



Office of the Regulator

Annual Report

for the period ended 30 June 2010

Executive Summary

The Annual Report for the Office of the Regulator for the period ending June 2010 reflects a period of intense activity.

Its **Corporate Services Division** has distinguished itself by reorganizing and restructuring to ensure that the key divisions; Corporate, Legal, Technical and Regulatory have clearly defined responsibilities while functioning as a coherent team.

The organization was significantly strengthened with the appointments of three new divisional Managers, the appointment of the Accounts Clerk and a Receptionist/Office assistant. The position of Principal Consumer Affairs Analyst became vacant due to resignation.

Focus was on institutional strengthening and all officers received continuous training in ensuring they were adequately equipped to carry out their duties. Training involved the attendance at specialized workshops as well as overseas attachments.

The OOTR now expects to focus improving its interaction with the public through its web site and other usage of the communications media.

Key in its preparation would be the development of its Corporate Plan in the upcoming year.

There has been emphasis on preparing the **Legal Framework** and this has been well served with the acquisition of in house Legal Counsel.

Legal challenges in the period include Digicel (Samoa) lodging the first ever judicial review application against a decision of the Telecommunications Tribunal and appeal against subsequent orders of the Regulator.

Licensing has been improved significantly with several consultations on licence templates to facilitate entry into the market. These licences include Submarine Cable, International Gateway and Fixed Services.

Rules and Orders issued in the period addressed replacement Interconnection Charges, directions to Interconnect and reconsidered interconnection charges.

The Telecommunications Act now with five years of experience will be further improved with amendments. The proposed amendments include addressing the typographical errors, the definition of Telecommunications services, clarification of the powers of the Regulator, clarification of the process for appeals of Orders of the Regulator and strengthening the operations of the Tribunal.

The Spectrum and Technical Division underwent a process of audit of the use of the spectrum with the view to regularizing its spectrum management functions and instilling discipline in the sector.

The operations of all users of the spectrum have now been regularized and operators are now properly licensed with new policies in practice. Key policies developed are a new Spectrum Management Policy and a National Emergency Telecommunications Plan.

Regular and scheduled monitoring is now the practice with the new policy for television frequency assignment serving as guidelines in the conduct of the spectrum scans. Clean spectrum, free from harmful interference is the goal of the division.

The Numbering audit now completed will assist in the formulation of an improved Numbering Plan for Samoa.

Some forty three (43) new licences were issued during the period and the number of radio frequency licences issued, is expected to grow.

The Technical Division has, in developing the Spectrum Management Policy, ensured the implementation of the plan to guarantee clean spectrum and clear guidelines for the assignment of frequencies. The allocation of frequencies will now reflect the present demands while taking into account possible future demands like that for 4G spectrum.

Special attention has been placed on the issue relating to the operations of Radio and Television Broadcast Stations to improve the delivery of this service to Samoa. The new *Policy Guidelines: Assignment of TV Frequencies in Samoa* presented in the 2007/2008 financial year report has gone a long way in improving service and with the possible inclusion of Broadcasting as part of the mandate of the OOTR other licensing aspects will be addressed in the upcoming period.

The tsunami that hit the southern part of Upolu Island on September 29th 2009 served as a wake up call and precipitated the OOTR in accelerating its plans to develop a **National Emergency Telecommunications Plan**. The Plan addresses the failures in proper communication experienced in recent disasters and through extensive consultation is representative of international best practice for such plans. The plan implementation would require the cooperation of Ministries and relief agencies but is an important step in strengthening our disaster mitigation capabilities.

Recognizing that the present monitoring equipment has shortcomings and is nearing its expected useful life the OOTR has instituted arrangements for maintenance of the present equipment and acquiring additional supplemental equipment.

Resolution of harmful interference has been a critical aspect of the operations of the technical division. Interference at the key transmission sites, specifically Mt. Fiamoe in Upolu, has been a major concern especially when it involves safety to life. These have been resolved and measures put in place to avoid recurrence. The main

transmission sites will be reorganized and emphasis placed on infrastructure sharing to make the use of the transmission towers more effective and efficient.

The Regulatory Division capacity was strengthened with the filling of the post of manager but suffered with the resignation of the senior technical officer. The division had as priority the clearing of all the outstanding regulatory matters before the regulator, this included matters dating back before the liberalization of the sector.

The focus in the period was on establishing procedures and guidelines for complaints handling and the development of policy for universal access to telecommunications services.

One of the successes of the division was in the establishment of cost based rates for interconnection with the finalization of a study for cost based rates and subsequent Order establishing cost based charges for termination services. There is now need to ensure that the benefits of reduced rates are passed on to the consumers with more cost oriented rates.

The **Universal Access Policy** has been consulted on and forwarded to the Minister for approval. The implementation issues will now be a priority in the upcoming period.

The development of a Competition Policy for the sector and consultation on the issue will be held in the next financial year.

The Financial Review of the OOTR shows healthy performance with a government approved budget of \$1,370,000 and projected revenue of \$2,181,000. Actual revenue for the period was \$2,599,197 including grants received from government per approved budget totalling \$1,369,999 and actual expenditure of \$3,566,464 which includes licence fees collected and transferred to government totalling \$2,026,096. The OOTR therefore realised a net loss of (\$967,267) but this was mainly due the high collections transferred to government compared to grants received from government for its operations.

The Proposals for the Financial Year 2010-2011 has the focus on institutional strengthening, building capacity and safeguarding institutional memory. The key proposals are:

- i) **The Corporate Division** will be developing its Strategic Plan, Corporate Plan with an implementation plan that gives a road map with necessary resources identified. Office relocation and inclusion of Postal and Broadcasting as part of the OOTR mandate will be priorities.

