to the other person who may be a respondent or party to the appeal.

(4) The Notice of Appeal must be served within 30 days after the date of the order, directive, decision, or exercise of discretion of the Regulator which is the subject of the appeal.

(5) The Notice of Appeal must set out:

(a) the relevant section of the Act under which the decision appealed against was made; and

(b) the grounds of appeal which must set out in sufficient detail so as to state -

(i) the grounds upon which the appellant contends that the decision appealed against was based on an error of fact or was wrong in law, or both;

(ii) the grounds upon which the appellant is appealing against the exercise of a discretion by the Regulator."

4. Telecommunications Tribunal - The Principal Act is amended by inserting after Part II a new Part IIA as follows:

"PART IIA TELECOMMUNICATIONS TRIBUNAL

11A. The establishment of the Telecommunications Tribunal-(1) The Telecommunications Tribunal is hereby established.

(2) When conducting a proceeding in accordance with this Act, the Tribunal shall be comprised of a presiding member and two (2) other members appointed in accordance with this Part.

(3) The Ministry shall provide the necessary administrative support to the Tribunal whenever it convenes under this Part of the Act.

11B. Presiding member - The Tribunal shall be presided over by a Judge or a lawyer who is qualified to be a Judge, who shall be appointed from time to time by the Chief Justice when the Tribunal is required to hear and determine an appeal under section 11.

11C. Other tribunal members-(1) Two (2) members of the Tribunal shall be appointed by the presiding member from the panel of Tribunal members for each Tribunal proceeding convened under this Act.

(2) A person may be appointed to the panel of Tribunal members by the Head of State, acting on the advice of Cabinet, if that person:

(a) has qualifications and/or experience in economics or management finance; or

(b) has qualifications and/or experience in telecommunications engineering or telecommunications business management; or

(c) has legal qualifications with telecommunication background.

(3) Prior to the commencement of a Tribunal proceeding, each member shall be required to state that he or she has:

(a) no personal interest or involvement in the matter under dispute; and

(b) no association of any nature with any of the disputing parties which may be perceived as affecting the impartiality of the member.

(4) A Tribunal member shall be entitled to receive a sitting fee, allowance and other expenses approved from time to time by the Minister.

(5) The Head of State, acting on the advice of Cabinet, may at any time revoke the appointment of any member of the Tribunal if such member:

(a) becomes of unsound mind or otherwise becomes permanently unable to perform his or her functions by way of health;

(b) is convicted of an offence punishable by a term of imprisonment exceeding five (5) years;

(c) fails without reasonable excuse to carry out any of the functions conferred or imposed on him or her under this Act; or

(d) engages in such activities as are reasonably considered prejudicial to the interest of the Tribunal; or

(e) has an interest in the proceedings which the member has failed to disclose.

11D. Convening Tribunal hearings-(1) The Tribunal shall be convened by the Presiding Member as soon as is necessary for the Tribunal to hear and determine any dispute referred to the Tribunal in accordance with this Act.

(2) The Tribunal shall convene at such time and place, and shall conduct its proceedings as determined by the Presiding Member.

11E. Tribunal proceedings-(1) Subject to this Act, the Tribunal shall have the powers and protections applying to a Commission of Inquiry under the Commissions of Inquiry Act 1964, including:

(a) protections in accordance with sections 5 and 9 of that Act; and

(b) powers as provided by section 6 of that Act; and

(c) a power to hear persons having an interest in a matter which is the subject of a Tribunal proceeding as provided by section 7 of that Act.

(2) A person who, after being summoned or ordered to attend before a Tribunal or to produce any books, papers, writings, or documents to a Tribunal:

(a) fails to appear according to the requirements of such a summons; or

(b) refuses to be sworn or to give evidence or to make answer to such questions as may be put to the person by any member of a Tribunal relating to the subject of the inquiry; or

(c) fails to produce any such books, papers, writings, or documents,

commits an offence and shall be liable to a fine not exceeding 50 penalty units, or to imprisonment for a term not exceeding six (6) months, or both.

(3) Each Tribunal proceeding shall be conducted so as to accord the principles of natural justice to any party as far as is practicable having regard to the need in any given case to proceed expeditiously to determine the appeal.

(4) Nothing in subsection (3) shall affect the right of the Tribunal to direct that:

(a) sworn statements be submitted by persons intending to provide evidence or make submissions to a Tribunal; and

(b) the right to cross examine any witness shall be restricted only to matters which the Tribunal considers to be of such a highly probative nature that they need to be tested under cross examination; and

(c) each party, and any interested person permitted to participate in a Tribunal proceeding, prepare and submit written submissions, and that these be provided to other parties and their representatives on terms determined by the Tribunal; and

(d) any other things be done or orders be complied with to permit the timely determination of a dispute.

(5) The Tribunal may make final and binding determinations in relation to any matter of procedure, and make orders to that effect.

11F. Government may be represented in any proceeding-(1) In all Tribunal proceedings, the Attorney General may elect to represent the Government, and in any such case, the Government shall be regarded as a party to the dispute.

(2) No order for the payment of any costs associated with any Tribunal proceedings may be made against the Government.

11G. Tribunal decisions-(1) All decisions of the Tribunal shall be validly made if a majority of members resolve to make the decision.

