



SAMOA

BROADCASTING ACT 2010

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2010

No. 5

AN ACT to establish a new legislative framework for the broadcasting sector, and to repeal the Broadcasting Ordinance 1959.

[Assent date: 7 April 2010]

[Commencement date: 10 August 2010]

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

**PART 1
PRELIMINARY**

1. Short title and commencement – (1) This Act may be cited as the Broadcasting Act 2010.

(2) This Act commences, in whole or in part on a date or dates nominated by the Minister.

2. Interpretation – In this Act, unless the context requires otherwise:

“Act” means the Broadcasting Act 2010;

“advertiser” means a person that purchases or procures an advertisement;

“advertisement” means the advertising of any product or service or the making of a public service announcement through a broadcasting service;

“affiliate” means, in relation to any 1 person, any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person;

“anti-hoarding policy” means the anti-hoarding policy approved under section 29(1)(c);

“anti-siphoning policy” means the anti-siphoning policy approved under section 29(1)(d);

“broadcasting facility” means any facility, structure, apparatus, device or other thing, including but not limited to, any wire, radio, optical or other electromagnetic system, mast sites, towers and poles that is used or is capable of being used for the delivery of broadcasting services or for any operations directly connected with broadcasting;

- “broadcasting policies” means the broadcasting polices listed in section 29;
- “broadcasting policy funds” means any fund that is established and maintained under section 30;
- “broadcasting service” means a service that delivers television programs or radio programs to a person having equipment appropriate for receiving that service, whether the delivery uses the radio frequency spectrum, cable, optical fibre, satellite or any other means of a combination of those means, but does not include:
- (a) a service (including a teletext service) that provides no more than data, or no more than text (with or without associated still images); or
 - (b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service;
- “Broadcasting Tribunal” means the Telecommunications Tribunal established under the Telecommunications Act 2005;
- “class licence” means a licence issued under sections 22 and 24 without the need for persons to whom the licence applies having to apply for that licence;
- “code of practice” means any code of practice published or approved by the Regulator under section 7(1)(n);
- “commencement date” means the date or dates on which this Act commences, in whole or in part as specified in section 1(2);
- “contract employees” has the same meaning as in the PublicService Act 2004;
- “control” means the power to determine the actions of another person in any manner, whether directly through the ownership of shares or other securities or indirectly through an agreement or arrangement of any type;
- “essential resource” means any cable conduit, transmission tower, programs or other broadcasting facility that the Regulator determines to be an essential resource pursuant to an order or rule;
- “exemption order” means an order issued by the Regulator under section 23;

- “free-to-air service provider” means a service provider that provides a public broadcasting service without charge to the audience receiving that service;
- “individual licence” means a licence issued pursuant to sections 22 and 24 to an individual person upon the application of that person;
- “licence” means an individual licence or a class licence issued pursuant to this Act as the context may require or permit, but does not include a licence issued prior to the coming into force of this Act;
- “licensee” means a person who holds a licence under this Act;
- “media diversity policy” means the media diversity policy approved under section 29(1)(a);
- “advertisement” means the advertising of any product or service or the making of a public service announcement through a broadcasting service;
- “Minister” means the Minister responsible for Communications and Information Technology;
- “Ministry” means the Ministry responsible for Communications and Information Technology;
- “Office of the Broadcasting Regulator” means the entity established under section 8;
- “order” means a written order made by the Regulator under this Act;
- “prior licence” means an authorisation for the operation of a broadcasting facility or provision of a broadcasting service issued prior to the coming into force of this Act;
- “program” means in relation to a broadcasting service, visual or audible matter, the primary purpose of which is to entertain, inform or educate an audience but does not include advertisements;
- “public service programs” means programs that contribute to a sense of national identity, reflect the cultural traditions and values of Samoans, educate, inform or otherwise benefit the public but does not include advertisements;
- “public service program policy” means the public service program policy approved under section 29(1)(e);
- “regulations” means regulations made by the Head of State under section 73;
- “Regulator” means the person appointed pursuant to section 5 to head the Office of the Broadcasting Regulator;

- “rule” means a rule made by the Regulator pursuant to this Act;
- “service provider” means a person that provides a broadcasting service or that owns or operates a broadcasting facility that is used to provide a broadcasting service;
- “subscription service” means a broadcasting service for which a person must pay money to receive the service;
- “subscription service provider” means a provider of a subscription service;
- “telecommunications service” has the meaning ascribed to it in the Telecommunications Act 2005;
- “terms of service” means the general terms and conditions upon which a service provider shall provide broadcasting services and which are set out in a document prepared under section 50;
- “this Act” includes regulations, rules and codes of practice made or approved under this Act.

- 3. Objectives of this Act** – The objectives of this Act are:
- (a) to facilitate the development of the broadcasting sector in order to promote social and economic development; and
 - (b) *(Repealed by the Broadcasting Amendment Act 2016, No.7)*
 - (c) to promote the efficient and reliable provision of broadcasting services, relying as much as possible on market forces, such as competition and private sector investment, to achieve this objective; and
 - (d) to promote the introduction of advanced and innovative broadcasting technologies to meet the needs of the people of Samoa; and
 - (e) to encourage and promote the local production and broadcast of public service programs; and
 - (f) to encourage sustainable investment in the broadcasting sector; and
 - (g) to establish a framework for the control of anti-competitive conduct in the broadcasting sector; and
 - (h) *(Repealed by the Broadcasting Amendment Act 2016, no.7)*
 - (i) to protect the interests of audiences and commercial users of broadcasting services; and

- (j) to protect the public from any physical harm that might be caused by a broadcasting facility; and
- (k) to define and clarify the institutional framework for policy development and regulation of the broadcasting sector, as well as the separation of government policy and regulatory functions from those of providing broadcasting services; and
- (l) to promote efficient management and use of radio spectrum and other scarce resources; and
- (m) to establish a fair, objective and transparent licensing regime for service providers; and
- (n) to establish an efficient approvals regime for broadcasting facilities; and
- (o) to establish measures to enforce the implementation of this Act and to prohibit certain types of conduct contrary to the orderly development and regulation of the broadcasting sector; and
- (p) encourage and preserve cultural diversity; and
- (q) establish measures for the control of broadcasting content to protect vulnerable sectors of the public such as children and to reflect community standards.

4. Application of this Act – (1) This Act binds the Government.

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

PART 2 THE REGULATOR

4A. The Regulator and Office of the Regulator - The Regulator under the Telecommunications Act 2005 shall be *ex officio* the Broadcasting Regulator and the Office of the Regulator established under the Telecommunications Act 2005 shall function as the Office of the Broadcasting Regulator in accordance with the Telecommunications Act 2005 unless and until separately appointed and administered according to this Part.

5. Appointment of Regulator – (1) The Head of State, acting on the advice of Cabinet, may appoint a person as Regulator for a term of up to three (3) years, who shall have and exercise the responsibilities, functions and powers conferred by this Act and any applicable law.

(2) The appointment of a Regulator may be renewed by the Head of State, acting on the advice of Cabinet.

(3) Cabinet may appoint a suitable regulatory body within or outside Samoa to act as Regulator for the purposes of this Act on such terms and for such period as Cabinet approves, and if the arrangement is no longer required or considered to be unsatisfactory in meeting the objectives of this Act, Cabinet may revoke such appointment.

(4) (Repealed by Broadcasting Amendment Act 2016, No.7).