Training and ensuring continuity of operations to prepare for the pending departure of the current Regulator will form an integral part of the work plan.

- ii) The **Legal Framework** will be enhanced through improvements to the Telecommunications Act and promulgation of new regulations. Competition and interconnection Regulations will be developed and the Radio Regulations enhanced. Alternative dispute resolution will be given prominence in the work plan.
- iii) The **Technical Division** will be finalizing the new Spectrum management policy and implementing a new Spectrum management Plan with special focus on the spectrum allocation table and the associated fees. The use of the 700 MHZ spectrum and possible introduction of new fourth generation (4G) technologies will be given priority.

Implementation of the National Emergency Telecommunications Plan is one of the key aspects of the technical department along with new plans and policies for Spectrum, Numbering and infrastructure sharing.

- iv) The **Regulatory Division** will focus on finalizing a Policy for Competition in the Sector reviewing the relevant market definitions, dominance and anti-competitive issues.

The implementation of the Universal Access Policy and management of disputes will be included in the work plan along with development of processes for approval and review of tariffs.

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1 Introduction

The period July 2009 to June 2010 has been a period marked with intensive activity by the OOTR as it seeks to grapple with the various challenges presented under its mandate while attending to several long outstanding regulatory matters.

This Annual Report is presented in seven sections, including this introduction, reflecting the internal organization and structure of the Office of the Regulator and supplemented with appendices.

The section on **Corporate Services** addresses the supporting activities that ensure the effective and efficient functioning of the OOTR. The staffing issues, organizational structure and Institutional Strengthening of the organization are highlighted.

The **Legal Framework** reports on the legal challenges faced, licensing issues, rules and orders issued by the Regulator and identifies the need to amend the Telecommunications' Act.

Spectrum and Technical Division provides an update on the radio spectrum licences, difficulties encountered in the management of the electromagnetic spectrum and numbering. The progress in the establishment of a National Emergency Telecommunications Plan and the resolution of outstanding issues of interference are highlighted.

The Regulatory and Consumer Affairs Division updates on the outstanding regulatory issues, interconnection, tariffs and Prices. The Universal Service Policy has been completed and submitted to the Minister and processes for dealing with consumer complaints in a structured fashion completed.

The Financial Review informs the reader of the revenues from telecommunications licence and radio spectrum fees. Statements of expenditure are provided with the audited Financial Reports.

Proposals for the Financial Year 2010 to 2011 are provided highlighting major areas of expenditure and initiatives to be completed by the OOTR.

The Appendices include the Register of Telecommunications Licensees, Register of Radio Spectrum Licensees, Financial Audit Reports and television transmission coverage maps.

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.

2.1 Staffing

The staff of the Office of the Regulator was comprised of the following ten personnel as at 30th of June 2010:

The Regulator: Donnie De Freitas

Legal Counsel: Elisa Kohlhase

Manager Spectrum & Technical Services: Unutoa Auelua-Fonoti

Manager Regulatory & Consumer Services: Karen Komiti

Principal Spectrum & Technical Analyst: Tuuaga Aviata

Principal Spectrum & Technical Officer: Eteuati Eteuati

Principal Accountant & Administration Officer: Faalelei Sua

Accounts Clerk: Etenauga Tanielu

Receptionist/Office Assistant: Leleiga Karene

Driver: Pio Bell

2.1.1 Appointments

All three Divisional Manager positions were filled during the period.

Mrs. Unutoa Auelua-Fonoti was appointed to the position of Manager Spectrum and Technical Services effective on 10th August 2009. Mrs. Elisa Kohlhase and Ms. Karen Komiti were appointed to the positions of Legal Counsel and Manager Regulatory and Consumer Services respectively, both appointments effective on 17th August 2009.

With effect from 11 August 2009, Miss. Etenauga Tanielu was appointed the Accounts Clerk and Miss. Leleiga Karene was appointed Receptionist/Office Assistant effective 8 June 2010.

2.1.2 Resignation from the Position of Principal Consumer Affairs Analyst

The position of Principal Consumer Affairs Analyst was vacant at the end of the period under review due to the resignation of Mr. Faafetai Ah Kuoi to pursue other career opportunities. He demitted office on 26 March 2010. The Office of the Regulator will initiate the recruitment process for a replacement early in the next financial year

2.2 Organisational Structure

The organisational chart for the Office has been updated to reflect all current positions as at 30 June 2010. Note should be made that except for the position of Principal Consumer Affairs Analyst, all other positions are filled.