(2) The Tribunal may:

(a) confirm, modify or reverse the decision or order of the Regulator;

(b) refer the decision or order back to the Regulator for re-consideration by it, either generally or in relation to any matter specified by the Tribunal;

(c) order that the decision of the Regulator to which an appeal relates shall not have effect until the appeal is determined;

(d) dismiss the appeal;

(e) order a party to refund to any specified service provider any amount that has been paid to that party in excess of a revised order imposed by the Tribunal;

(f) subject to section 11F(2), order costs to be paid.

(3) A decision of the Tribunal shall be final and binding on all parties, and all persons named in any order made by a Tribunal.

11H. Government ministries and agencies to assist Tribunal-(1) All government ministries and agencies shall cooperate with the Tribunal and shall make available, at no cost, any document or record in its custody which the Tribunal requires, or which may assist in the consideration and determination of a dispute.

(2) This section applies notwithstanding any provision of any law to the contrary.

11I. Appeal shall bar litigation-(1) No proceedings relating to any telecommunications dispute may be commenced in any Court after an appeal has been filed under this Part.

(2) This section does not prevent any action taken by way of judicial review in relation to a proceeding of the Tribunal.

11J. Enforcement of orders - Any person who is directed by the Tribunal or under a legal obligation to implement an order made by a Tribunal under this Act, and who refuses or fails to implement the order, commits an offence and shall be liable upon conviction:

(a) in the case of a natural person to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding 12 months, or both; or

(b) in the case of a company or other incorporated body, to a fine not exceeding 5,000 penalty units for a first offence and 10,000 penalty units for a subsequent offence."

5. Additional grounds for revoking or refusing renewal of a licence - The Principal Act is amended by inserting after section 18 a new section 18A as follows:

"18A. Revocation upon conviction for an offence - Notwithstanding section 18, a licence shall be deemed to be revoked if the licensee is convicted of any offence under the laws of Samoa which involves:

(a) an element of dishonesty;

(b) the making of some financial gain from the public or any section of the public by the failure to observe any legal obligation;

(c) the failure to obtain a licence or permit that is required by law in the course of any aspect of the licensee's business."

6. Interim interconnection charges - The Principal Act is amended by inserting after section 39 the following sections:

"39A. Interim interconnection charges-(1) The Regulator shall have the power to direct a service provider to implement interconnection charges on an interim basis, either:

(a) pursuant to the process set out in this section; or

(b) based on a rate agreed to by the service providers pursuant to section 39B.

(2) Where the Regulator intends to impose an interim interconnection charge, the Regulator shall request the service providers to provide, within 14 days from the date of the request reports containing:

(a) recommendations as to the appropriate interim charge;

(b) the basis for the recommended interim charge; and

(c) any other matter determined by the Regulator.

(3) 14 days after making the request for reports under subsection (2), the Regulator shall consider the reports that have been submitted and any other matter that the Regulator considers relevant in determining the interim interconnection charge.

(4) Before the Regulator finalises the interim interconnection charge, the Regulator shall notify the service providers of the interim interconnection charges that are to be imposed.

(5) The service providers may make submissions to the Regulator within seven (7) days of the receipt of the notification under subsection (4) of the intended interconnection charge if any of them do not agree with the proposed charge.

(6) The Regulator, after receipt and consideration of submissions (if any) from the service providers, shall then issue interim interconnection charges which shall be in force for any period of time determined by the Regulator, but the period shall not exceed six (6) months.

(7) Notwithstanding subsection (6), the Regulator shall have the power during the period of an interim interconnection order:

(a) to vary the interim interconnection order; or

(b) to extend the interim interconnection order for any other period provided such extended period does not exceed six (6) months; or

(c) to cancel the interim interconnection charge.

(8) In varying, extending or cancelling an interim interconnection order pursuant to subsection (7), the Regulator shall adopt as far as is appropriate in the circumstances, the process set out in subsections (2) to (5).

(9) Notwithstanding section 36, any interim interconnection order imposed by the Regulator under this section need not be cost based.

(10) A failure by a service provider to provide any report or submission under this section shall not prevent the Regulator from proceeding with determining the interim interconnection charge.

(11) Any service provider that disagrees with the interim interconnection charge imposed by the Regulator under this section may appeal to the Tribunal in accordance with Part IIA, but no such appeal shall operate to affect the validity of the interim charge pending the outcome of the appeal.

39B. Service providers to agree on interconnection charges-(1) The Regulator may direct the parties to enter into negotiations to determine and agree upon an agreed interconnection charge.

(2) If the service providers do not reach an agreement within two (2) weeks from the date of the Regulator directing the parties to negotiate, the Regulator shall impose interim interconnection charges in accordance with section 39A."

7. Consequential amendments-(1) Section 71 of the Principal Act is amended by deleting section 71 (2) (b).

(2) Section 72 of the Principal Act is amended by deleting section 72 (2) (b).

(3) Section 79 of the Principal Act is deleted.

8. Civil liability - Section 78 of the Principal Act is amended by inserting subsection (4) as follows:

"(4) The government and the Regulator shall not be liable for any costs or damages in any legal proceedings challenging any action taken under this Act, or for any failure or refusal to take any action which is authorized by this Act."

The Telecommunications Amendment Act 2008 is administered by the Ministry of Communications and Information Technology.

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