



Office of the Regulator

Annual Report

for the period ended 30 June 2008

Executive Summary

The year ended 30 June 2008 was a challenging year for the Office of the Regulator (“Office”), as it was required to address a diverse number of issues and to defend its actions. Such requirements arise in the normal course of development for newly established administrative bodies. This period also represented a full year of operations of the Office, and efforts were made to ensure that it is appropriately equipped to fulfil its responsibilities under the Telecommunications Act and to develop, as might be necessary, systems and procedures to better guide the sector.

The period witnessed the passage of a number of amendments to the Telecommunications Act 2005. The second set of amendments in particular, have caused some significant changes to the legal and regulatory framework through the establishment of a Telecommunications Tribunal, instead of the Supreme Court, to hear appeals, and by prescribing a clear process for setting interim interconnect charges.

The Office has not yet been able to fill its divisional manager positions, though the positions were advertised at least on two occasions during the reporting period. As a result, its in-house capabilities are still limited, and continue to affect the types of activities that can be undertaken.

Finally, the year end signalled a change in the leadership of the Office with the departure of Mr. John Morgan, the telecommunications sector’s first Regulator and upon whom the “*Office of the Regulator*” was established. The Office wishes to express its sincere appreciation to Mr. Morgan for his commitment to developing telecommunications in Samoa during his tenure and it looks forward to the appointment of his successor and the challenges that lie ahead.

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1. Introduction

The Office of the Regulator (“Office”) hereby presents its second Annual Report, for the period 1 July 2007 to 30 June 2008. During the period under review, the following key events occurred:

- two sets of amendments to the Telecommunications Act 2005 were promulgated;
- Telecommunications Licence Fees Regulations were enacted;
- two Orders of the Regulator were issued;
- procedures for applying for a Retail Internet Service Provider Licence were published;
- two telecommunications licences were issued;
- a new process to set interim interconnection charges was initiated;
- technical policy guidelines on the assignment of television frequencies were prepared;
- the processing of equipment type approval of telecommunications devices intended for use in Samoa commenced in earnest; and
- the Office engaged in litigation with Digicel (Samoa) Limited (“Digicel”), following an appeal to the Supreme Court of an order on interconnection charges that was issued in the previous reporting period.

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

- the changes to the legal framework for telecommunications in Samoa (Section 2);
- an update on developments and activities in the sector (Section 3);
- details of litigation involving the Office (Section 4);
- administrative and associated matters related to the Office (Section 5);
- a discussion on and the presentation of the financial statements and accounts for the Office (Section 6);
- final remarks, through which insight is given into expectations for the next financial year (Section 7).

2. Legal Framework

Within the reporting period, the legal framework for the telecommunications sector, as expressed in the Telecommunications Act No. 20 of 2005 (“Act”) experienced major developments with the promulgation of two sets of amendments, and of regulations to permit the collection of telecommunications licence fees by the Office. In addition, Orders of the Regulator were issued primarily to effect changes to retail prices that would be payable by consumers.

2.1 Amendments to the Telecommunications Act

Two amendments to the Act were promulgated during the period under review and are discussed in this section. Their purpose ranged from minor edits, to the introduction of new structures and processes that had not been initially contemplated, but with the benefit of experience, were considered essential for better management of sector issues.

2.1.1 Telecommunications Amendment Act 2007

The 2007 amendment to the Act¹ comprised an extensive list of revisions to the main Act. They ranged from typographical and drafting corrections, deletion and insertion of provisions, to changing the effect of provisions. Key changes that were given effect from this suite of amendments are summarised in Table 2.1.

Subject area	Details of the amendment (reference in the Act as amended)
Fees	The initial section was repealed and replaced with one that empowered the Head of State, acting on the advice of Cabinet, to make regulations on licence, radio spectrum and numbering fees, instead of the Regulator. (section 10)
Universal Access	Provisions in relation to the Universal Access Fund were revised to limit contributions to the fund to individual licensees only. Prior to

¹ 2007, No. 23; passed on 13 July 2007.