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

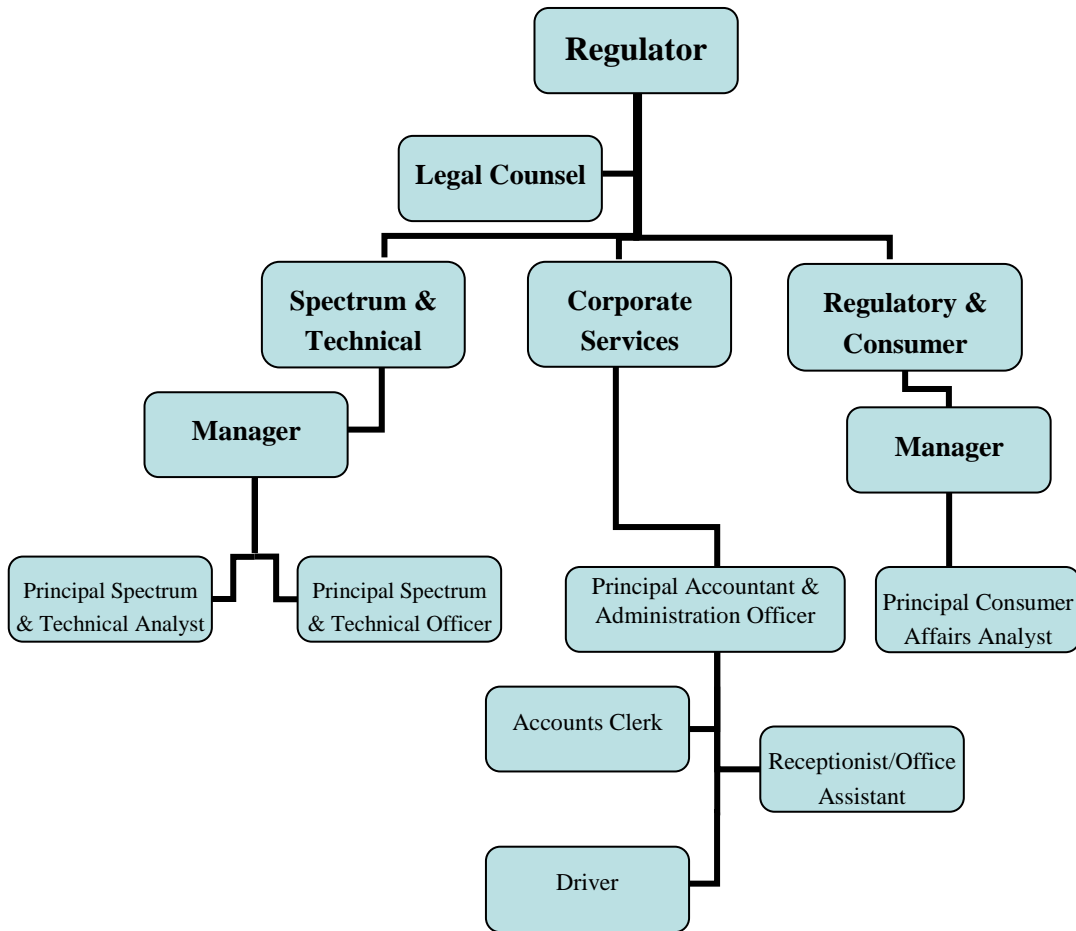


Fig 2.1 Organisational Structure of the Office of the Regulator

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 Counsel position will be shown at the same level of the other Managers heading the Legal Division. This change is expected to be effected in the 2010 -2011 year.

2.3 Institutional Strengthening and capacity building

Staff members of the Office of the Regulator attended specialised overseas training already identified for them from the previous financial year. This was to ensure that all employees are adequately equipped to carry out their duties.

Also, training for the three Divisional Managers was a priority to ensure that continuity after the contract period of the current Regulator is ended in 2012 is being guaranteed.

Training opportunities were provided through the International Telecommunications Union (“ITU”), the Telecommunications and Postal Reform Project and the Commonwealth Secretariat.

The Regulator attended a workshop on “*Networking Cost Modelling for the Pacific Island Countries*”. This was held in Auckland, New Zealand during the period 20th – 24th July 2009 and he also attended the “Policy Training for Decision Makers” held in Tonga from 14th – 15th June 2010.

Training provided for the Officers during the period under review is listed below:

Mr. Tuuaga Aviata attended the First Seminar of the ITU and World Meteorology Organisation on “*The use of Radio Spectrum for Meteorology: Weather, Water and Climate Monitoring and Prediction*”; held in Geneva, Switzerland from 16th – 18th September 2009.

He also attended the ITU “*Fundamental training on Spectrum Management System for Development Countries (SMS4DC) for the Pacific*” held in Suva, Fiji from 25th – 27th June 2010.

He also attended the United States Telecommunications Training Institute training program on “*Practical Applications of Spectrum Management and Spectrum Monitoring*” held in San Jose, United States of America from 3rd-7th May 2010.

Mr. Faafetai Ah Kuoi attended the ITU and National Telecommunications Commission “*Training Workshop on Universal Access and Rural Broadband*”, held in Bangkok, Thailand from 12th-15th October 2009.

Mr. Eteuati Eteuati attended the Ministry of Industry and Information Technology China, and ITU Centre of Excellence training workshop on “*Radio Spectrum Monitoring Techniques*” held in Shanghai, China from 2nd-6th November 2010.

Miss. Faalelei Sua attended the Commonwealth Telecommunications Organisation course on “*Project Management Tools for Project Managers*” held in Suva, Fiji from 2nd-6th November 2010.

Mrs. Unutoa Auelua-Fonoti attended the Australia Communications and Media Authority and ITU “*International Training Program*” held in Melbourne, Australia from 30th November – 4th December 2009.

Mrs. Elisa Kohlhasse attended the ITU workshop on “*Policy and Regulations for Newly Established Regulators in the ASP Region*” held in Nha Trang from 8th-9th December 2009.

She also attended “Malta-Commonwealth Third Country Training Program on “*Legal frameworks for ICT*” held in Malta from 7th-12th June 2010.

Mrs. Karen Komiti attended ITU and University Utara Malaysia training workshop on “*Improving Rural Development through Telecentres*” held in Penanga, Malaysia from 26th-28th April 2010.

In addition, all three Managers had the opportunity to attend the “*Public Utility Research Center and the World Bank’s International Training Program on Utility Regulation and Strategy*” held in Florida, United States of America. The Legal Counsel attended the course held on 10th-22nd January 2010 while Manager Spectrum and Technical and Manager Regulatory & Consumer Affairs both attended the session held from 7th-18th June 2010.

