



Office of the Regulator

Annual Report

for the period ended 30 June 2009

Executive Summary

The Office of the Regulator experienced a period of intense activity during the year under review.

Mr. Donnie DeFreitas, the new Regulator was appointed in February 2009 and he had to oversee among other things, challenges to decision of the Regulator resulting in appeals to the Tribunal while maintaining focus on developing the regulatory framework and the institutional strengthening of the Office of the Regulator.

The year was a successful one with major milestones including:

- Appointment of the new Regulator in February 2009;
- Appeals to the Telecommunications Tribunal in May 2009;
- Complete “opening up” of the Telecommunication Sector for competition in July 2009;
- Extensive and intensive training of the staff of the Office of the Regulator;
- Regulator scheduling of spectrum monitoring in Upolu and Savaii;
- Issuing a series of new licences;
- Conduct of a cost modelling exercise to determine cost of termination of Interconnection services;
- Initiating work on Policies for Universal Access and a National Emergency Telecommunication Plan;
- Addressing outstanding regulatory issues;
- Formalizing arrangement for the independence of the Regulator; while
- Improving its collection of revenues from licensed operators.

The initial focus of the OOTR this year was to manage the transition issues of having temporary Regulators; first the Consulting firm of Network Strategies represented by Ms Michelle Marius; then the Hon Minister Safuneituuga Paaga Neri; and finally in February 2009 to Mr. Donnie DeFreitas. This was done while preparing for an appeals process, the need to issue an Order for new interconnection rates and developing an appropriate model for costing these services.

Importantly it was recognised that there was need to strengthen the OOTR as an institution and the hiring of managers for the various division was a high priority. Training of existing staff and establishing mechanisms for the transfer of knowledge while building institutional memory were also high on the Regulator’s agenda.

Legally it was an interesting year with SamoaTel’s appeal against Orders 2008/03 and 2009/01 resulting in the need to review existing interconnection rates due to the Tribunal ruling that the rates in both Orders were not cost oriented. Two licenses had to be prepared to facilitate the expected full liberalization post 1st July 2009 and accordingly an International Gateway Licence and a Submarine Cable Landing Licence were prepared. The removal of exclusivity from SamoaTel’s licences meant that the “Fixed Services” licence also had to be reviewed.

Several Orders were issued during the period focussing on retail rates and interconnection wholesale rates.

The operational experience gained during the period led to the need to review and propose amendments to the Telecommunications Act of 2005.

The Spectrum and Technical Division was also very active in regularizing the operations of licensed operators, ensuring that they operated in compliance with the terms of their authorization and detecting unlicensed and illegal transmissions.

Some forty two (42) new licences were issued, the majority being Amateur Radio Licences and included four (4) new broadcast stations (2 Radio, 2 Television).

The process of issuing frequencies as well as the management and monitoring process came under review and as a result there will be consultation in the coming year on the regulations for Spectrum Management and Monitoring as well a National Emergency Plan (NETP) Numbering. The process for type approval of equipment to ensure compliance with established standards will also be reviewed.

There were a number of outstanding regulatory issues from the previous years and a system was put in place to resolve them. Interconnection was the major regulatory issue and while progress has been slow, this has been to avoid the Regulator providing any real basis in the future for litigation. The regulatory issues on interconnection this year included:

- Appeal of the Orders 2008/03 and 2009/01 by SamoaTel;
- Tribunal ruling to review the rates; and
- Reconsideration of the rates by the Regulator

There has been a marked increase in the use of full consultative processes ensuring transparency and fairness.

A comparison of the rates being charged for telecommunication services shows little change for fixed and mobile rates during the period.

Work remains to be done in developing a Universal Access Policy and mechanisms for funding Universal Access.

The OOTR has improved the mechanism for addressing consumer complaints as well as for complaint between providers.

Financially the OOTR maintained the positive trend of collecting revenues in excess of expenditures, while continuing to make savings on its budgeted expenses every year. The saving is being incurred while ensuring that all major objectives continue to be act.

The Government approved budget was WST\$1,695,134 and projected revenue was WST\$2,165,000. Actual revenues for the period was WST\$4,117,199 including

government grants per approved budget of WST\$1,565,383 and actual expenditure was WST\$3,641,766 including licence fees collected and transferred to government totalling WST\$1,886,519. OOTR therefore realised a net income of WST\$475,423.

The invoiced telecommunications licence fees were WST\$2,209,366 with an outstanding amount of WST\$1,610,256. This relatively high percentage of outstanding amount is due to the majority of the invoices being issues just prior to the end of the financial year and these are expected to be collected early in the following year.

Collection of Radio Spectrum Fees shows a similar pattern with invoiced amounts being WST\$333,267 and outstanding amounts being WST\$314,075. Again 90% of the outstanding amount is directly attributable to the timing of invoicing. In this case however there is the additional issue of non-payment by the Land- Mobile operators due to a variety of reasons.

The OOTR proposes to give a moratorium for bad debtors and have these bad debts removed from the books of the Office of the Regulator. All existing land Mobile licensed would then be mollified and new licenses issued allowing the operators to have a fresh start.

The financial management of the OOTR funds can best be seen with the positive report from the Audit Office.

As a sequel to a successful year the OOTR propose to follow up to success with an even more productive year. This will be achieved through the filling all available staffing posts, development of a Corporate Plan and the execution of an ambitious work plan that would take into account both factors.

The focus going forward would be capacity building and institutional strengthening. All Officers will be trained and mechanisms put in place to ensure that all training received will be properly documented and the learning experience shared with other staff members.

The development of a strategic approach encapsulated in a Corporate Plan would be the other priority. This strategic approach will take on board all of the existing challenges and opportunities for further development the Telecommunication Sector and the role of the OOTR in this process.

In 2009-10 the OOTR will ensure that the Cabinet decision for the OOTR to be a fully independent entity will be formalized through appropriate amendments to the Act and while the Act is being amended to use the opportunity to introduce several other needed amendments.

The development of the telecommunication sector would require improvement of the regulatory framework and this is reflected in the Work Plan. Critically the

development of a National Emergency Telecoms Plan will be given attention to allow for better preparation and response in times of disasters.

The OOTR present what it considers being a comprehensive review in the Annual Report and provides an outline in this Executive Summary.