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

(6) A person may not be removed as Regulator prior to the completion of a term of up to 3 years unless the person:

- (a) at the time of appointment and while holding the position of Regulator, has a conviction or is convicted of an offence, in Samoa or elsewhere—
 - (i) involving dishonesty or corruption; or
 - (ii) where the penalty for such offence includes imprisonment for 1 year or longer (irrespective of whether such penalty has been or is imposed concerning such conviction); or
- (b) is an un-discharged bankrupt; or
- (c) is determined by a medical practitioner to be unable to perform the Regulator's responsibilities, functions, duties and powers due to any physical or mental incapacity; or
- (d) breaches the Code of Conduct detailed in section 19 of the Public Service Act 2004.

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

(a) (Repealed by the Broadcasting Amendment Act 2016, No.7).

- (b) any period of time after a Regulator ceases to hold office and before a replacement is appointed; and
- (c) a period of temporary absence or incapacity of the Regulator.

(8) A person appointed under subsection (3) may exercise all of the responsibilities, functions and powers conferred on the Regulator by this Act and any applicable law despite any other provision of this Act.

(9) An appointment under subsection (3) may not continue for a period longer than 6 months.

(10) (Repealed by the Broadcasting Amendment Act 2016, No.7).

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

- (a) a service provider; or
- (b) a manufacturer or supplier of broadcasting facilities, except where the supply is incidental to the general merchandising of goods by wholesale or retail.

(2) Where any interest prohibited by subsection (1) vests in the Regulator or a member of the professional staff by will or succession for the benefit of the Regulator or a member of the professional staff, as the case may be, such interest is absolutely disposed of within 3 months of vesting, and any failure to act in accordance with this subsection shall make the Regulator or member of the professional staff, as the case may require, liable under subsection (1).

(3) For the purpose of this section:

- (a) a pecuniary or proprietary interest include, but is not limited to, a pecuniary or proprietary interest held by a spouse or parent or child or brother or sister of the Regulator or member of the professional staff, as the case may require; and
- (b) the professional staff of the Regulator is any member of staff of the Regulator nominated as such by the Regulator, as a class of such persons or individually, or both.

7. Responsibilities, functions and powers of the Regulator – (1) The Regulator shall:

- (a) advise the Minister on policy for the broadcasting sector; and
- (b) implement this Act, the regulations and other elements of the legal and regulatory framework for the broadcasting sector; and
- (c) issue individual and class licences, design and run the process for issuance of such licences; and
- (d) monitor and enforce compliance by licensees with the conditions of their licences; and
- (e) amend or revoke licences in accordance with this Act and the regulations; and
- (f) regulate access to broadcasting facilities and programs amongst service providers; and
- (g) in consultation with appropriate authorities publish or approve standards, classifications and scheduling for programs and advertisements and monitor and enforce compliance by licensees; and
- (h) resolve disputes between service providers, and between customers and service providers; and
- (i) institute and maintain appropriate measures for the purpose of preventing broadcasting service providers from engaging in or continuing anti-competitive practices; and
- (j) represent Samoa in international broadcasting organisations, in cases where the Minister decides the Regulator is the appropriate representative; and
- (k) carry out any responsibilities, functions and powers assigned to the Regulator in any policy or arrangements established pursuant to Parts 5 and 6; and
- (l) maintain records of licences and licence applications, equipment approvals and applications and access agreements and, except where the Regulator considers it justified for reasons of commercial confidentiality, make the documents in such records available to the public; and

- (m) publish procedures, guidelines and interpretations to facilitate the implementation of this Act; and
- (n) publish or approve codes of practice to facilitate implementation of this Act and monitor and enforce compliance of the codes of practice by licensees; and
- (o) make rules for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof by the Regulator; and
- (p) make orders in respect of any matter or thing within the jurisdiction of the Regulator under this Act, a regulation or rule, including orders to compel a person to comply with or implement the purposes of this Act, a regulation, rule, code of practice or licence and, upon publication by the Regulator such orders shall have the same legal force as a rule; and
- (q) on the initiative of the Regulator or upon request by another person—
 - (i) investigate complaints against licensees or other service providers; and
 - (ii) conduct such other investigations as the Regulator considers necessary to ensure compliance with this Act, a regulation, rule, code of practice, licence or order; and
 - (iii) issue an order in respect of anything prohibited, required or permitted to be done under this Act, a regulation, rule, code of practice, licence or order; and
- (r) comply with the Code of Conduct detailed in section 19 of the Public Service Act 2004; and
- (s) in exercising the Regulator's powers and performing duties under this Act, a regulation, rule or code of practice, determine any question of law or fact, and despite any other law, the Regulator's determination on a question of fact is binding and conclusive for all purposes, including but not limited to any proceedings in any Court, tribunal or other adjudicative body; and

- (t) take such other actions as are reasonably required to carry out this Act, the regulations, rules or codes of practice, and to perform such other responsibilities, functions, and powers conferred on the Regulator under any other law.
- (2) The Regulator shall carry out the responsibilities, functions and powers of the Regulator with a view to implementing the objectives set out in section 3.
- (3) The Regulator shall act independently in performing the responsibilities, functions and powers of the Regulator set out in this Act and other laws, and in this regard:
 - (a) the Regulator shall act in a manner that is separate from, and not accountable to, a service provider, including a service provider owned by the Government;
 - (b) the orders and rules made and the procedures used by the Regulator are impartial with respect to all service providers and other market participants, provided however that nothing in this section is interpreted to prevent the Regulator from—
 - (i) consulting with a person or organisation on any matter related to the Regulator's responsibilities, functions and powers; or
 - (ii) making a decision that is in accordance with this Act but that has a differential or prejudicial impact on a service provider or other market participant.

8. Office of the Broadcasting Regulator— (1) The Office of the Broadcasting Regulator is established, and shall function in accordance with this section.

(2) The Regulator is responsible for the management of the Office of the Broadcasting Regulator.

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

(4) The Regulator and the Office of the Broadcasting Regulator shall comply with all laws governing the public service and the finances of the Government of Samoa subject to this Act.

(5) The staff of the Office of the Broadcasting Regulator are

appointed and employed under this Act as follows:

- (a) contract employees are appointed under the Public Service Act 2004; and
- (b) the Regulator shall appoint other staff of the Office of the Broadcasting Regulator who are not contract employees.

(6) The Regulator shall establish an annual budget for the operations of the Office of the Broadcasting Regulator in line with the fiscal year of the Government of Samoa and taking into account any fees collected pursuant to regulations made under section 9.

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

- (a) designate 1 or more persons employed by the Ministry or other Ministries or Government organisations to work with the Office of the Broadcasting Regulator on a secondment basis. Such secondments may be part-time or full time, and shall last for such period of time as indicated in the notice; and
- (b) determine that the Office of the Broadcasting Regulator may share or otherwise utilise support staff, office premises and other resources of the Ministry, or another Government organisation that will include, but not be limited to, the Office of the Regulator established pursuant to the Telecommunications Act 2005.

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

- (a) authorise a person to make orders or issue licences; and
- (b) restrict the delegation to specific types of matters, or to a specific period of time; and
- (c) be subject to terms, conditions or restrictions; and
- (d) be revoked by notice in writing.

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

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

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

(12) The Regulator shall cause the Office of the Broadcasting Regulator to establish an official website to increase the transparency of the Office's affairs to persons inside and outside of Samoa.

(13) All rules, orders, codes of practice, notices and other important documents issued by the Office of the Broadcasting Regulator regarding the regulations of the broadcasting sector is to be posted on the Regulator's official web site, and published in any other media that the Regulator considers necessary or appropriate to provide adequate notice to interested persons.