Also, the two staff of the Spectrum and Technical Division had the opportunity to attend a week-long work attachment program at the New Zealand Ministry of Economic Development in Wellington, New Zealand from 19th-23rd April 2010. They also attended a similar work attachment program at the Australia Communications and Media Authority from 17th-21st May 2010.

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 2011 financial year.

3 Legal Framework

The legal division of the Office of the Regulator continues to be inundated with constant challenges presented to this office by way of appeals lodged, finalising of legal obligations of market participants as well as working in conjunction with providers to ensure that all providers are operating within the confines of the law.

This year has seen Digicel (Samoa) Limited lodge the first ever judicial review application against a decision of the Telecommunications Tribunal and a further appeal against subsequent orders of the Regulator.

On the licensing front, the Office of the Regulator has completed several consultation on licence templates and has issued licences to those providers who have applied for authorisation to provide particular services in the market.

Other achievements include the submission of various proposed amendments to the Act so as to allow the Office of the Regulator to operate more smoothly in the implementation of its functions and duties under the Act.

3.1 Legal Challenges

Digicel application for Judicial Review of Tribunal's decision

Further to the Telecommunications Tribunal's decision to refer Orders No. 2008/03 and 2009/01 back to the Regulator for reconsideration, Digicel lodged an application for judicial review with the Supreme Court of Samoa. Digicel argued that the Tribunal's decision was unreasonable and therefore unlawful. The Office of the Regulator's position in relation to the proceeding was one of assistance. The Office of the Regulator filed submissions primarily focused on providing the Court with a contextual background detailing the events which led to the Tribunal's decision. Included in the Regulator's submissions to the Supreme Court was an explanation of each of the grounds of judicial review as claimed by the applicant and the Regulator's position in relation to what the Court should be looking at in deciding on the matters raised. Justice Slicer of the Supreme Court of Samoa issued his decision on 23 October 2009; such decision dismissing Digicel's application for judicial review.

The Regulator subsequently issued Orders No. 2009/02 and No. 2009/03 establishing replacement interconnection rates applicable to SamoaTel Limited and Digicel (Samoa) Limited for the period from October 2008 to June 2009 as per the Tribunal's decision.

Digicel appeal against Regulator's reconsideration of interconnection charges

Following the issuance of Orders No. 2009/02 and 2009/03 on 7 October 2009, Digicel (Samoa) Limited lodged an appeal with the Telecommunications Tribunal on

6 November 2009 appealing the Regulator's reconsideration of the interconnection rates and the resulting Orders replacing the interconnection charges.

Preliminary mentions of the matter were held before His Honour Chief Justice Sapolu and SamoaTel Limited applied to be joined as a party to the proceeding. Preliminary mentions of the matter raised questions with respect to the appellant's intention and following discussions on the nature and elements required of the appellant in relation to an appeal lodged, Digicel (Samoa) Limited withdrew its appeal on 18 January 2010.

3.2 Licensing

The Office of the Regulator continues to work in accordance with the government objective for the telecommunications sector, more particularly, that the market was liberalised as at 1 July 2009 and should foster the development of new technologies and allow for the introduction of new service providers so as to increase the number of telecommunications services available to the public.

In keeping in line with the above objective, the Regulator endeavoured on a number of consultations with respect to establishing licence templates for different services.

During the past year, the Office of the Regulator completed consultations on licence for the provision of submarine cable services; one such licence has been issued with respect to the ASH Cable, and licence for the provision of international gateway services; four licensees are now authorised to provide IGW services.

Also with regard to the liberalisation of the sector and subsequently the expiration of SamoaTel Limited's fixed service monopoly on 30th June 2009, the Office of the Regulator has instigated a consultation on a fixed services licence. Further to discussions with SamoaTel Limited, the Office of the Regulator has agreed that upon the completion of this particular consultation, SamoaTel Limited will be excluded from having to submit to the Regulator particular technical, financial and legal information during the application process, that is, once the fixed services licence is finalised, SamoaTel need only pay the application fee and be granted a new non-exclusive licence to provide fixed services in Samoa. The Office of the Regulator hopes to complete this process and issue new fixed services licences by the first quarter of the next financial year.

3.3 Rules and Orders

The following Orders were issued in the past year –

- | | | |
|-------------------|---|--|
| Order No. 2009/02 | - | Replacement Interconnection charges applicable to Digicel (Samoa) Limited and SamoaTel Limited |
|-------------------|---|--|

- Order No. 2009/03 - Replacement Interconnection charges applicable to Digicel (Samoa) Limited and SamoaTel Limited
- Order 2009/04 - Order directing SamoaTel to interconnect with Digicel (Samoa) Limited's digifixed services

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 completed consultation with the providers and consequently issued Orders No. 2009/02 and No. 2009/03 on 7 October 2009. In November 2009, Digicel (Samoa) Limited lodged an appeal with the Telecommunications Tribunal in relation to the above; such appeal was subsequently withdrawn in January 2010.

Cost Study for the establishment of Long Term Interconnection Rates

Further to some issues raised by the providers in relation to the SBR model, the consultation on the establishment of long terms interconnection rates has not been finalised. The Regulator is currently working through the issues as identified by the providers and hopes to be in a position to issue a revised draft determination on the matter in the first quarter of the next financial year. This has been a long outstanding matter and it is the Regulator's hope that cost based rates will be effective before the end of 2010.