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1. Introduction

The Office of the Regulator (“Office”) hereby presents its third Annual Report, for the period 1 July 2008 to 30 June 2009. During the period under review, key events included the appointment of a Regulator; challenges to the Orders of the Regulator; convening of the Telecommunications Tribunal; and outfitting the Office of the Regulator to fulfil its role as an independent regulatory body for the telecommunications sector and general improvements in the sector.

Details on these key occurrences, in addition to other information that ought to be included in this report, as per subsection 9(12) of the Telecommunications Act 2005 as amended, are presented in the following sections:

- **Introduction** – providing the context of the Report;
- **Corporate Services** – detailing the issues addressed in strengthening the Office of the Regulator in fulfilling its role as an independent entity regulating the ordered development of the sector;
- **Legal Framework** – providing the legal framework within which the Office operated and the challenges and actions taken to ensure ordered development;
- **Spectrum and Technical Division** – highlighting the technical activities of the Office in carrying out its mandate under the Act focussing on spectrum management and numbering in ensuring interference free operation between licensed operators;
- **Regulatory and Consumer Affairs** – accentuate the regulatory issue and what the Office has done to address them;
- **Financial Review** – give attention to the financial viability and operating procedures require by the Act;
- **Proposals for the Financial Year 2009-2010** - Indicating the plans for the Office in the upcoming period and how it intends to cope with the multifaceted challenges in developing further the sector.

A period of intense activity, the Office of the Regulator has now emerged as an entity independent of the service providers it regulates. The privatization of SamoaTel is expected to remove all lingering perceptions of any possible conflict.

The year’s activities included:

- i) Appointment of a Regulator for a period of three years;

- ii) Establishing the Office of the Regulator as an Independent entity;
- iii) First sitting of the Telecommunications Tribunal and its ruling on the SamoaTel appeal against the Regulator's Orders 2008/03 and 2009/01;
- iv) Removal of all exclusivity in regard to the provision of telecommunications services(1st July 2009):
- v) Landing of the first submarine cable in Samoa;
- vi) Incorporation of SamoaPost as a state-owned company and its beginning operations on September 1, 2008;
- vii) Processes relating to Interconnection resulting in (a) Orders of the Regulator 2008-03 and 2009-01, (b) a "bottoms-up" Cost study for Termination Services, Reconsidered rates for October 2008 – June 2009;
- viii) New class licences issued for retail Internet Services provision;
- ix) Staffing arrangements to fill the posts of (a) Legal Advisor, (b) Manager – Regulatory Services, (c) Manager – Spectrum and Technical Services and (d) Accounts Clerk;
- x) Conduct of a numbering audit;
- xi) Development of process and criteria for the allocation and assignment of 1-800 numbers;
- xii) Training of staff in Competition Policy for Telecommunications; Regulatory and Privatization issues in Telecommunications; Mobile Broadband and Mobile TV & Wireless Broadband Revolution and development of a training program to ensure training of all staff including technical attachments to the more developed regulatory bodies in the region;
- xiii) Improvements in establishing appropriate office administration procedures;
- xiv) Hiring of an independent Consultant to advise on all matters relating to the establishment of appropriate termination rates for Samoa;
- xv) Initiation of the first process of a judicial review of a ruling of the Tribunal;
- xvi) Development of a discussion paper on Universal Access;
- xvii) Development of a Policy to guide TV frequency Assignment Policy;
- xviii) Improvement in mobile telephony coverage recording 90 to 95 percent coverage in Upolu and Savai (up from 45 percent in 2002);
- xix) The total number of mobile subscribers remained constant in respect of previous year;
- xx) Reduction in prices on both domestic and international calls;
- xxi) Fixed to Digicel mobile costs have increased (from 32 sene in 2002 to 69 sene in 2009);
- xxii) Internet penetration remained at very low penetration levels;
- xxiii) Consultation on Universal access was imitated with several workshops and a draft Policy will now be prepared and proposed to the Hon. Minister;

- xxiv) Technical assistance on the impact on poverty of the telecommunication reform was conducted under the World Bank Project;
- xxv) Preparation was completed by the Office of the Regulator to ensure that all services could be liberalized by 1st July 2009 and appropriate licences granted, (New Licences prepared for International Gateway Services and submarine cable landing services);
- xxvi) Progress was made on the process of the privatization of SamoaTel but the relevant details are outside the scope of this Report;
- xxvii) The Broadcasting Bill has been approved by the Cabinet and is to be passed into an Act. The Office of the Regulator is expected to be responsible for the regulation of the technical aspects of the Radio Broadcast networks.

Progress in the year under review has been steady and it is expected that in the upcoming year the gains made would be consolidated.

In the upcoming period the Office of the Regulator is expected to consolidate gains made and bring even more order and security to the sector thereby increasing investor confidence and continuing to make Samoa a preferred choice for doing business in the South Pacific.

2. Corporate Services

Corporate Services in the Office of the Regulator combines and consolidates all those support activities that are required throughout the organization. These include administration and human resource development activities.

The Office of the Regulator has been grappling with transition between several different leadership styles in a relatively short period as well as preparing itself to become an entity separate and independent from the entities that it regulates.

2.1 Transition Issues

John Morgan demitted office 27th June 2008 and the new Regulator, Donnie Defreitas was appointed effective February 16th 2009 for a three year contract term. In the interim, Michelle Marius of Network Strategies by virtue of Cabinet Directive [F.K (08) 22] and subsection 6(4)(b) of the Act as amended was appointed as Interim Regulator for the period 30 June 2008 to 30 December 2008. The Minister of Communications and Information Technology Hon. Safuneituuga Paaga Neri was later appointed under the act to serve as Interim Regulator from 1 January 2009 until the arrival of Mr. Defreitas.

In the period Cabinet also issued a directive F.K.(09) 18 to facilitate the Office of the Regulator becoming an independent body. This would require ensuring that the necessary human resources become available to the Office and that they be trained to carry out their functions efficiently.

The transition was also marked by the establishment of the Telecommunications Tribunal and having all appeals made to that body rather than to the Court.

Importantly, there was also the need to ensure that by the end of June 2009 all was in place to facilitate the full liberalization of all services by July 1st as was required by existing government policy.

2.2 Institutional Strengthening and capacity building

The first issue in strengthening the capacity of the Office of the Regulator to serve its stakeholders was to appoint a regulator on a more permanent basis. Having done this by contracting Mr. Defreitas the next step was to fill all existing vacant posts in the Office. The contract of the Legal analyst was also due to end and this post was to be made redundant and replaced by a Legal advisor with functions more in line with the mandate and responsibilities of the organization.