Subject area	Details of the amendment (reference in the Act as amended)
	the amendment, contributions to that fund would have been required of all licensees. (section 21)
Competition	The amendment appears to limit the need for a process through which a service provider is designated dominant. (section 26)
Numbering	<p>The amendments allow the Regulator to impose on a service provider a charge to meet the Regulator’s costs of developing and introducing:</p> <ul style="list-style-type: none"> • number portability and the ongoing costs of administering number portability; (section 63) • service provider selection or service provider pre-selection. (section 64)
Enforcement	<p>With the exception of certain circumstances, the additional provisions prescribed that an employee of a service provider who discloses without good and sufficient cause:</p> <ul style="list-style-type: none"> • information obtained from a telephone conversation overheard in the course of that employee’s duties, commits an offence. (section 75A) • information or document that relates to the affairs or personal particulars of another person and was obtained in the course of that employee’s duties, commits an offence. (Section 75B)

Table 2.1: Major changes given effect by the Telecommunications Amendment Act 2007.

2.1.2 Telecommunications Amendment Act 2008

The preparation and enactment of 2008 amendments to the Act² appeared to have been precipitated by the experience of litigation in the sector and the absence of a clearly stated process through which interim interconnection charges can be established. The amendment also included provisions for alternative arrangements for the appointment of a Regulator, in the event that an appointment in accordance with section 6 of the Act might not be appropriate. Hence the key provisions of the amendment were:

- An alternative arrangement for appointing a Regulator (section 7A) – the Cabinet of Ministers is now empowered to approve the appointment of a

² 2008, No. 18; passed on 12 June 2008.

suitable regulatory body within or outside Samoa to act as Regulator. Prior to this amendment appointment of a Regulator could only be made by the Head of State on the advice of Cabinet.

- The establishment of a Telecommunications Tribunal (section 11 and Part IIA) – appeals from an order, directive, decision, or exercise of discretion of the Regulator may only be made to the Telecommunications Tribunal, which was also established through these amendments. The amendments repealed and replaced provisions that allowed for appeals and review of Orders of the Regulator to the Supreme Court, and provided the general structure for tribunal proceedings when it is activated.
- A process for the implementation of interim interconnection charges (section 39A) – the Regulator is required to engage the parties in a consultative process prior to issuing an Order of the Regulator setting interim interconnection charges, which can be valid for a period of no longer than six months. The amendment clearly establishes a process for establishing interim interconnection charges and these charges are not required to be cost-based.

2.2 Telecommunications Licence Fee Regulations 2007

In accordance with section 81 of the Act as amended, Telecommunications Licence Fee Regulations were promulgated and came into force on 25 September 2007. These Regulations provided a framework for the payment of application and annual licence fees, including penalties that could be incurred by holders of individual and class telecommunications licences in Samoa.

A schedule of the fees payable to the Office for specific types of licences is included in the Regulations. Note should be made that depending on the licence that has been issued, annual licence fees vary from a fixed amount, to being calculated as a percentage of gross revenue derived from the licensed service during a licence year. However, for annual fees that are based on a percentage of gross revenue, a minimum payment is also prescribed, with the licensee required to pay the greater amount.

2.3 Rules and Orders

In the period under review, two Orders of the Regulator were issued.

2.3.1 Order of the Regulator, Number 2007/7

Following an investigation which substantiated allegations that Digicel was carrying international traffic from New Zealand that was destined for subscribers of SamoaTel Limited (“SamoaTel”), Order of the Regulator (“Order”) 2007/7 was issued. The action of carrying international traffic destined for customers on SamoaTel’s network was considered to be in contravention of the company’s licensing arrangement.

Through the Order, Digicel was instructed to cease carrying traffic originating outside Samoa that was not intended for termination on the company’s network. The Order was issued on 7 September 2007, with an effective date of 10 September 2007.

2.3.2 Order of the Regulator, Number 2008/1

As the dominant service provider for fixed-line telecommunications services, SamoaTel requested the approval of the Office for increases in its retail prices for fixed-line to mobile calls. The price increases would affect calls from SamoaTel’s fixed-line network

- to SamoaTel’s mobile (GoMobile) network; and
- to Digicel’s mobile network.

The proposed price changes, which include VAGST, are summarised in Table 2.2.