(14) Within 6 months after 30 June of each year the Regulator shall cause the Office of the Broadcasting Regulator to prepare and provide to the Minister an annual report on the work of the Office of the Regulator, such report to include:

- (a) a summary of the activities of the Office of the Broadcasting Regulator; and
- (b) financial statements and accounts and audit report on such statements and accounts (including any funds established and maintained under section 30) in a form approved and audited by or under the direction and control of the Controller and Auditor General; and
- (c) a list of licences in force and issued; and
- (d) a list of codes of practice in force; and
- (e) a list of access agreements filed with the Regulator;
- (f) a summary of material litigation involving the Regulator; and
- (g) a report on any funds established and maintained under section 30; and

- (h) a summary of rules and major orders made in the period since publication of the last annual report; and
- (i) a description of major procurement and outsourcing activities undertaken by the Regulator; and
- (j) a list of staff, employees and consultants appointed or seconded to the Office of the Broadcasting Regulator; and
- (k) such other information as the Minister may determine by notice in writing, —

and the Minister shall table the annual report in Parliament at the first available opportunity.

(15) (Repealed by the Broadcasting Amendment Act 2016, No.7).

9. Licences and licence fees – (1) The Head of State, acting on the advice of the Cabinet may make regulations prescribing licence fees, including licence application fees and annual licence fees.

(1A) The amount of a fee or charge prescribed in subsection (1):

- (a) shall be proposed by the Ministry in consultation with the Regulator; and
- (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

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

- (a) licence fees must be levied on different licensees in an impartial and competitively neutral manner; and
- (b) licence fees may be based on a percentage of the revenue obtained by the licensee in providing the licenced broadcasting service; and
- (c) the licence fees may be used in whole or part to cover the costs of the Office of the Broadcasting Regulator.

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

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

(2) A Notice of Appeal must be served on the Minister and accompanied by a signed written undertaking by the appellant to pay damages and all costs arising in any way from the convening of the Tribunal, the conduct of its proceedings and any subsequent order that is made by the Tribunal or the Regulator as a result of the appeal.

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

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

(5) The Notice of Appeal must set out:

- (a) the relevant section of the Act under which the decision appealed against was made; and
- (b) the grounds of appeal which must set out in sufficient detail so as to state—
 - (i) the grounds upon which the appellant contends that the decision appealed against was based on an error of fact or was wrong in law, or both;
 - (ii) the grounds upon which the appellant is appealing against the exercise of discretion by the Regulator.

PART 3 BROADCASTING TRIBUNAL

11 - 20. (Repealed by the Broadcasting Amendment Act 2016, No.7).

PART 4 BROADCASTING LICENCES

21. Requirement to hold licence – (1) A person shall not:

- (a) provide a broadcasting service to the public for direct or indirect compensation; or
 - (b) own or operate a broadcasting facility used to provide a broadcasting service to the public for direct or indirect compensation, –
- except in accordance with a licence or an exemption order.

(2) A person shall not use programs received from a subscription service provider for commercial use or personal gain.

(3) For the purpose of this section:

- (a) the public includes persons in Samoa or elsewhere; and
- (b) the provision of broadcasting services to the public includes the provision or offering of such a service to any segment of the public, including the resale or rebroadcast of broadcasting services obtained from another person, even if only one (1) person is provided or offered such a service.

22. General provisions related to licences– (1) Licences are issued by the Regulator, and signed by the Regulator or a delegate of the Regulator to whom authority has been delegated under section 8.

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

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

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

- (a) the applicable licensing procedures and licensing criteria; and
- (b) the period of time normally required to reach a decision concerning an application for a licence.

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

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

(7)The Regulator may issue licences under subsection (1) despite:

- (a) any law, including but not limited to this Act and the Broadcasting Ordinance 1959; or
- (b) an agreement, contract, arrangement, licence or other provision in existence at the commencement date.

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

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

24. Types of licences – (1) The Regulator may issue 2 types of licences:

- (a) individual licences; and
- (b) class licences.

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

25. Licensing Procedures – (1) The Regulator may determine the procedures and criteria for issuing a licence.

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

(3)The procedures and criteria for issuing licences are to be:

- (a) published in Samoan and English in the Savali; or
- (b) posted on the Regulator’s official web site.

26. Licence conditions – (1) The Regulator shall establish the conditions of all licences.

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

27. Amendment and revocation of licences – (1) The Regulator may amend or revoke a licence if:

- (a) the amendment or revocation has been requested or agreed to by the licensee; or
- (b) the licensee has been in breach of a material licence condition or this Act or a regulation, rule, code of practice or order made under this Act; or
- (c) changes to international treaties, commitments, recommendations, standards or the laws of Samoa require an amendment or a revocation; or
- (d) the Regulator decides that the amendment or revocation is required to implement this Act in a manner consistent with the objectives listed in section 3.

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

(3) Notice under subsection (2):

- (a) gives the licensee at least 14 days from service of the notice to prepare comments on the relevant actions; and
- (b) sets out any procedures the Regulator will use in considering the relevant action; and
- (c) may invite comments from other interested parties or the public.

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

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

(6) Despite this section, a licence is taken to be revoked if the licensee is convicted of an offence under the laws of Samoa which involves:

- (a) an element of dishonesty;
- (b) the making of some financial gain from the public or any section of the public by the failure to observe any legal obligation;
- (c) the failure to obtain a licence or permit that is required by law in the course of any aspect of the licensee's business.

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

28. Term and renewal – (1) The term of a licence shall be stated in the licence.

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

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

- (a) the licensee has been in breach of 1 or more material licence conditions, or this Act, or a regulation, rule, code of practice or order made under this Act; or
- (b) changes to—
 - (i) any international treaty to which Samoa is a party; or
 - (ii) any commitment or recommendation or standards applicable to the Government of Samoa; or
 - (iii) any applicable law, require a renewal on new conditions or denial of a renewal, as the case may require; or
- (c) the Regulator decides that a renewal on new conditions or the denial of a renewal is required to implement this Act in a manner consistent with the objectives listed in section 3.

PART 5 BROADCASTING POLICIES

29. Broadcasting policies – (1) The Minister may approve, policies setting out specific objectives, related principles and obligations to:

- (a) facilitate and maintain media diversity in the Samoan broadcasting sector; and
- (b) facilitate and maintain universal access to all free-to-air broadcasting services in Samoa; and
- (c) facilitate and maintain public access to certain programs acquired by free-to-air service providers in Samoa that are not broadcasted by the free-to-air broadcaster within a reasonable period

after acquiring the rights to broadcast such program, otherwise known as the anti-hoarding policy; and

- (d) facilitate and maintain public access to certain programs reserved for delivery by free-to-air service providers to ensure that programs of particular significance to Samoans continue to be available without the necessity for payment, otherwise known as the anti-siphoning policy; and
- (e) promote and facilitate the production and broadcast in Samoa of public service programs; and
- (f) facilitate, maintain or promote such other matters as the Regulator considers appropriate and in the interests of the public.

(2) The Regulator may implement broadcasting policies approved by the Minister through rules, orders or 1 or more codes of practice.

(3) In preparing the media diversity policy, the Ministry shall consider:

- (a) the objectives for establishing and maintaining media diversity in the Samoan broadcasting sector; and
- (b) any ownership and control restrictions that should be imposed upon service providers; and
- (c) residency requirements for licensees and directors of licensee companies; and
- (d) the procedures and measures through which media diversity is established and maintained.

(4) (Repealed by the Broadcasting Amendment Act 2016, No.7).