The Regulator was installed in office in February and work was then completed in the finalization of job descriptions for three middle level Managers: Legal Advisor; Manager Spectrum and Technical Services; & Manager Regulatory Services. Posts

were then advertised and interviews conducted it is expected that the posts will be filled early in the next financial year. Similarly the post of Accounts Clerk is to be filled.

In Order to ensure that existing and new employees are adequately equipped to carry out their duties the Work Plan developed focussed heavily on providing training and identifying opportunities both through the International Telecommunications Union and the Telecommunications reform project.

Continuity, after the contract period of the current Regulator is ended in 2012, is being guaranteed by instituting a process of rigorous training and exposure for the middle Managers to have all three in the position of being potential future candidates as Regulator.

The institutional strengthening process will be enhanced by putting in place administrative procedures and practices that would ensure that the Office functions as a unit, institutional memory is safeguarded and distributed among all employees and that a heightened level of job satisfaction is provided.

Specialized training both overseas and local have been identified for all staff members. The Office has now instituted processes where regular staff meetings with all staff are held and all staff is given the opportunity to present of subject matters within their competence. On return from any training staff will present a report on the matters dealt with and if determined useful, make a presentation at a special session with other staff.

Training was provided for two Officers during the period under review.

Mrs. Tima Leavai attended training in “*Competition Policy & Regulatory Privatization issues in Telecommunications*”. Training was held at the United States Telecommunications Training Institute (USTTI) in Washington DC and conducted over the period 16th -26th July 2008.

Mr. Faafetai Ah Kuoi attended training in “*Broadband and Mobile Television & The Wireless Revolution in Broadband*” also at the United States Telecommunications Training Institute (USTTI) during the period 14th – 27th August 2008.

The Office is now focussing on upgrading the interaction with the public through an improved website and making its process of public consultation more interactive and consumer friendly. Priority is being given to the use of information technology to improve internal processes of information management and improving the productivity of staff.

In charting its future and providing both the vision and metrics for the future development of the sector the Office of the Regulator will be developing its Corporate Plan early in 2010.

2.3 Staffing

The approved organizational structure of the Office of the Regulator is reflected in Fig 2.1 below.

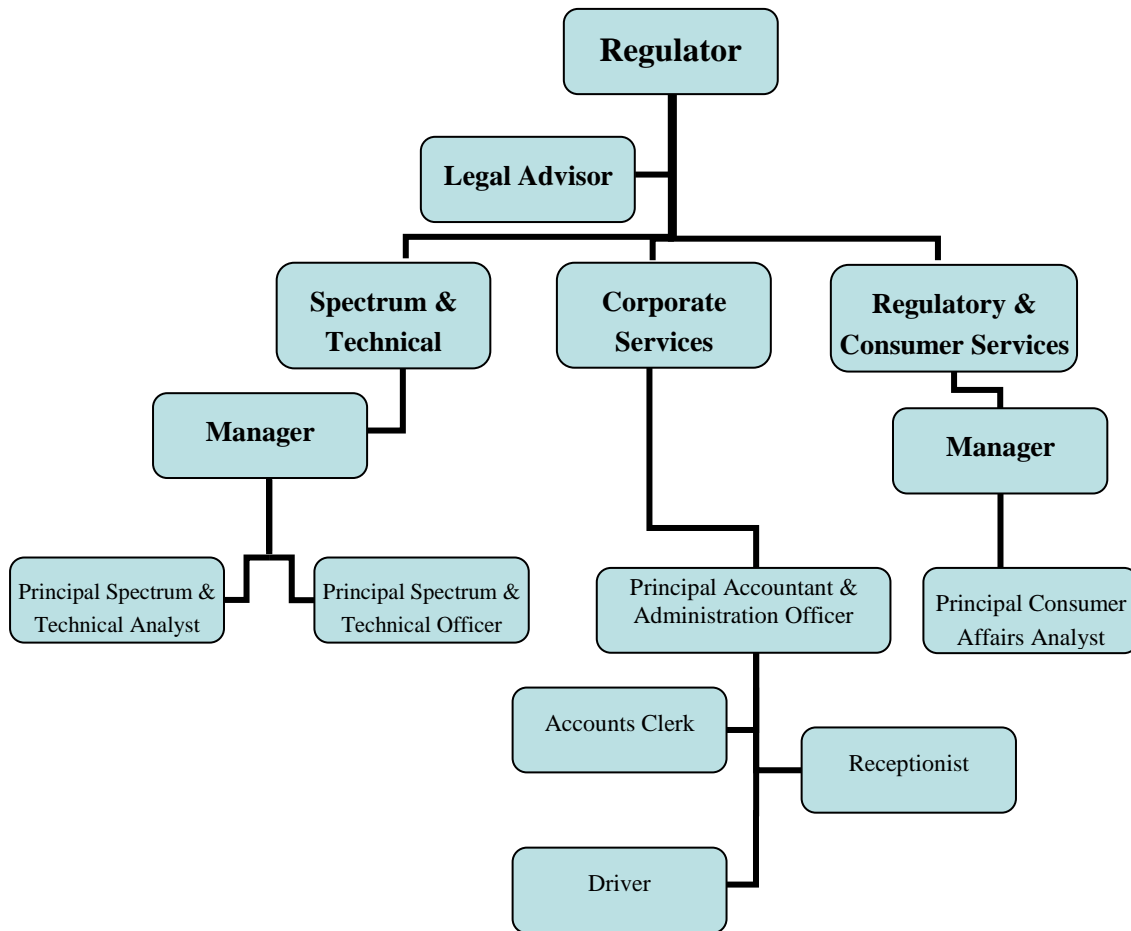


Fig 2.1 Staffing of the Office of the Regulator

This structure will be reviewed to show four divisions to be headed by Divisional Managers with the fourth division being the Legal Services. The Legal Advisor title will be changed to Legal Counsel and shown at the same level of the other Managers heading the Legal Division. This change is expected to be effected in the 2009 -2010 year.