Service element	Initial price ³	Proposed price ⁴	% change
Fixed-line to GoMobile (per min)	\$0.31	\$0.42	+ 35.5%
Fixed-line to Digicel (per min)	\$0.65	\$0.85	+ 30.8%

Table 2.2: Price changes proposed by SamoaTel

Recognising that interconnection charges had reverted to previous levels when Digicel’s appeal of the charges was allowed⁵, regulatory approval was given for the

³ Prices are in WST and include VAGST.

⁴ Prices are in WST and include VAGST.

⁵ See Section 3.3 of this report for further details.

following maximum retail amounts (VAGST inclusive) for each minute of peak hour traffic, as reflected in Order 2008/1, which was issued on 15 February 2008:

- forty-two (42) sene per minute for peak hour calls from SamoaTel's fixed-line network to SamoaTel's Go-Mobile network; and
- seventy-seven (77) sene per minute for peak hour calls from SamoaTel's fixed-line network to Digicel's mobile network.

The effective date of the Order was 16 February 2008.

3. Sector Update

Activity within the sector is still developing, and the Office is still implementing structures that are needed to better guide stakeholders, and itself. During the period under review, considerable attention and resources were applied to addressing radio frequency spectrum and technical matters, as well as interconnection.

3.1 Telecommunications Licences

During the 2007/2008 financial year, the telecommunications licences that have been issued by the Office are presented in Table 3.1.

Licence	Licensee	Date of issuance
Retail Internet Services Provision (“ISP”)	Datec (Samoa) Limited	21 November 2007
	Bear Systems International Limited	25 June 2008

Table 3.1: Telecommunications licences issued by the Office during the 2007/2008 financial year.

As at 30 June 2008, the number telecommunications licences that had been issued under the Act as amended total nine, and are listed in Appendix A. Further, within the period of review, the Office did not have cause to amend any of the above-stated licences, and for the avoidance of doubt, it did not revoke any of the licences that have been issued.

3.1.1 Procedures for the Licensing of Retail ISP

On 21 October 2007, the Office published procedures for applying for a Retail ISP Licence. The document included guidelines on the manner and form of applications, as well as supporting information that should be provided. In addition, the application process and the time frames within which applications should be processed were detailed.

3.2 Radio Spectrum Licences

During the period under review and as at 30 June 2008, radio spectrum operations for forty-two (42) licensees were approved by the Office. Additionally, the Office issued radio spectrum licences for ten (10) temporary operations within the jurisdiction of Samoa.

3.2.1 Temporary Radio Spectrum Licences

In September 2007, the South Pacific Games were held in Samoa which necessitated the temporary assignment of frequencies in order to manage the demands of hosting such a regional event. As a result, temporary licences were issued to the Police, the Red Cross Society, and to television broadcast entities to facilitate coverage of the various events and for satellite uplink operations.

3.2.2 Non-temporary Radio Spectrum Licences

Non-temporary radio spectrum licences were issued by the Office for the following types of operations:

- Aeronautical radio (aircraft station)
- Fixed station
- FM radio broadcast
- Land mobile radio
- Maritime radio (ship station)
- Television broadcast
- Amateur radio
- Satellite earth station (transmit and receive)
- Satellite earth station (receive-only)

As reflected in Figure 3.1, land mobile radio operations constituted approximately 50% of the licences issued within the 2007/2008 financial year. On the *Register of Radio Spectrum Licensees*, which is included as Appendix B, almost half of all of those licensees were taxi businesses, followed by government and statutory organisations.