(5) In preparing the anti-hoarding policy, the Ministry shall consider:

- (a) the objectives for prohibiting free-to-air service providers from acquiring certain programs and not broadcasting a reasonable proportion thereof on its broadcasting service; and
- (b) the criteria for imposing an anti-hoarding prohibition on free-to-air service providers; and
- (c) the acquired programs that should be affected by the anti-hoarding prohibition; and
- (d) the conduct of free-to-air service providers that should be prohibited; and

- (e) the procedures and other measures through which public access program policy should be achieved.
- (6) In preparing the anti-siphoning policy, the Ministry shall consider:
- (a) the objectives for reserving certain programs for delivery by free-to-air service providers in Samoa; and
 - (b) the criteria for imposing restrictions and obligations on relevant service providers; and
 - (c) the programs that should be reserved; and
 - (d) the conduct of service providers that should be restricted; and
 - (e) the service providers that should be obliged to comply with restrictions imposed on certain programs and certain conduct; and
 - (f) the procedures and other measures through which public access program policy should be achieved.
- (7) In preparing the public service program policy, the Ministry shall consider:
- (a) the objectives for the local production and broadcast of public service programs; and
 - (b) in consultation with relevant authorities the genre and content of public service programs that will be acceptable under the public service program policy; and
 - (c) the broadcasting services through which public service programs may be delivered; and
 - (d) the obligations to be imposed on promoters, producers and broadcasters of public service programs; and
 - (e) the procedures and other measures through which production and broadcast of public service programs should be achieved.
- (8) In preparing any broadcasting policy, the Ministry shall ensure that any rights and obligations of service providers:
- (a) are administered in a transparent, non-discriminatory and competitively neutral manner; and
 - (b) are not more burdensome than necessary for the relevant broadcasting policy objectives to be achieved.

(9) The Ministry shall consult with the Regulator and other interested parties when preparing any broadcasting policy.

(10) Part III of the Public Bodies (Performance and Accountability) Act 2001 relating to Community Service Obligations does not apply to Part V of this Act.

30. Broadcasting policy funds – (1) Following approval of:

- (a) *(Repealed by the Broadcasting Amendment Act 2016, No.7).*
- (b) a public service program policy; or
- (c) any other policy that is determined to require funding, –

the Minister, by notice in writing, may establish a corresponding fund to achieve the objectives of the relevant policy under any rules or procedures specified in that policy.

(2) A fund established under subsection (1) is:

- (a) administered by the Regulator and in accordance with any financial and administrative directions issued in writing by the Chief Executive Officer of the Ministry of Finance; and
- (b) operated out of a separate account from the Ministry or the operational accounts of the Regulator.

(3) Subject to subsection (4), where the Minister has established a fund under subsection (1), the Minister by notice in writing may:

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

(4) The disbursement procedures of the fund established under subsection (1) shall be competitively neutral and market oriented.

**PART 6
COMPETITION POLICY**

31. Functions and duties of the Regulator regarding competition – (1) The Regulator shall perform the following functions and duties in relation to competition among service providers in broadcasting markets in Samoa:

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

- (b) establish an open and transparent regulatory framework that minimises regulatory and other barriers to entry into broadcasting markets; and
- (c) *(Repealed by the Broadcasting Amendment Act 2016, No.7).*
- (d) *(Repealed by the Broadcasting Amendment Act 2016, No.7).*
- (e) *(Repealed by the Broadcasting Amendment Act 2016, No.7).*
- (f) monitor and prevent practices that would restrict competition, under section 34; and
- (g) review and decide upon proposed transfers of control of service providers, under section 37; and
- (h) undertake market reviews from time to time to evaluate market conditions and the state of competition in those markets; and
- (i) dispose of complaints and resolve disputes related to anti-competitive practices in a timely and impartial manner.

(2) Wherever a conflict arises between the provisions of this Act and the provisions of any other legislation regulating competition in broadcasting markets in Samoa, the provisions of this Part shall prevail except in relation to the Telecommunications Act 2005 in which case the latter shall prevail.

(3) The Regulator may issue an order that authorises a person to provide a broadcasting service and to construct and operate broadcasting facilities, despite that another service provider has been granted exclusive rights by licence, agreement or otherwise, to engage in such service provision, construction or operation, provided that:

- (a) the Regulator has given the service provider with exclusive rights notice of—
 - (i) the Regulator’s intention to issue an order under this subsection; and
 - (ii) at least 21 days to comment before such an order is made; and
- (b) after taking into account comments received under paragraph (a), the Regulator has made an order that the service provider with exclusive rights has unreasonably failed or refused to provide such services, or to construct and operate such facilities.

32 - 33. *(Repealed by the Broadcasting Amendment Act 2016, No.7).*

34. Other anti-competitive practices – No person shall engage in a practice restricting or distorting competition in broadcasting markets, including the following:

- (a) arrangements between 2 or more service providers that directly or indirectly fix prices or other terms or conditions of broadcasting services, including but not limited to programs or advertisements, in broadcasting markets; and
- (b) arrangements between 2 or more service providers that directly or indirectly determine which person will win a contract or business opportunity in a broadcasting market; and
- (c) arrangements between 2 or more service providers to apportion, share or allocate broadcasting or advertisement markets among themselves or other service providers.

35. Determination of service provider's and anti-competitive practices – The Regulator may, on application by any person, or on the Regulator's own initiative, determine:

- (a) whether or not the actions or activities of a service provider amount to an anti-competitive practice within the meaning of section 34; or
- (b) that an action or activity of a service provider under sections 34 is authorized and does not contravene this Act, on the grounds that such activities are in the public interest and otherwise consistent with the objectives set out in section 3.

36. Remedies for anti-competitive practices– If the Regulator determines that the actions or activities of a service provider constitute an anti-competitive practice within the meaning of this Act or a regulation or rule, the Regulator may issue an order to:

- (a) require 1 or more persons named in the order to take 1 or more of the following actions—
 - (i) cease the actions or activities specified in the order immediately, or at such time specified in the order, and subject to such conditions specified in the order; or

- (ii) make specific changes in actions or activities specified in the order, as a means of eliminating or reducing the abusive or anti-competitive impact; or
- (b) impose a financial surcharge subject to sections 38 to 41; or
- (c) require the service provider involved in the abusive action or activity or anti-competitive practice and a person affected by such action, activity or practice to meet and attempt to determine remedies to prevent or eliminate continuation of such action, activity or practice, and to resolve any remaining dispute; or
- (d) require the service provider responsible for the abuse or anti-competitive action or activity specified in the order to publish an acknowledgement and apology for such action, activity or practice in Samoan and English in the Savali and one other newspaper circulating in Samoa, in such a form and at such a time as the Regulator specifies in the order; or
- (e) require the service provider to provide periodic reports to the Regulator to assist in determining whether the action or activity is continuing and to determine its impact on broadcasting markets, competitors and customers.

37. Transfers of control of service providers– (1) Subject to this section, no approvals are required for the transfer of control of a service provider.

(2) No transfer of control of an individual licensee shall be effected without the prior approval of the Regulator if as a result of the transfer, a person, alone or with affiliates, would control service providers whose gross revenues in a specific broadcasting market constitutes 40% or more of the total gross revenues of all service providers in that market.

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

(4) Applications for transfers of control that require approval under subsection (2) shall include such information on the proposed transfer transaction as the Regulator may require. Such information shall, at a minimum, include:

- (a) the identification of all persons involved in the transfer transaction, including buyers and sellers, their shareholders and affiliated companies, and any other persons that have a greater than 5% ownership interest in all such persons; and
- (b) a description of the nature of the transaction and a summary of its commercial terms; and
- (c) financial information on the persons involved in the transaction, including their annual revenues from broadcasting markets, identified by specific markets, value of assets devoted to broadcasting business and copies of any recent annual or quarterly financial reports; and
- (d) a description of the relevant broadcasting markets in which the persons involved in the transaction operates.

