

SAMOA

Arrangement of Provisions

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 Repeal and substitution - Section 10 of the Principal Act is repealed and the following section is substituted: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