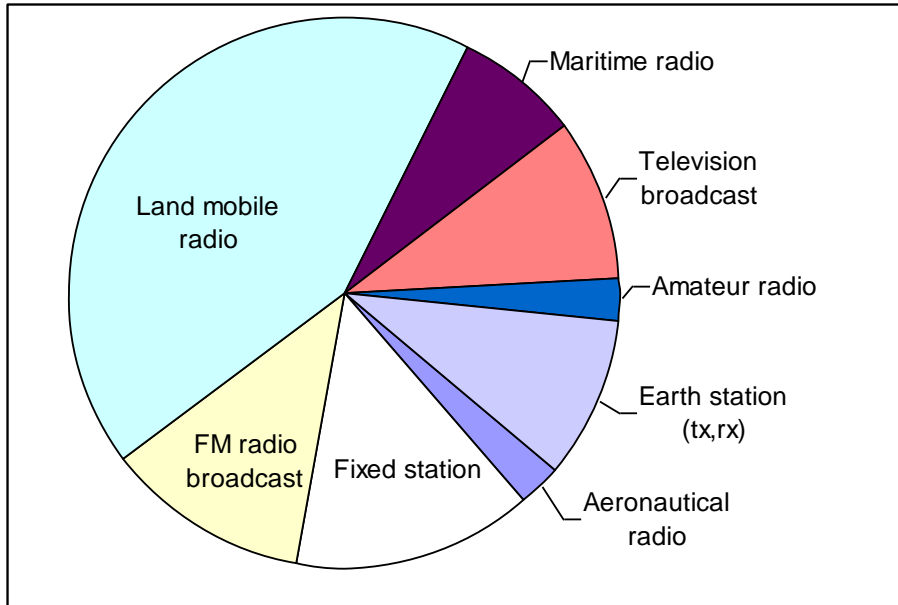


Figure 3.1: Distribution of the radio spectrum licences by operation.

Over the last two financial years, 2006/2007 and 2007/2008, the number of spectrum licences issued was relatively consistent, as shown in Figure 3.2. However, these figures do not reflect the number of radio operators in Samoa. Few radio operators are up-to-date in the payment of radio spectrum fees, which is in turn reflected in the number of radio spectrum licences that have been issued. Matters related to the payment of spectrum fees are discussed in section 6 of this report.

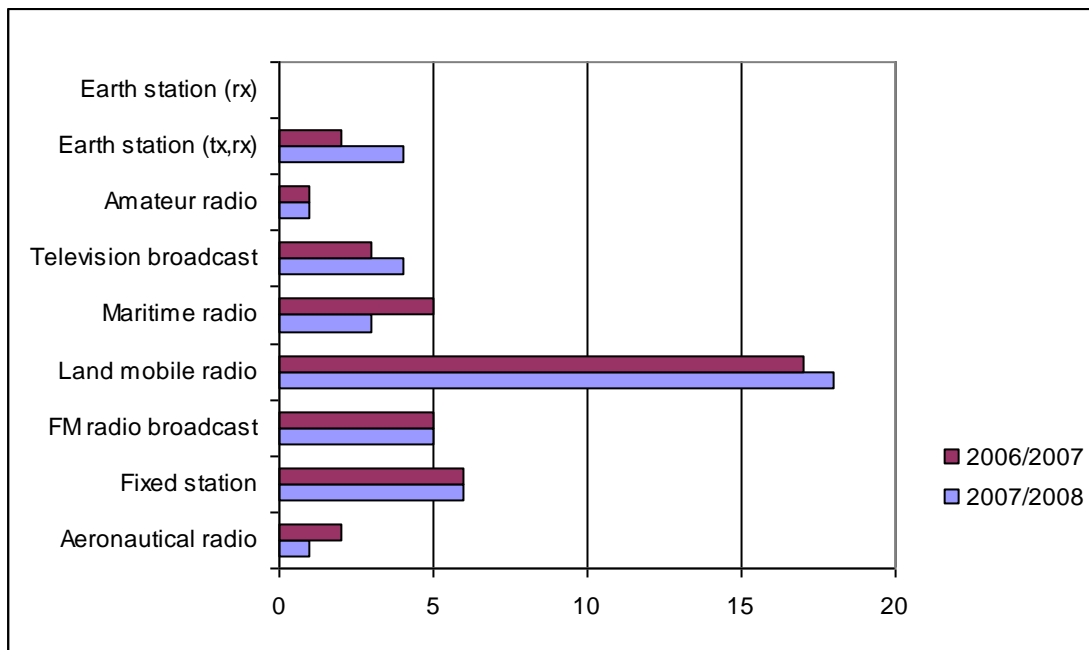


Figure 3.2: Comparison of the number of radio spectrum licences issued for the periods ending June 2007 and June 2008.

3.3 Interconnection

Towards the end of the 2007 financial year, the Office issued Order 2007/4, which replaced Order 2006/4 on interim interconnection charges between Digicel and SamoaTel. The charges set out in the Order 2007/4 were based on recommendations made by consultants, who were required to assess the interconnection cost models prepared by the companies and to supply recommendations for cost-based interconnection charges.