The staffing complement is eleven (11);

- i) The Regulator (1)
- ii) Legal Services (1) [Legal Advisor];
- iii) Corporate Services (4) [Principal Accountant and Administration Officer, Accounts Clerk, Receptionist/Office Assistant, Driver];

- iv) Spectrum and Technical Services (3) [Manager, Principal Spectrum and Technical Analyst, Principal and Technical Officer];
- v) Regulatory Services (2) [Manager, Principal Regulatory and Consumer Affairs Analyst]

2.4 Technical assistance

The Office benefited from the Services of Network Strategies Limited who were contracted by the Government of Samoa to provide interim regulatory services. Ms. Michele Marius of Network Strategies was appointed to the position of Interim Regulator with effect from 30th June 2008 for a period of three months.

3. Legal Framework

The legal landscape for the telecommunications sector in Samoa has been a very active one. There have been legal challenges with SamoaTel appealing against the Orders 2008/03 and 2009/01 of the Regulator. The Telecommunications tribunal was convened and ruled in favour of SamoaTel on the issue which resulted in Digicel filing a judicial application with the Supreme Court against the Tribunal's decision.

Significant progress was made in preparing and issuing new licenses and similarly several Rules and Orders.

The event of the period prompted a review of the Act and is scheduled to be completed early in the New Year.

3.1 Legal Challenges

SamoaTel Appeal against Orders 2008/03 & 2009/01

Subsequent to the enactment of the Telecommunications Amendment Act 2008, the Office of the Regulator faced its first challenge in the newly established Telecommunications Tribunal ('Tribunal'). In October 2008, SamoaTel Limited filed an appeal against Order of the Regulator No. 2008/03 establishing interim interconnection rates between the providers due to expire on 31 March 2009. Certain delays in the organizing of the Tribunal led to the matter been postponed to the following year, with a potential hearing to be set after March 2009. As a consequence of the appeal being set for a hearing date after 31 March 2009, the Regulator issued another Order No. 2009/01 to establishing interconnection rates to apply from 1 April 2009 to 30 June 2009. Upon the issuance of Order 2009/01, SamoaTel filed a second Notice of Appeal against Order No. 2009/01 and upon an application by SamoaTel, the Tribunal consolidated the appeals into one.

The Tribunal consisted of His Honour Chief Justice Patu Falefatu Sapolu, Mr. Kester Gordon and Mr. John Hayden. The hearing was held from 13 to 15 of May 2009.

In a decision dated 22 May 2009, the Tribunal allowed SamoaTel's appeal and Orders 2008/03 and 2009/01 were referred back to the Regulator for reconsideration of interconnection rates to apply from the period of 1 October 2008 to 30 June 2009.

Digicel has now filed a judicial review application which is set for hearing in the latter part of this year – October 2009.

3.2 Licensing

Prior to the freeing up of the telecommunications market, the incumbent SamoaTel operated under a general Deed of Licence which gave it exclusivity in relation to international gateway services and fixed network services. In addition, although the introduction of competition saw the entrance of Digicel (Samoa) Limited as a mobile service provider, the market was still restricted in terms of who could provide what services. There is a government objective that on 1 July 2009, the telecommunications market will be liberalized and as the regulatory body, the Office of the Regulator is charged with the responsibility of ensuring that proper authorizations in terms of licences are in place for telecommunications services especially now that liberalisation is imminent.

During the past year the Office of the Regulator has been involved in a number of consultations regarding the creation of licences for particular services. These consultations included the following –

- a. International Gateway Licences
- b. Submarine Cable Licence

As at the date of this report, the Office of the Regulator has issued such licences as are specified in Annexure A.

3.3 Rules and Orders

The following Orders were issued in the past year –

- | | | |
|-------------------|---|---|
| Order No. 2008/01 | - | Approval of SamoaTel's Retail Rates |
| Order No. 2008/02 | - | Approval of Changes to SamoaTel's Retail Pricing Structure |
| Order No. 2008/03 | - | Establishment of Interim Interconnection Rates applicable to Digicel (Samoa) Limited and SamoaTel |
| Order 2009/01 | - | Establishment of Interim Interconnection Rates applicable to Digicel (Samoa) Limited and SamoaTel |

Reconsideration of Rates as consequence of Tribunal Decision

As a result of the Tribunal decision, the Office of the Regulator has instigated the process of reconsidering the interconnection rates to apply from October 2008 to June

2009. The Regulator has started consultation with the relevant parties in relation to the process to be adopted in terms of consultation and the establishment of an appropriate timeframe in which the parties must submit comments to the Regulator on the particular issues related to the rates to apply for this specific period. The Regulator will upon the completion of this process issue the appropriate Order(s) which will in accordance with the Tribunal's decision include lower interconnection rates applicable for the specified period.

Cost Study for the establishment of Long Term Interconnection Rates

The Office of the Regulator is currently conducting a cost study whereby long-term cost-based interconnection rates will be established and the Regulator will issue the appropriate Order specifying these interconnection rates once the cost study is completed. It is expected that the cost study will be completed within the first quarter of the next financial year.

3.4 Review of the Act

Telecommunications Act 2010 – Proposed Amendments

Further to amendments made in 2008 via the enactment of the Telecommunications Amendment Act 2008, the Office of the Regulator is currently reviewing the Act to ensure that all changes which have occurred within the sector are addressed in the Act. Once this review is completed, the Office of the Regulator will be submitting to the Office of the Attorney General a list of proposed amendments which it hopes will be enacted as soon as practicable taking into account the availability of resources at the Office of the Attorney General to address the proposals and prepare them for Parliament and the schedule of parliamentary sittings in the next financial year. The proposed amendments are likely to include the following -

- a. Establishment of the Office of the Regulator as an Independent Body
- b. All typographical corrections currently included in the Act
- c. Clarification of the powers of the Regulator under section 8

4. Spectrum & Technical Division

The Spectrum and Technical Division has seen increased activity and the focus has been on regularizing all existing licensed operators, conduct of resource audit and ensuring interference free operation. A number of new licences were issued, a review of the spectrum allocation and assignment process ongoing and particular emphasis on providing new clean spectrum for new applications and innovation in the sector.

Regular and scheduled monitoring of the electromagnetic-spectrum is now the norm and the recommendations of the policy guidelines for television frequency assignment have been employed.

Numbering and equipment type approval have been receiving attention with an audit of the former conducted and the standardization of the type approval process completed.

Ensuring of clean spectrum, free from harmful interference remains however the centre piece of all activity in this division.

4.1 Radio Spectrum Licences

The period of 1st of July 2008 to 31st of June 2009 sees the continuation of the issuing of Licenses according to conditions set by the Regulator within the licenses themselves. During financial year 2008/2009, 42 licenses were approved by the regulator and issued to the users with the intention that they will comply with their license conditions. The following **Table 4.1** describes how the licenses were distributed.