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

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

- (a) approve the transfer of control without conditions; or
- (b) approve the transfer of control with such conditions as are reasonably related to promoting the development of open and competitive broadcasting markets in Samoa and maximising the benefits of the transaction for the public; or
- (c) deny the transfer of control; or
- (d) issue a notice initiating an investigation of the proposed transfer of control, and following such investigation the Regulator shall take 1of the actions set out in paragraph (a), (b) or (c).

(7)The Regulator shall only deny a transfer of control or attach conditions to a transfer of control under this section if the Regulator determines, acting reasonably, that the transfer would

have serious anti-competitive effects which would outweigh any positive effects for the public.

PART 7 SURCHARGE

38. Imposition of surcharge – (1) A service provider is liable to surcharge under subsection (2) where it is established that the service provider's actions constitute:

- (a) an abuse of the service provider's position; or
- (b) an anti-competitive practice.

(2) Subject to section 39, the Regulator may impose a surcharge on a service provider not exceeding \$100,000.

39. Procedure for imposition of surcharge– (1) Before imposing a surcharge under section 36(b), the Regulator shall:

- (a) forward to the person against whom it is proposed to make the surcharge notice providing the reasons for the proposed surcharge; and
 - (b) consider any submissions made by that person within 14 days of his or her receipt of the notice or such longer period specified in the notice.
- (2) In light of those submissions, the Regulator may decide:
- (a) to impose a surcharge for an amount no greater than is specified in the notice; or
 - (b) not to impose a surcharge.

(3) Where the Regulator imposes a surcharge, the Regulator shall forward to the service provider, against whom a surcharge has been imposed, a notice specifying the Regulator's decision and the reasons for the decision together with a statement of the service provider's right of appeal.

(4) Where the Regulator forwards a notice under subsection (1) to a service provider and later decides not to impose a surcharge, the Regulator shall notify the service provider accordingly.

40. Appeal against surcharge – (1) A service provider against whom a surcharge has been imposed may appeal to the appellent authority within 21 days after the service provider has been notified of the surcharge.

(2) The appellant authority is the Broadcasting Tribunal.

(3) The appellant authority may make such order as it thinks proper, confirming the surcharge or annulling it in whole or in part after investigations as it thinks proper.

41. Surcharge payable to Treasury Fund – (1) A financial surcharge imposed under section 38 is payable to the Treasury Fund.

(2) For the purpose of removing doubt, the Regulator may revoke a licence where the licensee fails to pay a financial surcharge imposed.

**PART 8
RELATIONS BETWEEN SERVICE
PROVIDERS AND CUSTOMERS**

42. Application – The following sections apply only to subscription service providers:

- (a) section 43 (Fair Dealing Practices); and
- (b) section 49 (Terms of Service); and
- (c) section 50 (Information on Terms of Service); and
- (d) section 53 (Access to Customer Premises).

43. Fair dealing practices– (1) A service provider shall only charge a customer for the specific broadcasting service or broadcasting facility that the customer has ordered. The customer shall have no liability to pay for a broadcasting service or broadcasting facility that the customer has not ordered.

- (2) Service providers shall provide customers with invoices:
- (a) in writing (although invoices may be provided electronically if the customer consents); and
 - (b) on a regular basis; and
 - (c) in a plain and simple format; and
 - (d) that provide accurate information on the services provided and the amounts due for each service; and
 - (e) that clearly indicate the method of calculation of charges for any service for which invoices are based; and
 - (f) that comply with this Act and any regulations, rules and orders dealing with customer invoices.

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

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

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

- (a) the availability, price or quality of the service provider's broadcasting services or broadcasting facilities; or
- (b) the broadcasting services or broadcasting facilities of another service provider.

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

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

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

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

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

45. Protection of personal information – (1) A service provider is responsible for customer information in the custody or control of the service provider or the service provider’s agents.

(2) A service provider shall operate the service provider’s broadcasting facilities with due regard for the privacy of the service provider’s customers.

(3) Except as permitted or required by law, or with the consent of the person to whom the personal information relates, a service provider shall not collect, use, maintain or disclose customer information or customer communication for undisclosed purposes.

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

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

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

46. Access by Government Authorities –Nothing in this Act is to be interpreted to prohibit or infringe upon the rights of the Government, government agencies and authorities to exercise their rights to access otherwise confidential information relating to a customer. Such access shall be made under the laws of Samoa.

47. Audience and customer complaints – (1) Service providers shall identify a specific person or group of persons to receive audience and customer complaints.

(2) Service providers shall establish procedures to deal with audience and customer complaints. The procedures and any amendments thereto, are subject to approval by the Regulator,

and shall be published in a suitable manner that is approved by the Regulator.

(3) Disputes between a service provider and a viewer, listener, customer or between service providers, which the parties cannot resolve among themselves, are subject to sections 62, 63 and 64.

(4) Subscription service providers shall not disconnect or otherwise change any of the broadcasting services then being provided to a customer and which are the subject of a complaint or dispute, other than in accordance with the terms of service approved by the Regulator pursuant to section 49 or as permitted by order made by the Regulator.

48. No unjustified discrimination – (1) Unless otherwise specifically permitted by the Regulator, service providers shall offer all viewers or listeners the same terms and quality of service, including tariffs charged, unless different terms are objectively justified, based on differences in supply conditions, including different costs or a shortage of available facilities or resources.

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

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

(2) The draft terms of service must be consistent with this Act, the rules, codes of practice, licence conditions and orders made by the Regulator, and shall describe the basic terms of the business relationship between the service provider and the service provider's customers in the provision and use of broadcasting services.

(3) The Regulator shall approve all draft terms of service, with or without changes made by the Regulator, after consultation with the service provider and other interested parties, as determined by the Regulator. Once approved, these

terms of service will replace the customer terms of service then in use by a service provider and shall become binding on the service provider and the service provider's customers.

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

50. Information on terms of service—(1) A service provider shall at all times maintain on the service provider's website, in both Samoan and English, the following information:

- (a) the current version of the service provider's terms of service; and
- (b) all of the service provider's approved tariffs and proposed tariff changes which have been filed with the Regulator; and
- (c) the official website address and other contact information for the Regulator, together with a clear statement that the service provider is regulated by the Regulator under this Act and that customers and other service providers may contact the Regulator if they are unable to resolve disputes with the service provider; and
- (d) an easy to follow navigation system that allows a customer to locate the above information.

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

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

(4) Once approved by the Regulator, the terms of service shall, together with this Act, the regulations, rules, orders and approved tariffs, be binding upon a subscription service provider and its users.

51. Program directories – If required by an order of the Regulator, a service provider shall provide its audience with a program directory in accordance with terms and conditions as the Regulator may nominate in the order.

52. Quality of service – (1) A service provider shall provide broadcasting services that meet specific quality of service standards. The service standards shall be developed by the Regulator in consultation with the service provider and may be included in the service provider’s licence or established by order of the Regulator.

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

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

- (a) quality of service reports shall—
 - (i) be in a form determined by the Regulator; and
 - (ii) set out the service provider’s actual results for each quality of service standard; and
- (b) where a quality of service report indicates that a standard has not been achieved, the service provider shall provide an explanation to the Regulator as to why the standard was not achieved and what specific steps the service provider has taken or intends to take to achieve the standard.

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

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

- (a) any additional reporting requirements the service provider shall adhere to until the standard is achieved; and
- (b) what, if any, specific refunds or other remedies, including but not limited to customer remedies, are to be implemented by the service provider as a result of the service provider's failure to meet such standard.