In July 2007, Digicel filed an appeal against the Order 2007/4. A stay was granted on the Order 2007/4, resulting in the Digicel and SamoaTel reverting back to the interconnection charges contained in the Order 2006/4. The case, Digicel versus Attorney General and SamoaTel Limited (2008), was heard on 4 and 5 October 2007 and the judgment was delivered on 30 March 2008. The details of the litigation are discussed in section 4 of this report.

In June 2008, following promulgation of a second set of amendments to the Act, the Office invoked subsection 39A, which prescribed a process for setting interim interconnection charges. By the end of this reporting period, the parties, Digicel and SamoaTel, had submitted their recommendations on appropriate interconnection charges. The process will continue (into the next financial year), with the Office considering the submissions made by the parties, as well as any other matters that are considered relevant towards making a determination of interim interconnection charges.

3.3.1 Interconnection Agreements

During the period under review, no new interconnection agreements were filed with the Office. The only interconnection agreement that the Office has on record is that between Digicel and SamoaTel, which was submitted by the parties during the 2006/2007 financial year.

3.4 Radio Spectrum Management

With the delivery of the Integrated Spectrum Monitoring System (“ISMS”) towards the end of the last financial year, the Office was in a position to embark upon radio frequency monitoring activities both in Upolu and Savaii. The ISMS has been an integral addition to the diagnostic tools available to the organisation, allowing it to not

only ensure compliance by spectrum licensees to the terms and conditions of their licences, but to investigate allegations and instances of radio frequency interference.

3.4.1 Radio Spectrum Planning

Due to the additional demands for radio spectrum for activities associated with the South Pacific Games that were held in September 2007, a concerted effort had to be made, as it related to spectrum planning, to ensure that adequate provisions were made for radio frequencies bands that would be in great demand, and that alternative options could be provided.

Within the reporting year, the Office embarked on an exercise to examine television broadcast frequency assignments in Samoa, which resulted in the preparation of *Policy Guidelines: Assignment of TV Frequencies in Samoa*, and which is discussed in the next section of this report. The impetus for this activity was the realisation that the demand for television broadcast frequencies, and particularly those in the VHF⁶ band, outstripped what was available.

Finally, the Office benefitted from the short-term assignment of a technical expert to the Office, who was made available through the International Telecommunications Union. The terms of reference for the assignment included reviewing the telecommunication and broadcasting frequency band plans, as well as the spectrum licence forms and procedures. Further details are provided in section 5.3 of this report.

3.4.2 Television Frequency Assignment Policy Guidelines

Following from research that was conducted on television broadcast frequencies assignments in Samoa, the Office embarked on an exercise to establish technical guidelines for such assignments. Particular attention was paid to television broadcast services in the VHF band, as the following observations had been made:

- (i) VHF broadcast channels are in high demand due to the wider coverage that can be achieved in comparison to similar UHF⁷ operations.
- (ii) There are insufficient VHF channels available in the existing band plan to meet current and forecast demand.
- (iii) Additional VHF channels need to be made available for any new free-to-air television operations intending to provide nation-wide coverage.

⁶ VHF – Very High Frequencies.

⁷ UHF – Ultra High Frequencies.

- (iv) Government policy prescribed that at least three VHF channels should be made available for free-to-air programming on a nation-wide basis.
- (v) Greater consideration was required to minimise instances of inter-network interference.
- (vi) With the prospect of digital television eventually being introduced to Samoa, early planning consideration could be given to its requirements.

Discussion papers were first prepared on the subject and were circulated for comment in the last quarter of 2007 and again in May 2008. The document, *Policy Guidelines: Assignment of TV Frequencies in Samoa*, was finalised in June 2008.

3.5 Tariffs and Pricing

During the period under review, changes in retail prices were implemented by Digicel and SamoaTel for mobile/cellular and fixed-line telecommunications services respectively. SamoaTel increased its prices for fixed-line to mobile/cellular calls in line with the levels that were approved by the Regulator in Order 2008/1 (section 2.3.2). Table 3.2 presents a comparison of fixed-line telecommunications prices offered by SamoaTel over the 2007/2008 financial year.