Type of License	Period		Total Number of License
	Jul – Dec 08	Jan – Jun 09	
Amateur Radio	10	3	13
Broadcasting FM	0	2	2
Fixed Link & GSM	3	2	5
Land Mobile & Base	1	6	7
Ship Radio License	1	5	6
Satellite Earth Station	1	1	2

Broadcasting TV	2	0	2
Aircraft Radio License	4	1	5
Total			42

Table 4.1: Distribution of Radio Spectrum License by operations as at June 2009

4.2 Spectrum Management

Spectrum as we know, the vital and useful national resource is used by the Office of the Regulator to manage, maintain and control any kind of broadcasting, mobile networks, radio based networks, microwave links, satellite transmission and other services. Effective spectrum allocations and management ensures that all services in Samoa requiring radio spectrum work efficiently. Hence the Office of the Regulator during this period with the help of a consultant from ITU has been reviewing the Spectrum Management Plan with the intention that it will be officially launched in the next financial year. This process will include consultations with stakeholders. This consultation process will use to solicit stakeholders views on the current practice of spectrum management and the scope to make further improvements to this in the interest of the Samoa Telecommunication community as a whole. The views from the consultation will use by the office of the Regulator to develop national spectrum policies and regulations and review technical standards and type approvals.

4.2.1 Frequency Allocation

Since the last annual report, the Technical Division of the Office of the Regulator is reviewing the allocation of frequencies for different users in Samoa. Allocating of these frequencies is based on the current spectrum use and assignment and forecasting of future spectrum use. In 2008/2009 we focused on creating a baseline for the current allocation, assignment and use in Samoa. There were amended made to the spectrum allocation and assignment tables in order to develop a more detail Samoa National Frequency Allocation Table. This information will be within the framework of the International Telecommunication Union’s Radio Regulations and the requirement of the Telecommunications Act 2005. In addition, we will be defining the new policy, processes and procedures to be followed to improve spectrum efficiency.

4.2.2 Spectrum Monitoring

With the growing demand for radio spectrum in Samoa, spectrum management is becoming one of the most important functions of the Office of the Regulator.

Spectrum management requires special considerations to ensure high quality of service and efficient use of radio spectrum in Samoa. One of the essential tools of spectrum management is spectrum monitoring, with the presence of the Integrated Spectrum Monitoring System, the Technical and Spectrum Division is in a good position to monitor and continue on with the monitoring activities both in Upolu and Savaii. This monitoring process is vital to ensuring the complete compliance in the part of services providers and radio communication services to their licenses terms and conditions, but also to investigate complaints of radio frequency interference.

4.2.3 Television Frequency Assignment Policy

The Office of the Regulator has used findings and recommendations from the document titled *Policy Guidelines: Assignment of TV Frequencies in Samoa* presented in the last financial year report to improve its frequency allocations. The impetus for this assignment is due to the fact that there is a huge demand on the use of VHF band. This is because VHF¹ transmission produces a greater coverage provided by a single transmitter when compared to UHF Transmission. The fact that providers requesting VHF channels are also free to air channels and it needs to provide nation-wide coverage if consumers in many rural areas are to have a choice of programming to watch. Consideration was also given to minimizing inter-network interference problems between networks. The Office of the Regulator has since issued VHF frequencies to TV3 as part of its efforts to improve their national coverage. These frequencies are shared by other television broadcasting services.

4.3 Numbering

During financial year 2008/2009 allocations of new numbers to service providers were done. With the liberalization of the telecommunication market, growth in the number of subscribers and the demand from service providers for the using of new numbers has increased rapidly. It is the responsibility of the Office of the Regulator to allocate reserve, assign, and monitor numbers and codes used by service providers. Currently numbers are allocated to SamoaTel and Digicel who are the only operators providing that public service. The Office of the Regulator will conduct an Audit of all Numbers and Codes used in Samoa for the purpose of improving that service. The information obtained from that assignment will then be use to create an update the

¹ VHF – Very High Frequency ; UHF – Ultra High Frequency

Samoa National Numbering Plan and will be published on the Office of the Regulator website and ITU website.

4.4 Telecommunication Equipment

The Office of the Regulator has been type approving all telecommunications devices intended for use in Samoa. Type approval process involves assessing the device/equipment if it is compliance with the Australia and New Zealand Standards and/or if they are ETSI² and FCC compliance. At the moment we are using the Australian and New Zealand standards as the base standards for all devices to be use in Samoa. It is in the work plan of the Office of the Regulator to establish standards and is intended to launch it in the next financial year. As at 30th June 2009, 22 devices have been type approved, a listing of which is provided in **Table 4.2**

Manufacture	Product Description	Model Identifier	Approval
Blackberry	Wireless Smartphone	9000	10 July 2008
Panasonic	Laptop Personal Computer	CF - 52	15 August 2008
Blackberry	Wireless Smartphone	8220	14 October 2008
Blackberry	Wireless Smartphone	8900	13 November 2008
Blackberry	Wireless Smartphone	9500	04 January 2009
Panasonic	Laptop Personal Computer	CF – 19 Class B	12 March 2009
Nokia	GSM Modem	CS - 10	15 May 2009
Blackberry	Wireless Smartphone	8520	10 June 2009

Table 4.2: Equipment Type Approved as at 30 June 2009

² ETSI – European Telecommunication Standards Institute; FCC – Federal Communications Commission (USA)

4.5 Harmful Interference

During financial year 2008/2009, only one complains received by the office of the Regulator. It is regarding harmful interference at the transmission site of Mt Lepiu-tai in Savaii.

The issue was raised by TV1 through a letter informing the Regulator of the problem. The interference was monitored using the IMS System, and the following findings were found;

1. the existence of another VHF television signal in the proximity of TV1's operations and;
2. the crossing of signal paths have been detected.

The setback was believed to be that both systems experiencing the problem of having adjacent channels. This problem was the result of having two channels with close frequencies and with different power levels. The strongest signal was captured by the receiver while the weak signal is not. TV1 was transmitting in 20 watts who have the disadvantage over TV3 having been transmitting is 100 watts. The office of the regulator have been trying all possible solutions to solve the issue, including suggesting installation of band pass filters, relocation and alteration of antennae, TV1 to use a UHF link instead of VHF. Since both broadcasters didn't agree with the Office of the Regulators initial recommendation for above solutions, the Regulator through the advice from the technical staff issued another frequency to TV3 to replace the temporary frequency initially issued to them which have since solved the problem.