3.4 Review of the Act

Telecommunications Act 2010 – Proposed Amendments

The legal challenges brought by Digicel (Samoa) Limited has highlighted a number of issues which the Office of the Regulator believes should be addressed via amendments to the Act. The Office of the Regulator has prepared and submitted to the Office of the Attorney General a paper including the following proposed amendments and explanations as to why each amendment is necessary –

- a. All typographical corrections currently included in the Act;
- b. Amendment to the definition of Telecommunications services in the Act;
- c. Clarification of the powers of the Regulator under section 8 – amendment to section 8(1)(u) of the Act;

- d. Independence of the Office of the Regulator, more particularly, in relation to the recruitment of its employees;
- e. Section 11(1) – Need for each appeal to be separate;
- f. Grounds for withdrawal of appeal to be included in the Act;
- g. Clarification that bank cheque accompanying Notice of Appeal to be non-refundable
- h. Powers of the Tribunal to be clarified;
- i. Time limit on period for lodging judicial review applications
- j. Provisions relating to radio spectrum management to include specific penalties for illegal users of frequencies; and
- k. Proposal that administrative rules be established for the Telecommunications Tribunal.

The Office of the Regulator awaits a response from the Office of the Attorney General in relation to the above matters and hopes to have the amendments finalised before the end of 2010. However the Office of the Regulator is wary that the Office of the Attorney General has scarce resources and will work in conjunction with the same to enable to formulation and subsequent tabling of the proposed amendments in Parliament.

4 Spectrum & Technical Division

The Spectrum and Technical Division has continued to increase its activities in this financial year and the main focus has been on regularizing all existing licensed operators, registering of licensed operators, conduct of resource and frequency audit, numbering audit, development of certain policies and plans and ensuring interference free operation. This financial year saw a slight decrease on the number of new licences issued compared to the previous financial year. A review of the spectrum allocation and assignment process was done and as a result was a formulation of a new Spectrum Management Policy and the National Emergency Plan (NETP). The emphasis was basically focussed on the effective management and compliance to spectrum management and in particular allowing for new clean spectrum for emergency services, new applications and innovation in the sector.

Regular and scheduled monitoring of the electromagnetic-spectrum is now the standard practise within the technical division and the results were encouraging as it has been seen that most users are operating within their range of regulatory allowances. The policy guidelines for television frequency assignment have been employed and are strictly monitored by the Technical Division.

Numbering audit has completed but the Plan is intended to formulate in the next financial year. Equipment type approval has been on going and the standardization of the type approval process is continuing.

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 Office of the Regulator issues radio spectrum licenses as per the Telecommunications Act 2005. The number of new licenses issued during the financial year 2009/2010 was 43. The period of 1st of July 2009 to 31st of June 2010 sees the continuation of the issuing of Licenses according to conditions set by the Regulator within the licenses themselves with the intention that they will comply with their license conditions. Table 4.1 indicates the number of licence issued in the period 2009/2010.

Type of License	Period		Total Number of License
	Jul 09–Dec 09	Jan10–Jun 10	
Amateur Radio	10	4	14
Broadcasting FM	0	3	3
Fixed Link & GSM	0	4	4
Land Mobile & Base	4	1	5
Ship Radio License	2	5	7
Satellite Earth Station	2	2	4
Broadcasting TV	1	1	2
Aircraft Radio License	3	1	4
Total	22	21	43

Table 4.1: Distribution of Radio Spectrum License by operations as at June 2010

4.2 Spectrum Management

The radio spectrum is a vital natural resource that countries should have control of and manage. Spectrum as we know is a limited natural resource which has increasing demand from a large and growing number of services such as broadcasting, fixed, mobile, amateur, satellite transmission, emergency telecommunications, meteorology, microwave links, radio based networks and communication services - that ensure safety of life on land, at sea and in the skies. The demand for the use of frequencies and the range of the services in Samoa for which spectrum is used has increased dramatically in recent years and is expected to continue to grow at a rapid pace. The most remarkable example of this rapid growth is the demand for wireless services with the growth of mobile telephony service not only in Samoa but world wide. Also the number of broadcasting companies submitting applications for frequency authorizations to improve their coverage adds to this increasing usage.

To ensure the efficient and economical use of the radio-frequency spectrum by all radio communication services and to ensure interference-free operations of radio communication systems, the Office of the Regulator through its Technical Division has developed a Spectrum Management Policy and Guidelines. The purpose of this Policy is to set forth the policies and guidelines for the use of the radio spectrum in Samoa. The intent is to ensure that the principles of good spectrum management would be achieved in order to maximize the efficient use of radio spectrum and to ensure that spectrum is made available for new technologies and services, and that further flexibility is preserved to adapt to new market needs. It is aimed that this policy will be finalised on the first quarter of the next financial year. The process involves several consultations to all users of the spectrum to solicit views of stakeholders on the draft policy and current and future practices and to make further improvement to spectrum management.

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. The last review was done in May/June of this financial year as it was part of the Spectrum Management policy already developed and is intended to finalise in the beginning of the next financial year. Allocating of these frequencies is based on the current spectrum use and assignment and forecasting of future spectrum use. In 2009/2010 we focused on creating a baseline for the current allocation, assignment and use in Samoa and allocating spectrum for 3G and 4G with the intention that by the next financial year OOTR will be in a good position to issue first license on these new technology. Furthermore, the allocation of spectrum for Digital Television has done pending plans for users to migrate out of the band to allow for Digital Dividend. There were amendments 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.

4.2.2 Spectrum Monitoring

The Spectrum Monitoring Vehicle is used to monitor radio frequency spectrum, allowing OOTR to supervise efficient use of the spectrum and to pinpoint interferences. 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 2007/2008 financial year report to improve its frequency allocations in the last financial year. This document has since been reviewed and use for current allocations of spectrum for TV services. 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 will further review this document when needed especially with the introduction of the Digital Dividend worldwide.