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

(7) Where the Regulator concludes that it is in the public interest, the Regulator may require a service provider to publish in Samoan and English in the Savali and 1 other newspaper circulating in Samoa all or parts of the service provider's quality of service reports and the Regulator's reporting requirement.

53. Access to customer premises – (1) The service obligations of a service provider shall extend to the installation, operation, maintenance and repair in good working order of all broadcasting facilities that are owned or provided by the service provider and located on a customer's property.

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

- (a) the service provider has given the customer notice that is reasonable in the circumstances; and
- (b) the service provider dispatches only properly identified and qualified personnel; and
- (c) the service provider has received the consent of the customer for such access; and
- (d) the service provider's personnel interfere as little as possible with the customer's activities, premises and property.

54. Liability, refunds and damages – The Regulator may issue an order or rule establishing provisions concerning the

liability of, refunds by and damages to be paid by service providers to viewers, listeners and customers.

PART 9 BROADCASTING FACILITIES

55. Broadcasting facilities – (1) To the extent that broadcasting facilities are not regulated or otherwise provided for under the Telecommunications Act 2005, the Regulator may issue an order to do one or more of the following:

- (a) decide that certain types of broadcasting facilities proposed or used to provide broadcasting services to the public require approval for such purpose; and
- (b) publish criteria for certification and establish standards for approval of broadcasting facilities for use in connection with broadcasting services; and
- (c) identify domestic or foreign organisations or testing facilities for approval of broadcasting facilities for use in connection with broadcasting services; and
- (d) maintain a register of certified or approved types of broadcasting facilities, criteria for certification and standards for approval.

(2) Providing there is no conflict with the Telecommunications Act 2005, the Regulator may enter into mutual recognition agreements with authorities in other countries to provide for mutual recognition of, certification and approval of broadcasting facilities in other countries and Samoa.

PART 10 ACCESS TO PROPERTY

56. Access to Government land and facilities – (1) Where a service provider cannot, on commercially reasonable terms:

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

- (b) gain access to a pole, duct, tower or other supporting structure of a broadcasting, electrical power or other utility transmission system constructed on Government land or a Government facility, or which is owned or controlled by the Government or a Government Agency or Authority, the service provider may apply to the Regulator for assistance.

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

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

- (a) the Regulator may exercise such other powers under this Act or other Acts, as the Regulator considers appropriate to resolve the matter; or
- (b) the matter may be submitted by the Regulator or a party to the Ombudsman for a recommendation by the Ombudsman to grant or refuse the required consent or access, as the case may be, on such terms and conditions as the Ombudsman may determine.

(4) In determining a matter under subsection (3), the Ombudsman shall have regards to:

- (a) the objectives of the Act set out in section 3; and
- (b) a submission provided by the Regulator or the parties; and
- (c) the likely effect and consequences of a decision to grant or refuse the required consent or access on the parties, the public and customers of the service provider; and
- (d) any other relevant matter.

(5) The Ombudsman's recommendation in subsection (3) is subject to approval by Cabinet.

(6) The parties to a recommendation made by the Ombudsman under subsection (3) and approved by Cabinet in subsection (5) shall comply with such recommendation as if the recommendation had been made by the Regulator.

(7) Where the Ombudsman makes a recommendation to grant the use of or to grant access to Government land or facilities under subsection (3) for Cabinet approval, the Ombudsman shall include in the recommendation the amount which the service provider is to be required to pay to the Government as compensation for the service provider's use of or access to Government land or facilities.

57. Access to private land and facilities – (1) Where a service provider:

- (a) requires access to private land or private facilities (other than customary land or facilities located on customary land) to provide broadcasting services; and
- (b) cannot, on commercially reasonable terms, reach an agreement for such access with the owner of the private land or private facility, the service provider may apply to the Regulator for assistance either in reaching an agreement with the owner of the private land or private facility or for the exercise of other powers to obtain the required access.

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

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

- (a) the Regulator may exercise such other powers under this Act or other Acts, as the Regulator considers appropriate to resolve the matter; or
- (b) the matter may be submitted by the Regulator or a party to the Supreme Court or District Court for such court to make an order granting or refusing the required access on such terms and conditions as the court may determine, having regard to—
 - (i) the nature of the private land or private facilities; and
 - (ii) the nature of the access required; and

- (iii) the importance of such access in maintaining or improving broadcasting services for Samoa; and
- (iv) whether any payment or other consideration can compensate the owner if access is ordered by the Court; and
- (v) the impact on the owner and other residents on the land or facilities if such access is ordered; and
- (vi) the objectives of the Act set out in section 3;
- (vii) any submission provided by the Regulator or the parties; and
- (viii) such other matters as the Court considers relevant.

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

58. Access to customary land and facilities – (1) Where a service provider:

- (a) requires access to customary land or facilities located on customary land to provide broadcasting services; and
- (b) cannot, on commercially reasonable terms, reach an agreement with the person responsible for the customary land or facilities,–

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

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

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

- (a) the matter may be submitted by the Regulator or a party to the Ministry of Natural Resources and Environment or the Land and Titles Court for

resolution under this Act or the Alienation of Customary Land Act 1965 or the Taking of Land Act 1964, or other Acts and procedures dealing with customary land; and

- (b) if the matter is dealt with under paragraph (a), the Regulator may provide such reasonable assistance the Regulator considers necessary as part of the process of dealing with the customary land, including the making of an order certifying whether the purpose for which the land or facilities is required is a public purpose under the Taking of Land Act 1964; and
- (c) the Regulator may exercise such other powers under this Act or other Acts as the Regulator considers appropriate to resolve the matter.

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

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

(5) Subject to subsection (6), where the Land and Titles Court makes an order granting access under subsection (4), the Court shall include in the order what compensation (if any) the service provider shall pay to the person responsible for the customary land or facilities.

(6) The Taking of Land Act 1964 applies to this section with adaptations and modifications as necessary.

59. Co-location – (1) Service providers that own or control existing transmission towers shall allow other service providers to co-locate their antennas, transmitters and ancillary equipment with those existing transmission towers where such co-location is economically feasible and no major additional construction work is required.

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

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

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

PART 11 NATIONAL SECURITY AND PUBLIC EMERGENCIES

60. National security – (1) Despite any other law, a service provider shall comply with any written request, direction or other requirement of the Attorney General regarding access to any part of the service provider's broadcasting facilities or broadcasting services or related information in connection with national security requirements.

(2) A service provider shall provide any facilities or capabilities, required for compliance with subsection (1) at the service provider's expense, but may apply to the Regulator for an order dealing with the treatment of any substantial additional expense.

(3) The Regulator may consider such application submitted to the Regulator under subsection (2) in connection with any tariff approval application or recovery of the costs of universal access obligations, and make an order regarding the recovery of such additional expense.

(4) For the purposes of subsection (1), the Attorney General may determine that any event or matter concerns national security.

61. Public disaster and state of emergency – (1) In case of a disaster or an emergency under the Disaster and Emergency Management Act 2007, service providers shall comply with directions issued by the Commissioner of the Samoa Police Service or the Chief Executive Officer of the Ministry responsible for disaster co-ordination to respond to or alleviate problems faced by the public or the Government relating to the disaster or emergency.

(2) For the purposes of subsection (1), the Commissioner of the Samoa Police Service or the Chief Executive Officer of the Ministry responsible for disaster co-ordination may determine that an event or matter is a public disaster.