Destination	2007 Price per minute ⁸		2008 Price per minute ⁹	
	Peak	Off-peak	Peak	Off-peak
Local calls	\$0.04	\$0.04	\$0.04	\$0.04
National calls	\$0.18	\$0.18	\$0.18	\$0.18
To SamoaTel GoMobile	\$0.27	\$0.27	\$0.37	\$0.37
To Digicel Mobile	\$0.60	\$0.60	\$0.67	\$0.67

Table 3.2: Changes in retail prices for fixed-line services offered by SamoaTel during the 2007/2008 financial year.¹⁰

Digicel implemented a suite of changes to its service offerings by introducing new plans and tariffs for both its pre-paid and postpaid calling services. Table 3.3 presents the key changes in the tariffs and prices for pre-paid mobile/cellular telecommunications services offered by Digicel over the 2007/2008 financial year. In

⁸ Prices as at 1 July 2007. Prices are in WST and exclude VAGST.

⁹ Prices as at 30 June 2008. Prices are in WST and exclude VAGST.

¹⁰ Source: <http://www.samoatel.ws>.

Appendix C of this report, the key changes in the tariffs and prices for Digicel's postpaid mobile/cellular telecommunications services offered over the 2007/2008 financial year are summarised.

Calling plans	2007 Price per minute ¹¹		2008 Price per minute ¹²	
	Peak	Off-peak	Peak	Off-peak
<i>Classic Flex</i>				
Digicel to Digicel	\$0.70	\$0.25	\$0.70	\$0.25
Digicel to GoMobile & Fixed-lines	\$0.80	\$0.50	\$0.70	\$0.25
<i>Anytime Flex</i>				
Digicel to Digicel	\$0.45	\$0.45	\$0.45	\$0.45
Digicel to GoMobile & Fixed-lines	\$0.70	\$0.50	\$0.45	\$0.45
<i>DigiTXTR Flex</i>				
Digicel to Digicel	-	-	\$0.70	\$0.70
Digicel to Fixed-lines	-	-	\$0.70	\$0.70

Table 3.3: Changes in retail prices for pre-paid mobile/cellular services offered by Digicel during the 2007/2008 financial year.¹³

3.6 Telecommunications Equipment

Commencing in the last reporting period, the Office has been type approving telecommunications devices intended for use in Samoa. Type approval refers to a process through which equipment is assessed for compliance to established standards and authorised for use. As at 30 June 2008, fourteen devices have been type approved, a listing of which is provided in Appendix D.

3.7 Universal Access

Universal access in telecommunications is an important method to realise more equitable access to telecommunications. It is frequently implemented when the cost of

¹¹ Prices as at 1 July 2007. Prices are in WST and include VAGST.

¹² Prices as at 30 June 2008. Prices are in WST and include VAGST.

¹³ Source: <http://www.digicelsamoa.com>.

expanding the infrastructure and/or the likely return on investment makes such initiatives prohibitive to network operators. Though the current telecommunications legislation has included provisions to allow for the introduction of Universal Access, the required systems and structures have not yet been implemented.

3.7.1 Universal Access Policy

Following from activities that were implemented in the last reporting period towards the preparation of a Universal Access Policy, in April 2008 two preliminary surveys were undertaken in rural areas of Upolu that might possibly be experiencing poor mobile communications coverage¹⁴. It was observed that while service was generally available, it was poor and/or restricted in many areas along Fagaloa, and in parts of Aleipata, Safata, Falelatai and the Aana district.

As a result of the field trips and noting that it was almost a year since the consultative workshops were conducted in Savai'i, it was decided that workshops would be held again in Savai'i, and in Upolu, to secure updated input towards the preparation of the Universal Access Policy. It is intended that the workshops will be conducted during the next reporting period.

Additionally, in June 2008, a discussion paper, "*Universal Access to Telecommunications Services*", was circulated for comment. The document proposed options for improving access to telecommunications services and considerations towards implementing Universal Access in Samoa. There was limited response to the discussion paper, so it is likely that it will be updated and will eventually be subject again to consultation.