4.2.4 Spectrum Management Policy

The Technical Division has developed a Spectrum Management Policy. The purpose is to ensure that the principles of good spectrum management would be achieved in order to maximize the efficient use of radio spectrum and to ensure that spectrum is made available to every people of Samoa and for the Digital Dividend. This policy should also promote competition and to public safety and health. During this financial year OOTR have been engaged in a series of consultations not only on NETP but for Spectrum Management Policy. OOTR have established fourteen policies on using the spectrum with the intention that it will review this policy every three years. The consultation process is planned to be completed by February of 2011 and should be approved for use in March 2011.

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

4.3 Numbering

During financial year 2009/2010 allocations of new numbers and short codes 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 and short codes 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 has conducted a numbering audit this financial year 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 Samoa National Numbering Plan and will be published on the Office of the Regulator website and ITU website. The numbering Plan will be finalised in the next financial year.

4.4 National Emergency Telecommunication Plan

In the wake of recent emergency events in Samoa more particularly, the tsunami that hit the southern part of Upolu Island on September 29th 2009, although the monitoring station at the Ministry of Natural Resources and Environment detected the massive earthquake that triggered the tsunami, still a lack of procedures for communicating the warning messages to the public delayed the transmissions of warnings. Therefore there are still communications deficiencies that affect the ability of responders to manage routine incidents and support responses to natural disasters and emergency response.

Recognising the need for an emergency strategy to address these shortfalls, and recognizing the need for an overarching strategy to help coordinate and guide such efforts, the Office of the Regulator has initiated with the collaboration of all sectors namely Government Ministries, Service Providers of Telecommunication Services and private organisations, to develop a National Emergency Telecommunication Plan (NETP) for Samoa. It is a strategic plan that establishes a national vision for the future state of telecommunication utilization for emergency purposes and for directing responders to their specific roles and responsibilities. The process involves intensive consultations with the stakeholders to help us established this plan. The process is now completed and OOTR will submit its final copy for its approval from the cabinet in the first quarter of the next financial year.

4.5 Telecommunication Equipment

The Office of the Regulator has been type approving all telecommunications devices intended for use in Samoa, these are the equipments declared suitable for radio communication or for connecting a public radio communication or connecting a public telecommunication network 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. To be inline with the requirement of the Telecommunications Act 2005, OOTR has identified the standards used by New Zealand and Australia, ETSI and FCC as the foundation standards for all devices to be use in Samoa.. From 1st July 2009 to 30th June 2010, 12 devices have been type approved, a listing of which is provided in **Table 4.2**

Manufacture	Product Description	Model Identifier	Approval
Nokia Corporation	Nokia CS-15 Modem	RD-10	24-Aug-09
	Nokia 2680s-2 Mobile	RM-392	4-Aug-09
Blackberry	Wireless Smartphone	9700	27-Oct-09
Ralink Technology	Ralink 3090	RT3090BC4	1-Jan-10
Nokia Australia PTY	Nokia GSM Mobile	N1280	22-Mar-10
	Nokia 2220s	RM-590	30-Mar-10
	Nokia 2690	RM-635	30-Mar-10
Panasonic Corporation	Personal Computer	Class B CF-52	15-Apr-10
Nokia Australia PTY	Nokia 1616-2	RH-125	28-Apr-10
Research In Motion	Blackberry Smart Phone	BB9100	27-May-10

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

Nokia Corporation	Nokia X2-00	RM-618	4-Jun-10
	Nokia N8-00	RM-596	4-Jun-10

Table 4.2: Equipment Type Approved from 1st July 2009 to 30th June 2010

4.6 Harmful Interference

During financial year 2009/2010, only one complains received by the office of the Regulator. It is regarding harmful interference at the transmission site of Mt Fiamoe in Upolu.

The issue was raised by the Airport Authority and its regarding a possible interference to Aeronautical Channel 118.1MHz resulting in no communication from Air to Ground and vice versa. The interference was monitored using the IMS System, and the following findings were found;

1. There were spurious and out of band emissions viewed on the monitoring system in the belief of the engineers, it should not have made a big impact on the AA system because they are too small to cause any possible interference, it demonstrated that not all Radio Broadcasters are operating within their authorized parameters and though not the cause of this interference, it represent the potential for trouble in the future. Since then OOTR have spoken to broadcasters concerned regarding this issue and were advised to operate within their assigned frequency bands.
2. Because of the presence of the out of bands emissions, the broadcasting services operating on the vicinity of the 118.1MHz have been switched off one by one to eliminate the problem but did not make any difference to the magnitude or the quality of the radio communication emissions.
3. The OOTR engineers and Airport Authority engineers conduct a check on Airport Authority equipments and found one of their filters to be faulty and was the reason for the problem.

The setback was due to faulty equipment at the Airport Authority system. The air to ground communications was restored after replacing the faulty filter. As verification a test transmission was done with an aircraft in Pago Pago, American Samoa and that the signal was received without interference. Given the important of the system to the aeronautical communication where the life of people are at risk, it was disappointed to know that a simple equipment malfunction was the source of the setback and that user responsible did not have detected this before reporting the matter to the Office of the Regulator.

Since this incident, a proper Form has been developed by the Technical Division and it is posted on the Office website to assist the complainants about the nature of the problem before submitting it to our office for further action.

The particular site, Mt. Fiamoe, is in need of reorganization and this is a matter that the Office should address urgently. It is in the pipeline for the next financial year to formulate a co-location policy to rectify this problem.

5 Regulatory and Consumer Affairs

Within the period under review, the position for Regulatory and Consumer Affairs Division Manager was filled in August 2009. Activities for the division during the reported period focussed primarily on consumer affairs functions in the establishment of procedures and guidelines for complaints handling, and the development of policy for universal access to telecom services.