PART 12 DISPUTES, OFFENCES AND ENFORCEMENT

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

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

- (a) assign a member of the Regulator's staff or consultant to attempt to mediate the dispute; or
- (b) recommend that the dispute be brought before a court; or
- (c) issue an order to resolve the dispute.

63. Audience and customer disputes – (1) Where a viewer, listener or a customer, other than a service provider is involved in a dispute that the parties to the dispute have been unable to resolve among themselves, either party may refer the dispute to the Regulator for assistance.

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

- (a) assign a member of the Regulator's staff or consultant to attempt to mediate the dispute; or
- (b) recommend that the dispute be brought before a court; or
- (c) issue an order to resolve the dispute.

64. Alternative dispute resolution– (1) Parties to a dispute may agree to refer that dispute to private mediation or arbitration.

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

65. Broadcasting and computer offences – (1) No person shall:

- (a) fraudulently, maliciously, or with dishonest or otherwise unlawful intent, use or attempt to obtain any subscription service without payment of the lawful charge; or
- (b) intentionally, without right and with dishonest or otherwise unlawful intent access or attempt to access the whole or any part of a broadcasting facility or service provider's computer system by infringing security measures, with the intent of obtaining broadcasting or computer data; or
- (c) intentionally, without right and with dishonest or otherwise unlawful intent, intercept or attempt to intercept a transmission not intended for public reception of broadcasting or computer data to, from or within a computer system; or
- (d) intentionally, without right and with dishonest or otherwise unlawful intent, damage, delete, deteriorate, alter or suppress broadcasting or computer data or attempt to damage, delete, deteriorate, alter or suppress broadcasting or computer data; or
- (e) intentionally, without right and with dishonest or otherwise unlawful intent, hinder or disrupt or attempt to hinder or disrupt the functioning of a

broadcasting facility or computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing broadcasting or computer data; or

- (f) intentionally, without right and with dishonest or otherwise unlawful intent, use, possess, produce, sell, procure for use, import, distribute or otherwise make available or attempt to use, possess, produce, sell, procure for use, import, distribute otherwise make available a device, including but not limited to a computer program, for the purpose of committing any of the offences established in paragraphs (a), (b), (c), (d) or (e); or
- (g) intentionally, without right and with dishonest or otherwise unlawful intent, use, possess, produce, sell, procure for use, import, distribute or otherwise make available or attempt to use, possess, produce, sell, procure for use, import, distribute or otherwise make available a computer password, access code or similar data by which the whole or any part of a broadcasting facility or computer system is capable of being accessed with intent that such network or system be used for the purpose of committing any of the offences established in paragraphs (a), (b), (c), (d), or (e); or
- (h) wilfully damage or attempt to damage any broadcasting facility.

(2) A person who contravenes subsection (1) commits an offence and is liable upon conviction to the penalties provided in section 66.

66. Other offences and penalties – (1) A person who contravenes or attempts to contravene this Act or breaches a licence condition or fails to comply with an order made by the Regulator under this Act commits an offence and is liable:

- (a) for a natural person, to a fine not exceeding 50 penalty units for a first offence and 100 penalty units for a subsequent offence; or

- (b) for a company or other incorporated body, to a fine not exceeding 5,000 penalty units for a first offence and 10,000 penalty units for a subsequent offence; or
 - (c) in addition to paragraph (a) in the case of a natural person who is a director, manager, officer of company or incorporated body and who is responsible for the contravention, breach or failure by the company or incorporated body, imprisonment for a term not exceeding 2 years.
- (2) A person commits an offence and is liable to the penalties provided under subsection (1) who:
- (a) knowingly makes or attempts to make any false or misleading or incomplete declaration, application, information, return or statement for the purpose of obtaining or assisting another person to obtain a licence, consent, permission or other act of authority under this Act; or
 - (b) knowingly provides, supplies or otherwise gives, or attempts to provide, supply or otherwise give, to the Regulator or a person acting under or on behalf of the Regulator or a person acting under or on behalf of the Regulator any false, misleading or incomplete documents, statement or information concerning this Act; or
 - (c) wilfully obstructs or hinders or attempts to obstruct or hinder the Regulator or a person acting under or on behalf of the Regulator in the execution of any responsibility, duty or power of the Regulator under this Act.
- (3) Where an offence under subsection (1) or (2) is committed or continued on more than 1 day, the person who committed the offence is liable for a separate offence for each day on which the offence is committed or continued.

67. Divulging personal information obtained in the course of duties– (1) Subject to subsection (2), an employee of a service provider who without good and sufficient cause discloses or uses any information or document that:

- (a) relates to the affairs or personal particulars (including any unlisted telephone number or address) of another person; and
- (b) was obtained in the course of that employee's duties,

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

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

- (a) reasonably necessary for the enforcement of the criminal law; or
- (b) reasonably necessary for the protection of the public revenue; or
- (c) otherwise required or authorised by law.

68. Judicial enforcement— An order made by the Regulator is enforced in the same manner as in section 76 of the Telecommunications Act 2005.

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

- (a) to require the production of documents and information by licensees, affiliates of licensees and any other persons; and
- (b) to search premises and seize documents, equipment and other items; and
- (c) to require attendance and examination of witnesses under oath or affirmation or otherwise; and
- (d) to require persons to undertake specific actions or to cease specific actions in the event of a breach of this Act, the regulations, rules or orders or under any other law.

(2) The Commissioner of Police and all sworn officers of the Samoa Police Service shall provide such reasonable assistance to the Regulator as the Regulator requires in undertaking the

Regulator's responsibilities, functions and powers under this Act and any other law.

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

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

(3) Nothing in subsection (1) or (2) applies to any action for breach of a contract to provide broadcasting services or any action for damages in relation to a fee charged by a service provider.

71. Jurisdiction of the Supreme Court and District Courts– (1) Subject to this Act, the Supreme Court and the District Court shall have jurisdiction to deal with all matters referred to such Court under the Act, including but not limited to civil actions brought under section 70 and disputes referred to the Court under sections 62 and 63.

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

PART 13 MISCELLANEOUS

72. Civil protection for the Regulator – (1) Claims made by or against the Regulator are made pursuant to the Government Proceedings Act 1974.

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

- (a) a person who has been or is the Regulator where such person has been or is acting in good faith; or
 - (b) a person who has been or is acting under the authority of the Regulator under the Act where such person has been or is acting in good faith.
- (3) The Government and the Regulator are not liable for any costs or damages in any legal proceedings challenging any action taken under this Act, or for any failure or refusal to take any action which is authorised by this Act.

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

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

(3) Regulations may be made under subsection (1) prescribing fees and charges for the purpose of this Act, and the amount of any fee or charge prescribed under this section:

- (a) shall be proposed by the Ministry in consultation with the Regulator; and
- (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

74. Evidence by certificate – Despite any other law, in any proceedings under or concerning this Act, including but not limited to a prosecution for an offence, a certificate signed by or on behalf of the Regulator and stating:

- (a) that on any date a person was or was not the holder of a licence issued pursuant to the Act; or
- (b) that on any date the Regulator had made or otherwise issued or amended or revoked or cancelled a rule, order, code of practice, licence, direction, guideline or other act of authority under this Act; or
- (c) the content of a rule, order, code of practice, licence, direction, guideline or other act of authority made or otherwise issued or amended or revoked or cancelled by the Regulator under this Act, –

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

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

- (a) in the case of service on any other person, by—
 - (i) delivering the notice, order, letter, other document or act of authority to the Office of the Regulator during normal business hours; or
 - (ii) sending the notice, order, letter, other document or act of authority by pre-paid post or facsimile transmission to the postal address or facsimile address, as the case may require, of the Office of the Regulator; and
- (b) in the case of service on any other person, by—
 - (i) delivering the notice, order, letter, other document or act of authority to the person at the nominated address in Samoa of the person in any application made by the person to the Regulator or to the nominated address in Samoa of the person in any licence or other act of authority affecting the person issued or signed by or on behalf of the Regulator; or
 - (ii) delivering the notice, order, letter, other document or act of authority, during normal business hours, to the address in Samoa of any solicitor acting as legal representative for the person; or
 - (iii) sending the notice, order, letter, other document or act of authority by pre-paid post or facsimile transmission to the Samoan postal address or facsimile address, as the case may require, nominated by the person in any

application made by the person to the Regulator or nominated in any licence or other act or authority affecting the person issued or signed by or on behalf of the Regulator; or

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

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

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

- (a) service is taken to have been effected upon completion of transmission without evidence of garbling or incomplete transmission; or
- (b) a printed or copied signature is sufficient for any notice, order, letter, other document or act of authority served by facsimile transmission.

