

"Note: This electronic version of the Telecommunications Act 2005 has been prepared for the convenience of readers only. The Government of Samoa has not confirmed the accuracy of this electronic version, and an official paper version of the Act should be consulted by any party that intends to rely on the Act."

TELECOMMUNICATIONS ACT 2005

SAMOA

Arrangement of Provisions

PART I

PRELIMINARY

1. Short title and commencement	1
2. Interpretation.....	1
3. Objectives of this Act.....	4
4. Application of this Act.....	5
5. Repeal of Acts	5

PART II

THE REGULATOR

6. Appointment of Regulator.....	5
7. Disqualification.....	6
8. Responsibilities, Functions and Powers of the Regulator.....	7
9. Office of the Regulator.....	10
10. Licence, Radio Spectrum and Numbering Fees	13
11. Appeal and Review of Orders of the Regulator	13

PART III

TELECOMMUNICATIONS LICENCES

12. Requirement to Hold Licence.....	14
13. General Provisions Related to Licences.....	15
14. Exemption Orders.....	16
15. Types of Licences.....	16
16. Licensing Procedures.....	17
17. Licence Conditions.....	17
18. Amendment and Revocation of Licences.....	17
19. Term and Renewal.....	18

PART IV

UNIVERSAL ACCESS

20. Universal Access Policy..... 19
21. Universal Access Fund..... 20

PART V

RADIO SPECTRUM MANAGEMENT

22. Spectrum Management Functions 20
23. Radio Spectrum Regulation..... 21
24. Interference Disputes and Coordination

44. Cost Studies	39
45. Price Cap Regulation Method	40

PART IX

RELATIONS BETWEEN SERVICE PROVIDERS AND CUSTOMERS

46. Application	40
47. Fair Dealing Practices	41
48. Confidentiality of Customer Information.....	42
49. Confidentiality of Customer Communications.....	43
50. Protection of Personal Information.....	44
51. Access by Government Authorities	44
52. Customer Complaints.....	45
53. No Unjustified Discrimination	45
54. Terms of Service	45
55. Information on Terms of Service.....	46
56. Telephone Directories	47
57. Quality of Service	47
58. Access to Customer Premises.....	48
59. Liability, Refunds and Damages.....	49

PART X

TELECOMMUNICATIONS EQUIPMENT

60. Telecommunications Equipment	49
--	----

PART XI

NUMBERS

61. National Numbering Plan.....	50
62. Use of Numbers	50
63. Number Portability.....	51
64. Service Provider Selection	51

PART XII

ACCESS TO PROPERTY

65. Access to Government Land and Facilities.....	52
66. Access to Private Land and Facilities	53
67. Access to Customary Land and Facilities	55
68. Co-location	56

PART XIII

NATIONAL SECURITY AND PUBLIC EMERGENCIES

69. National Security 57
70. Public Disaster and State of Emergency 57

PART XIV

DISPUTES, OFFENCES AND ENFORCEMENT

71. Service Provider Disputes 58
72. Customer Disputes 58
73. Alternative Dispute Resolution 59
74. Telecommunications and Computer Offences 59
75. Other Offences and Penalties 61
76. Judicial Enforcement..... 62
77. Monitoring and Enforcement 62
78. Civil Liability 63
79. Jurisdiction of the Supreme and District Courts..... 63

PART XV

MISCELLANEOUS

80. Civil Protection for the Regulator..... 64
81. Regulations 64
82. Evidence by Certificate 64
83. Service of Notices etc..... 63
84. Amendments to Schedule..... 66
85. Savings and Transitional Provisions 64
86. Transitional Provisions for Prior Licences..... 67

Schedule

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.

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

PART I

“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 communications.

“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”

“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 affordable prices;
- (c) promote the efficient and reliable provision of telecommunications services, relying as much as possible on market forces, such as competition and

- (l) establish an 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 and 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 five year term of 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 29 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 purposes 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 licensees 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)

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 t

(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) The Regulator, or 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 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 first 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 licensed telecommunications services.
- (4) 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.

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
af

- (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 Officer 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 telecommunications services require individual licences and class licences.

16. Licensing Procedures

- (1) The procedures for issuing licences 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 is 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 action;

- (b) shall set out any procedures the Regulator will use in considering the relevant action; and
- (c) may invite comments from other interested

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 Communicati248of the2.011 h

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 reso

- (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 rule 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 otherwise 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) monit

- (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 service 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 services or facilities to other

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 acquire another service 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 acquires another service that the competitor does not require;
- (d) pre-emptively acquiring or securing scarce facilities or resources, including but not 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 serviceTm -0.226 Tc (int) n a

- (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 position within the meaning of section 27;
- (b) whether or not the actions or activities of any service provider amount to an anti-competitive practice with

- (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\$100,00, 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,

telecommunications business and copies of 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) Subject 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 promoting the 0Tnably related 4i

- (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 compet

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 offices 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 service 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 precludes 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 telecommunications network, telecommunications facilities or the provision of the service provider's telecommunications 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) essentiaPi41 T90.153 Twa6 310.8 42m Tm -0(388.56 Tm 0 h) Tj 10.08

PART VIII
TARIFFS

40. Tariff Filing and Approval

- (1) Dominant service providers shall file with and obtain the approval of the Regulator for all tariffs, rates or charges for telecommunications services in markets in which the Regulator has designated them 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; and
 - (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; or
 - (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 services provided by 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 subject 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 or 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 oth

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) th

(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 publish 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 Regulator 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 Consumer 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 or order made by the Regulator, or as otherwise permitted by the 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)

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

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

(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 41;
- (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

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 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 standards.

(6) When a service provider files a quality of service report or any additional related material with t

- (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

(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

- (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 provide 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 and 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 pre-selection systems and the ongoing costs of administering service provider selection or service provider pre-selection shall be recovered from service providers 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 telecommunications 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 the 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 regard 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 the 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

- (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) th

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 detection, prevention 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 subject

73. Alternative Dispute Resolution

- (1) Parties to a dispute may agree to refer a dispute to private

- (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 or 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 any 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 without speech or other sound; or
 - (ii) the transmission of data or images (video or otherwise); or
 - (iii) wilfully 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 Regul

(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 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 the 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 undertakingquires in

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 Constit

otherwise issued or amended or revoked or
cancelled by the Regulator under the 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:

in any application made by the person to the Regulator or nominated in any licence or other act of 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

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 legislation 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 this Act.

(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 co

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.

- (i) 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.
- (ii) 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.