5.1 Outstanding Regulatory Issues

During the period under review, OOTR investigated a number of outstanding regulatory matters, one of which dated back to pre-liberalization period whilst others related directly to legal issues before the Regulator and which required thorough and lengthy consultation for the principles of natural justice and fair process to be administered. The various regulatory and legal issues that arose from disputes between service providers and the resultant consultation meant that by the end of the reported period, these matters were at the finalization phases of respective submissions by service providers relating to the matters before the Regulator. It is expected these processes and submissions would be completed prior to the Regulator making a decision, and the subsequent Final Determinations and Order of the Regulator issued and made public by the next review period.

5.2 Interconnection

As reported in the previous financial period, the Regulator, in an effort to establish cost-based rates for interconnection services effective from the period 1st July 2009, conducted a cost study with the assistance of a consulting firm, namely SBR Juconomy Consulting (Germany).

Upon completion of the cost study, the relevant service providers, namely Digicel and SamoaTel were provided the opportunity to make submissions relating to the cost model and the proposed rates. This process was completed during the reported period, and a draft Considerations Paper dated 29th March 2010 was issued for subsequent comments from both providers, all of which were duly considered prior to the Regulator making a final decision on the charges.

It is expected that this decision specified in the Final Determination and Order from the Regulator establishing the long term interconnection charges for fixed and mobile termination services for a minimum period of two (2) years would be issued and made public during the next review period.

5.3 Tariffs and Prices

OOTR recognized that the finalization of the interconnection rates also marked the beginning of a more vigorous regulatory scrutiny of the retail rates currently charged to consumers. It is envisaged that OOTR would undertake a sector-wide audit aimed at ensuring consumers are not charged retail rates below the cost-based mobile and fixed termination rates as determined and specified by the Regulator. Equally importantly, OOTR would ensure during this exercise that pursuant to the provisions of the Act, that all tariffs, rates and charges for telecom services have indeed received approval from the Regulator, and in the absence of this would require service providers to submit a schedule of their retail rates and obtain the requisite regulatory approval prior to charging these rates.

This industry-wide audit of retail tariffs is expected to be completed during the next period of review.

5.4 Universal Access

5.4.1 Universal Access Policy

The draft Universal Access Policy was completed in December 2009 and circulated to sector stakeholders including all service providers and community groups, as well as government bodies. In March 2010, a consultation was held and all comments received were duly noted and incorporated in the draft policy.

It is expected that the final draft would be submitted to the Minister during the next financial period for review and presentation to Cabinet for approval and adoption.

5.4.2 Universal Access Fund

Funding of a pilot project under the universal access program was being considered under the Telecommunications and Postal Sector Reform Project funded by the World Bank. However, OOTR was only privy to this funding and given the timeframe before the closure of the TPSR Project in October 2010, it is unlikely that funding could still be available for implementation of pilot project.

It is expected that OOTR would continue to investigate other possibilities for funding for universal access program.

5.5 Consumer Complaints

During the current financial period, OOTR continued to resolve complaints received during the last quarter of the previous financial period. One of these pertained to internet retail rates charged by an Internet Service Provider (ISP) and which remained unresolved when both parties ceased to respond to OOTR's request for supporting evidence of the complaint. In the course of the period under review, five (5)

complaints were received from the public on a number of issues including on dispute on internet calls billed to a residential consumer's telephone bill, the terminating of a leased line circuit (LDC) to a government office, and one residents' concern of potential harmful radiation from a neighbour's newly installed transmission post. These were duly investigated and opportunity was provided to the parties complaint against to submit responses – all of which were resolved during the reported period.

One recurring complaint arising from lack of broadcasting coverage by Samoa Quality Broadcasting (SQB) to Lona and Fagaloa, and some areas of Savaii which was investigated by the Technical Team and SQB was instructed to reinstate service by February initially, and then upon request, this was extended to April 2010. By the end of the reported period, there is still lack of service in these parts of Upolu and Savaii. One complaint which OOTR effectively closed relate to a complaint on internet usage rates charged by a wholesale ISP and which dated back to the previous review period. The complainant has since entered the market for wholesale ISP and given complainant's lack of interest in pursuing the matter further, the OOTR resolved to close the matter.

5.6 Competition Policy

The OOTR is in the process for developing a Competition Policy having consulted with the relevant ministries, namely the Ministry of Communications and Information Technology (MCIT), and Ministry of Commerce Industry and Labour (MCIL) on a proposed structure for policy and specific responsibilities for OOTR relating to telecom services under the Policy. The division manager is expected to attend training on competition policy during the next reported period, and on her return will develop a draft Policy. Such policy draft is expected to be completed in the next financial period and submitted for consultation.

6 Financial Review

The Government approved a budget of \$1,370,000 for the Office for the period July 2009 to June 2010. As at June 2010, the Office had recorded revenue in the amount of \$2,599,197 and had incurred expenses of \$3,566,464. It therefore realised a net loss of (\$967,267).

A total amount of \$2,026,096 relating to revenue collected has been transferred to the Government's accounts during the year.

6.1 Revenue

The key sources of revenue for the Office are telecommunications licence and radio spectrum fees, accounting for 44.87% and 1.86% respectively. This is in addition to government grants received during the year amounting to 52.71% of its 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 2010 was \$1,166,204. 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 financial year, there was \$1,865,857 outstanding; however 100% of this amount was generated towards the end of June 2010, and the Office will be following up to ensure compliance. In addition, 30.11% of this outstanding amount is recorded as accrued revenue as it relates to the upcoming financial year.