5. Regulatory and Consumer Affairs

The Regulatory and Consumer Affairs Division came into effect following the appointment of a Principal Consumer Affairs Analyst in November 2008. The division is responsible, inter alia, for regulatory and consumer functions including the establishment of operational procedures and guidelines for complaints and disputes, provide advice on regulatory issues, monitor for anti-competitive activities and compliance with license conditions, and the development of universal access policy.

5.1 Outstanding Regulatory Issues

During the period under review, the Office of the Regulator had a number of outstanding regulatory issues requiring resolution, many of which were able to be resolved during the reported period, and the rest pending more information for further investigation, and likely to be completed in the next financial year.

5.2 Interconnection

The most critical regulatory issue facing the Regulator over the period is without doubt the setting of interconnection rates. The history of setting interconnection rates in Samoa has been plagued with problems, legal challenges and setbacks.

The previous Regulator John Morgan, in response to failed negotiations between the existing service providers imposed through the Order 2006/4 among other things a mobile termination rate of 25 sene per minute for off-peak traffic and 45 sene per minute for peak hour traffic. Effective 31st October 2006 the Order increased the existing incoming mobile termination rate from 10 sene per minute to 35 sene per minute. This was done with the expectation that these rates would be until a cost based study could be completed and final cost based rates be implemented. The then projected time frame was a further six months.

In an effort to establish a basis for the setting of appropriate rates, the Regulator had commissioned a consulting firm Intercai Mondiale to do cost study on appropriate interconnection rates. On the basis of the Report of the Consultants the Regulator on 15th May 2007 issued Order 2007/04 and purported to determine cost based-interconnection charges effective from 19th May 2007 for a minimum period of 2 years. The fixed termination rate was set at 11.8 sene and the average of the domestic termination rate at 22.8 sene. The Order was appealed by Digicel and the High Court ruled that the Regulator, among other things, did not follow what is normal and

standard procedure in regulatory proceedings and as a result upheld the Digicel appeal and quashed Order 2007/04.

In June 2008, amendments to the Telecommunications Act were enacted that allowed the Regulator to set interim interconnection charges that did not necessarily have to be cost based. Subsequent this amendment in October 2008 SamoaTel Limited filed an appeal against Order of the Regulator No. 2008/03 establishing interim interconnection rates between the providers due to expire on 31 March 2009. In the interim period while awaiting the Tribunal to hear the matter the Regulator issued another Order No. 2009/01 to establishing interconnection rates to apply from 1 April 2009 to 30 June 2009. This Order was also appealed by SamoaTel asking the Tribunal to have both appeals consolidated into one. These Orders effectively set the mobile interconnection termination rates at 35 sene per minute.

The Tribunal, in decision dated 22 May 2009, allowed SamoaTel's appeal and Orders 2008/03 and 2009/01 and referred them back to the Regulator for reconsideration of interconnection rates to apply from the period of 1 October 2008 to 30 June 2009.

The Regulator, in consideration of the Tribunal Ruling then reconsidered the rates. While rates were being reconsidered, Digicel (Samoa) Ltd filed an Notice of Motion for Judicial Review in the Supreme Court with respect to the Tribunal's decision.

Clearly the recent history indicates that parties were bent on ensuring that the interconnection rates were set at levels favourable to their operations and were willing to go to Court to achieve that objective. Digicel as a nett recipient of mobile interconnection payments argued for higher rates compared to the nett out payer SamoaTel who presented arguments for lower rates.

The Regulator, in an effort to avoid previous errors and to establish a basis for setting appropriate interconnection charges had instituted a consultative process for the setting of rates that included contracting a new firm to do a long term incremental cost study on termination rates in Samoa. This process is ongoing and is expected to be completed in early 2010.

5.3 Tariffs and Prices

During the reported period, SamoaTel implemented slight changes to retail prices for local calls, whilst Digicel indicated no changes in its retail prices. Table 5.1 presents comparison of fixed-line telecommunications prices offered by SamoaTel over the 2008/2009 financial year.

Destination	2008 Price per minute ³		2009 Price per minute ⁴	
	Peak	Off-peak	Peak	Off-peak
Local calls	\$0.04	\$0.04	\$0.05	\$0.05
National calls	\$0.18	\$0.18	\$0.18	\$0.18
To SamoaTel GoMobile	\$0.37	\$0.37	\$0.37	\$0.37
To Digicel Mobile	\$0.67	\$0.67	\$0.67	\$0.67

Table 5.1: Changes in retail prices for fixed-line services offered by SamoaTel during the 2008/2009 financial year.

Within the period under review, retail prices for Digicel remained unchanged from the previous reported period as depicted in Table 5.2.

Calling plans	2008 Price per minute ⁵		2009 Price per minute ⁶	
	Peak	Off-peak	Peak	Off-peak
<i>Classic Flex</i>				
Digicel to Digicel	\$0.70	\$0.25	\$0.70	\$0.25
Digicel to Go Mobile & Fixed-lines	\$0.70	\$0.25	\$0.70	\$0.25
<i>Anytime Flex</i>				
Digicel to Digicel	\$0.45	\$0.45	\$0.45	\$0.45
Digicel to Go Mobile & Fixed-lines	\$0.45	\$0.45	\$0.45	\$0.45
<i>DigiTXTR Flex</i>				
Digicel to Digicel	\$0.70	\$0.70	\$0.70	\$0.70
Digicel to Fixed-lines	\$0.70	\$0.70	\$0.70	\$0.70

Table 5.2: Retail prices for pre-paid mobile/cellular services offered by Digicel during the 2008/2009 financial year.

5.4 Universal Access

³ Prices as at 1 July 2008. Prices are in WST and exclude VAGST.

⁴ Prices as at 30 June 2009. Prices are in WST and exclude VAGST.

⁵ Prices as at 1 July 2008. Prices are in WST and exclude VAGST.

⁶ Prices as at 30 June 2009. Prices are in WST and exclude VAGST.

As reported in the previous financial year, although the current telecommunication legislation has included provisions to allow for the introduction of Universal Access, the required systems and structures have not yet been implemented.