76. Repeal –The Broadcasting Ordinance 1959 is repealed.

77. Savings and transitional provisions – (1) All references in law or any document or act of authority to the Broadcasting Department of Western Samoa or Director of Broadcasting or successors is read as referring to the Ministry unless the context otherwise requires.

(2) Insofar as they are not inconsistent with this Act, every regulation, order, document and act of authority under or concerning the Broadcasting Ordinance 1959, so far as they are subsisting or in force at the time of the repeal of the Broadcasting Act 1959, shall continue and have effect under the corresponding provisions of this Act until such time as they are altered, amended or cancelled, as the case may require, under this Act and, where there is a question or concern as to what is a corresponding provision of this Act, the Minister by notice in writing may for all purposes declare a provision of this Act to be a corresponding provision.

(3) All criminal proceedings undertaken by or on behalf of the Ministry arising out of or under the Broadcasting Ordinance 1959 or any regulations made thereunder at the commencement of this Act is deemed to have been instituted and continued under the corresponding provisions of this Act.

(4) Despite this Act, all applications and other matters arising out of or under the provisions of the Broadcasting Ordinance 1959 which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act are determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations and alterations as the Minister may determine in writing.

(5) Despite this Act, where this Act does not provide or provides insufficient or inadequate provision for the transition from the Broadcasting Ordinance 1959 to this Act, the Minister, by notice published in Samoan and English in the Savali, may make such provisions as the Minister considers necessary in order for all matters under or concerning the Broadcasting Ordinance 1959 and this Act to be properly and effectively determined or otherwise dealt with under this Act.

78. Transitional provisions for prior licences– (1) Despite this Act, the holder of an existing licence (a “prior licence”) issued prior to the coming into force of this Act may apply to the Regulator at any time after the commencement of this Act to revoke the holder’s prior licence and apply to operate under a new licence issued in accordance with this Act.

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

(3) In all other respects, the operation of broadcasting networks and the provision of broadcasting services under prior licences is subject to the licensing and other requirements of this Act, and all applicable regulations, rules, orders and licensing procedures.

(4) The Regulator’s powers to grant a licence under this Act applies despite any law, agreement, contract, arrangement or prior licence (howsoever called) issued to a person and in

existence at the time of the commencement of the Broadcasting Ordinance 1959.

(5)Where:

- (a) the Minister has granted a licence under the Broadcasting Ordinance 1959; or
- (b) the Regulator has granted a licence under this Act; and
- (c) the Attorney General and the Chief Executive Officer of the Ministry of Finance have advised Cabinet in writing that the grant of such licence has adversely affected the rights of a person under an existing agreement, contract, arrangement, licence or other provision (howsoever called), Cabinet, in its absolute discretion, may authorise the provision of compensation to such person in the form of money, concessions, and benefits or otherwise in such amount or form as the Attorney General and the Chief Executive Officer of the Ministry of Finance in writing may recommend

(6)In the event of any inconsistency between this section and section 77, this section prevails.

REVISION NOTES 2010 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2010 – 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.(e.g. Samoa Police Service, Commissioner of the Samoa Police Service and sworn officers of the Samoa Police Service; and correct name for Constitution of the Independent State of Samoa 1960).
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General—
 - (i) “Every” and “any” changed to “a”

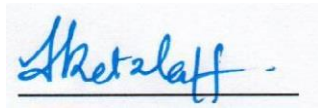
- (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”,
- (iii) “deems” changed to “considers”
- (iv) “shall have” changed to “has”
- (v) “shall be guilty” changed to “commits”
- (vi) “notwithstanding” changed to “despite”
- (vii) “pursuant to” changed to “under”
- (viii) “it shall be lawful” changed to “may”
- (ix) “it shall be the duty” changed to “shall”
- (x) Numbers in words changed to figures
- (xi) “hereby” and “from time to time” (or “at any time”) removed
- (xii) UK spelling used to spell check (e.g. “license” or “licensed” or “licenses” substituted with “licence” or “licenced” or “licences” respectively).
- (xiii) Changes made to formalise the name of the “Regulator” and “Office of the Regulator”, respectively, throughout the Act (i.e. instead of “regulator”, substituted “Regulator”).
- (xiv) Adopting the drafting style of putting “and” or “or” at the end of paragraphs where appropriate, and substituting “and/or” with “or”.
- (xv) Correct grammatical, typographical and similar errors.
- (xvi) Deleted “the provisions of” in references such as “the provisions of this Act” and deleted “of this Part” in references such as “sections of this Part” where appropriate.
- (xvii) Correct cross references made within the Act (e.g. in section 39(1), for reference to “section 36(1)(b)” substituted “section 36(b)).
- (xviii) Redraft of certain sections for clarity (e.g. section 39(3)).
- (xix) The second sentence in the definition of “terms of service” in section 2 has been transferred to section 50(4), as it is a substantive provision
- (xx) Substituted roman numerals with decimal numbers.

The following amendments were made to this Act since its enactment:

By the Broadcasting Amendment Act 2016 (No.7) commenced on 9 February 2016:

- Section 2** substituted new definition for “broadcasting service”;
inserted a new definition for “Broadcasting Tribunal”;
Omitted “universal access policy” and its meaning.
- Section 3** paragraphs (b) and (h) repealed;
new paragraphs (p) and (q) inserted.
- Section 4A** new section inserted after Part 2.

- Section 5** subsections (1), (2) and (3) substituted;
 subsections (4), (7)(a) and (10) repealed;
 for subsections (8) and (9), deleted “subsection (4)”
 substituted with “subsection (3)”.
- Section 8(15)** repealed.
- PART 3** repealed.
- Section 10(1)** omitted “established under section 11”.
- Section 29** for subsection (1), deleted “The Ministry shall propose, and
 the” and substituted with “The”;
 subsection (4) is repealed;
 for subsection (9) inserted “the Regulator and other” after
 “consult with”.
- Section 30(1)(a)** repealed.
- Section 31** for subsection (1), paragraphs (c), (d) and (e) are repealed;
 subsection (2) substituted.
- Section 32** repealed.
- Section 33** repealed.
- Section 35** substituted.
- Section 36** for the section heading, omitted “abuse of dominance” and
 omitted “an abuse of the service provider’s dominant
 position or”.
- Section 37(2)** substituted.
- Section 40(2)** omitted “established under section 11”.
- Omitted “dominant” wherever occurring in the Act.
- By the *Fees and Charges (Miscellaneous Amendments) Act 2017*, No. 13:
- Section 9** New subsection (1A) inserted;
- Section 73** New subsection (3) inserted;



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Communications and Information Technology.*