6.1.2 Radio Spectrum Fees

The total amount invoiced as radio spectrum fees for the year was \$48,454. 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 financial reporting period, there was \$119,865 recorded as outstanding spectrum licence and administration fees. However, a provision for doubtful debts is included in the financial statements for the amount of \$81,095 to address the issue of licence fees that have been long outstanding.

In addition to the issue of outstanding licence fees for land mobile operators relating to prior financial years, OOTR also intend to address the issue of all other long outstanding spectrum licence and administration fees. All these long outstanding amounts need 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 2009/2010 financial year, the usage of the Office’s income was primarily limited to operating expenses.

In the financial year ended 30 June 2010, 56% of the total expenses of the Office is represented by income collected and transferred to Government.

As reflected in 6.1, approximately 30% of the organisation’s expenses for the year comprised salaries, wages and allowance for staff members, and depreciation of assets.

The segment labelled “Other”, which accounted for approximately 7% 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.

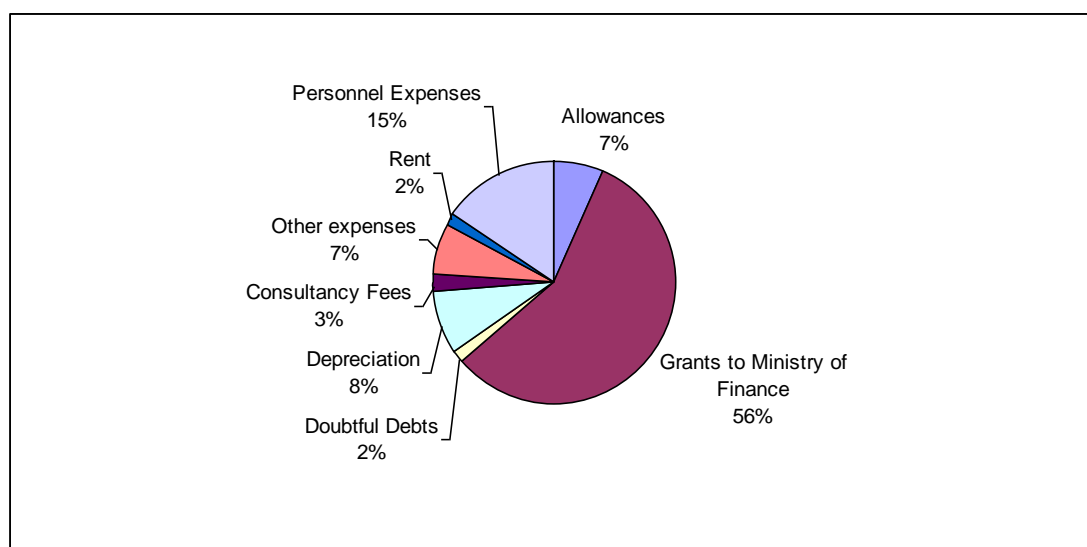


Figure 6.1: Distribution of expenses for the year ended 30 June 2010

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 2010 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 2010-2011

The OOTR in the year 2010 to 2011 the OOTR will be focussing on institutional strengthening and several of its activities will be on building capacity and ensuring institutional memory.

The **Corporate Division** will be developing its Strategic Plan, Corporate Plan with an implementation plan that gives a road map with necessary resources identified.

Relocating its offices, thereby reducing its current expenditure and ensuring space for staff growth will be given priority. The web site as a projection of its new corporate image will be enhanced and improved public relations will be sought. The OOTR will implement a public education campaign that will provide information on the role and functions of the OOTR and the rights of the consumers in the new competitive environment.

The addition of the new mandates of Postal and Broadcasting will receive major attention again ensuring that the Office is well prepared to meet the new challenges.

Training will be emphasized to ensure that the Office is able to transition from the incumbent regulator to a new one without any major hiccup.

In order to ensure transparency and efficiency in the operations of the Office the filing and documentation of records using electronic information management systems will be implemented.

The **Legal Framework** will be enhanced through improvements to the Telecommunications Act and promulgation of new regulations. Competition and interconnection Regulations will be developed and the Radio Regulations enhanced.

There will be a programme to develop capacity in alternative dispute resolution and integrating this within the fabric of the legal framework to minimize the need for appeals to the tribunal and other forms of litigation.

The **Technical Division** will be finalizing the new Spectrum management policy and implementing a new Spectrum management Plan with special focus on the spectrum allocation table and the associated fees. The use of the 700 MHZ spectrum and possible introduction of new fourth generation (4G) technologies will be given priority.

One of the key developments in spectrum management would be the completion of the National Emergency Telecommunications Plan and its implementation. Work is well advanced on its development through extensive consultation and what remains is the approval, adoption and implementation.

There will be a new Numbering Plan developed after consultation and all of the new numbering issues that are directly related to the use of numbers in a converged environment will be examined and incorporated.

Infrastructure sharing will be addressed to eliminate one source of interference at transmission sites and improving the efficiency of use of existing infrastructure. A Policy will be developed and possibly appropriate Regulations to address the current inefficient use of existing infrastructure.

Monitoring of the use of telecommunications resource will continue and will be complemented with increased enforcement.

The Regulatory Division will focus on finalizing a Policy for Competition in the Sector reviewing the relevant market definitions, dominance and anti-competitive issues.

The implementation of the Universal Access Policy once approved by Cabinet or Parliament will involve finalization of how the Fund will be established and managed as well as the levels and forms for contribution

Complaints and disputes will continue to be of interest with focus on improving the processes for resolution.

Tariffs, the levels, processes for approval and review will also form part of the work plan while efforts will be made to ensure the benefits of competition redound in more reasonable prices to consumers.