5.4.1 Universal Access Policy

A number of activities were intended for implementation during the reported period, as follow-on from the last previous period including workshops for Savaii and Upolu to secure updated input towards the preparation of the Universal Access Policy; as well as the revision of the consultation paper titled '*Universal Access to Telecommunications Services*' proposing options for improving access to telecommunications services and considerations towards implementing Universal Access in Samoa.

It is expected these will now be completed in the next financial year.

5.4.2 Universal Access Fund

As reported in the previous period, subject to the development of a Universal Access Policy, the office of the Regulator continues to defer the establishment of the Fund, until the next financial year.

5.5 Consumer Complaints

Within the last two quarters of the reported period, the Office of the Regulator received four (4) complaints from the public on a number of issues including billing by service providers for internet traffic and international calls and interference between providers of telecommunication services. The Office of the Regulator is expected to resolve them over the next reporting period.

6. Financial Review

This is the second year that the Office has managed its own accounts having moved from the Ministry of Communications and Information Technology handling all financial transactions on behalf of the organisation in July 2007.

The Office also focussed on the report of the external financial audit and addressing the identified shortcomings.

The Government approved a budget of WST\$1,695,134 for the Office for the period July 2008 to June 2009. As at June 2009, the Office had recorded revenue in the amount of WST\$4,117,199 and had incurred expenses of WST\$3,641,776. It therefore realised a net income of WST\$475,423.

A total amount of WST\$1,886,516 relating to revenue collected has been transferred to the Government's accounts for the year and 67% of this amount relates to the previous financial year.

6.1 Revenue

The key sources of revenue for the Office continue to be telecommunications licence and radio spectrum fees, accounting for 53.66% and 8.09% respectively. This is in addition to government grants received during the year amounting to 38.02% of total revenue. The balance is represented by application fees.

6.1.1 Telecommunications Licence Fees

The total amount invoiced as telecommunications licence fees for the year ended June 2009 was WST\$2,209,366. It comprises the fees payable by licensed telecommunications services providers, in accordance with the Telecommunications Licence Fee Regulations 2007.

As at the end of the reporting period, there was WST\$1,610,256 outstanding; however, about 74% of this amount was generated towards the end of June 2009, and the Office will be following up to ensure compliance.

6.1.2 Radio Spectrum Fees

The total amount invoiced as radio spectrum fees for the year was WST\$333,267. It comprises the fees payable by licensed radio spectrum users, in accordance with the Radio Spectrum Fee Regulations 2007.

As at the end of the reporting period, there was WST\$314,075 outstanding as radio spectrum fees, based on 55 unsettled invoices for the current financial year. However, note should be made that the bulk of the outstanding amounts totalling 90% of those invoices were generated just prior to the end of the financial year. In addition, a total of \$153,185 is also outstanding at 30 June 2009 for spectrum licence fees but relate to the prior financial year.

The issue of outstanding licence fees for Land Mobile Operators as at June 2009 relating to the prior financial year needs to be reconsidered and the Office proposes to:

- i) give a moratorium period for bad debtors;
- ii) declare these outstanding fees as bad debt and remove from the books of the Office of the Regulator;
- iii) nullify all the relevant licences;
- iv) Reissue new licences on payment of licence and spectrum fees.

6.2 Expenditure

In the 2008/2009 financial year, 51.8% of the total expenses of the Office represented income collected and transferred to Government.

In addition, the spending of Office's expenses was primarily limited to operating expenses.

As reflected in 6.1, approximately 20% of the organisation's expenses for the year comprised salaries, wages and allowance for staff members, and depreciation of assets.

During the year, consultancy fees totalled 19% of the organisation's expenses. This included the contract between the Government of Samoa and Network Strategies Limited to provide interim regulatory services for the period 30 June to 30 December 2008; and consultant work carried out by SBR Juconomy Consulting AG to establish Interconnection cost models for Samoa.

Also during the year, legal fees were incurred from the two appeals against the Office of the Regulator throughout the year.

The segment labelled "Other", which accounted for approximately 2% of the total expenditure; include payments towards advertising, audit fees, loss on disposal of fixed assets, bank charges, subscription to publications and other miscellaneous operating expenses.

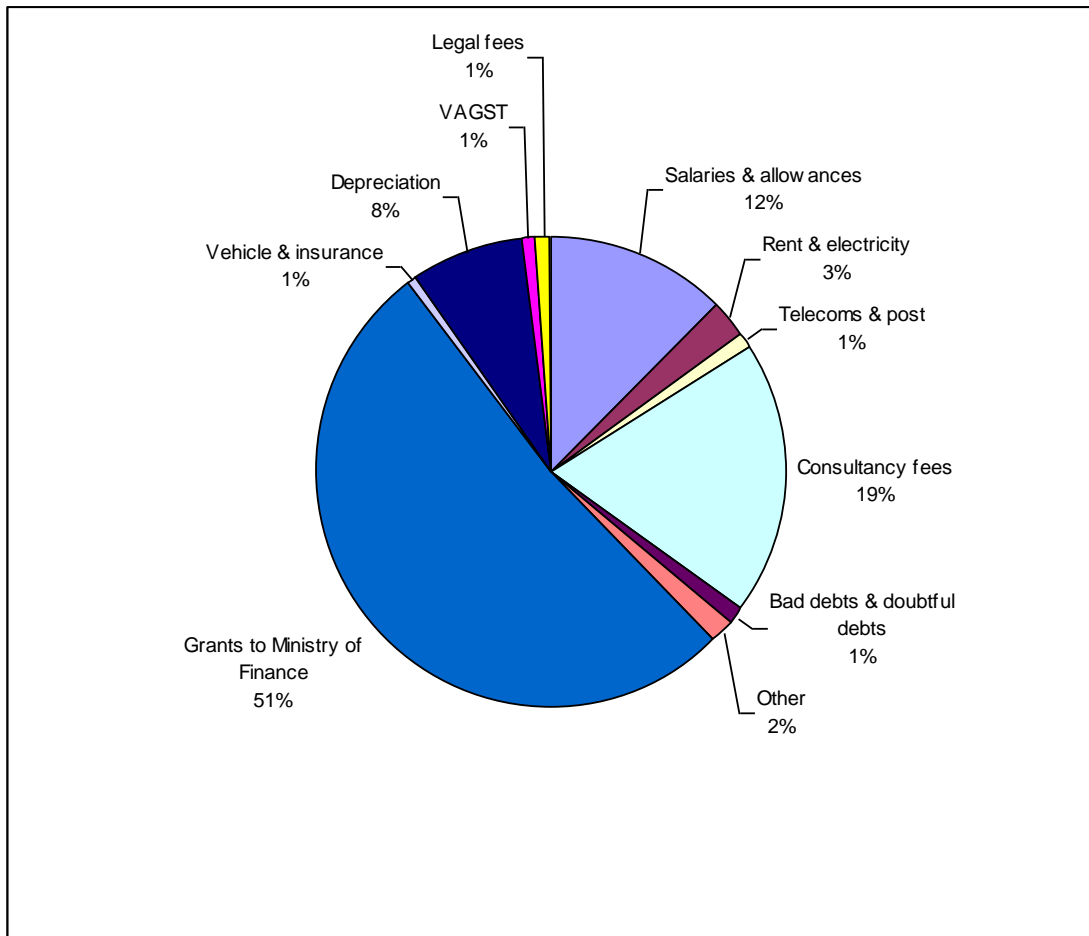


Figure 6.1: **Distribution of expenses for the year ended 30 June 2009.**

6.3 Financial Audit Reports

The report of the Audit Office, Government of Samoa, has been supplied as Appendix C of this report. Note should be made that as at 30 June 2009 the audit exercise did not include examination of financial statements and accounts in respect of the Universal Access Fund, as the fund has not yet been established.

7. Proposals for the Financial Year 2009-2010

The proposals for the upcoming financial year are predicated on the basis of the present development of the sector, the challenges presented and the Office of The Regulator plans to address the same.

The major challenge of the Office of the Regulator is developing in house capacity and ensuring institutional capacity that would ensure continuity of operation into the future. The present Regulator is on a three year contract and would need to institute processes that would ensure smooth transfer of power and operation on his expected departure in 2012.

The plan to ensure the above will be a multi faceted one that would focus on capacity building and institutional strengthening. It will have the following facets:

- i) Developing a strategy to ensure fully trained persons are available to assume the role of Regulator post 2012;
- ii) Preparing a Corporate Plan that will provide the vision and strategic approach to be adopted by the Office of the Regulator in fulfilling its role as an independent entity regulating the ordered development of the sector. It will detail the expected challenges and approaches to be followed by the Regulator;
- iii) Focussing on establishing the Regulator as an independent entity and removing all perceptions of potential conflict with any regulated body;
- iv) Reviewing and revising the Telecommunications Act and attendant Regulations, Rules and Orders to ensure that they reflect international best practice and are well suited to Samoa;
- v) Improving the regulatory framework with the view of providing a facilitating environment for the sustained development of the sector; and
- vi) Focussing on disaster mitigation and ensuring that the effects of natural & man made events are minimized.

7.1 Capacity Building and Institutional Strengthening

Capacity building and institution strengthening will be the focus of the upcoming period. All available opportunities for training of staff will be analysed and exposure to staff guaranteed. The criteria for selecting training for staff will be three fold:

- i) The training must be relevant to the work of the officer selected for training. This could be his/her present job

description or the job description of a post for which they are being trained for;

- ii) It must not be repeat training, i.e training that the particular officer has already received;
- iii) The training must be shown to have a positive cost benefit value to the Office of the Regulator.

In keeping with the cost benefit focus the Office will be scheduling several training sessions to be held locally and facilitated by international experts. This would maximize the impact of the training exposing a much larger number of “Samoa” participants while providing for cost savings. Training sessions to be held in Samoa will be scheduled for:

- Mediation training;
- Spectrum Management;
- Numbering;
- Cost Modelling of Telecommunications Networks; and
- Telecommunications Disaster Management Plan development.

The Office of the Regulator will be providing training at the Public Utilities Regulatory Commission (PURC) in Florida USA for the three Managers as well as accessing training at other Regional and International facilities.

Working attachments for staff in Australia and New Zealand are also being negotiated to allow staff to gain the international experience of working in similar environments.

The availability of training from the International Telecommunications Union (ITU) with the training fully funded will be exploited when opportunity present always with the three pronged criteria established above.

7.2 Corporate Plan

The Office of the Regulator considers the development of its Corporate Plan a priority and will spare no effort in ensuring that the Plan is done in a manner and form befitting the highest levels of quality.

The Plan will be developed early 2010 and will guide the preparation of the 2010/11 work plan and budget for the Office of The Regulator.

7.3 Independence of the Regulator

The process for the establishment of the Office of the Regulator as an independent entity is well in progress and in the upcoming year the Office will be following up to ensure that the expressed desire of Cabinet is enacted through the passage in parliament and necessary amendment to the Telecommunications Act.

7.4 Amendments to the Telecommunications Act

Several amendments would be required to the Telecommunications Act, the Act would be revised and consultation conducted on the major proposed revisions.

Several issues already identified are:

- i) All typographical corrections currently included in the Act
- ii) Clarification of the powers of the Regulator under section 8
- iii) Sections 71 and 72 of the Act regarding resolution of complaints and disputes
- iv) Time Limits to be imposed on applications for judicial review

7.5 Improvement of Regulatory Framework

The proposed institutional strengthening and capacity building in the Office of the Regulator along with the proposed amendments to the Act are all part of the effort of improving the regulatory framework.

The Office of the Regulator will also be focussing on improvements in the consultative process to make it more meaningful and productive as a major tool for regulation in Samoa.

There will also be a review of all necessary Regulations, Orders and Procedures that need to be implemented and an appropriate schedule prepared.

The Regulations for Spectrum management and Numbering have been singled out for special attention.

The emphasis will be in creating a facilitating process and avoiding unnecessary bureaucratic hurdles. The update and use of the website as the first place for interaction with the public will be pursued.

7.6 National Emergency Telecommunication Plan (NETP)

The Office of the Regulator has recognized the need for having a National Emergency Telecommunication Plan for Samoa. There is an urgent need for immediate and adequate actions to adapt to climate change before its impacts become unmanageable. Samoa is not immune to disasters, natural or otherwise, hence the need for the implementation of its emergency plan. The NETP is on the pipeline and the intention

is for it to be addressed in the next financial year. This NETP will be designed to meet the needs and its goals for: mitigation; preparedness; response and recovery efforts, it will be use as a tool to make it easier to organize the emergency response and the telecommunication utilization before, during and after natural disasters.

The plan will also outline alternative roles for personnel working in emergency situations, including the reporting structure, this will include the key players who will act immediately and coherently to achieve the requirements of the National Emergency Plan.