3.7.2 Universal Access Fund

In accordance with the legislation, the preparation of a Universal Access Policy is supposed to be the precursor to the establishment of a Universal Access Fund by the Minister. Note should be made that under subsection 20(1) of the Act as amended, the Office has the discretion to propose a Universal Access Policy to the Minister. Hence, subject to the outcome of its intended consultations, the Office could decide to defer proposing a Universal Access Policy to the Minister, which in turn would delay the establishment of the Universal Service Fund, in accordance with subsection 21(1).

¹⁴ The areas included Fagaloa; Tiavea; Aleipata; Safata; Falealili; Lefaga; Falelatai; Tanumalala; inland Fasitootai and Aleisa.

4. Litigation involving the Office of the Regulator

In the previous Annual Report, summaries were provided on two court cases in which the Regulator was named as a defendant:

- Bluesky Communications Limited vs. Attorney General¹⁵ and Computer Services Limited (2007); and
- Digicel (Samoa) Limited versus Attorney-General¹⁶ and SamoaTel Limited (2008).

The case Bluesky Communications Limited vs. Attorney General (2007) was heard early within this financial year, and its outcome has already been reported¹⁷. However, as at 30 June 2008, Bluesky Communications Limited had not re-filed its suit.

With regard to the case, Digicel (Samoa) Limited versus Attorney-General and SamoaTel Limited (2008), the appellant filed an appeal in July 2007 against the Order 2007/4 on interconnection charges that was issued by the Office in May 2007. The case was heard on 4 and 5 October 2007, and the judgment was delivered on 30 March 2008.

4.1 Digicel (Samoa) Limited versus Attorney-General and SamoaTel Limited

In the lead up to the launch of Digicel's GSM operations in Samoa, efforts were underway for the company and SamoaTel to establish an interconnection agreement, which would facilitate the physical and logical connections of their networks. By October 2006, the parties were still unable to finalise some of the interconnection charges for the provision of interconnection services to each other, in particular fixed-line and mobile termination charges, resulting in regulatory intervention.

¹⁵ The Attorney General's Office represented three of the four defendants: the State of Samoa, the Minister for Communications and Information Technology and the Office of the Regulator.

¹⁶ The Attorney General's Office represented the Regulator, who was the first defendant.

¹⁷ See the Office's Annual Report 20006/7 Financial Year.

The Act specified that the interconnection charges of dominant service providers must be cost-based and also empowered the Regulator to establish interconnection charges. Detailed cost based information was not available at the time the charges were being negotiated, therefore the Regulator established interim interconnection charges to be used for a limited period of time until both parties provided fully substantiated cost information.

Records indicate that the Regulator consulted with the parties prior to setting the interconnection charges. On 31 October 2006, the Regulator issued Order 2006/4, establishing interim interconnection charges for Digicel and SamoaTel.

A cost study was subsequently conducted in 2007, in which both companies were required to provide cost models based on Long Run Average Incremental Cost (“LRAIC”) for independent review. Consultants, Intercai Mondiale Limited, were required to assess the models prepared by the companies and to supply recommendations for cost-based interconnection charges, which were to remain in effect for at least three years.

Due to delays in securing the requisite information from the parties, the consultants were instructed to develop cost models based on Fully Allocated Cost (“FAC”) principles, instead of LRAIC as had been communicated to the parties. On 16 May 2007, the Office issued Order 2007/4 establishing interconnection charges for Digicel and SamoaTel, as recommended by the consultants and based on FAC models.

In July 2007, the Digicel filed an appeal against the Order 2007/4. The parties were Digicel as appellant, Attorney General on behalf of the Regulator as first respondent, and SamoaTel as second respondent. At the Motion for Leave to Appeal held on 13 July 2007, the Order 2007/4 was stayed.

4.1.1 Nature of proceedings

Digicel’s appeal was brought under section 11 of the Act, which has since been repealed and replaced. The company asked that the Court declare the Order 2007/4 unlawful on the key grounds that:

- (i) the Office had not disclosed to Digicel relevant material and information used in setting the interconnect charges, and that the company had not been given any opportunity to correct, contradict or comment on such information prior to the making of the Order; and
- (ii) the Office had not provided to Digicel a copy of the draft Order, and the company had not been given a fair opportunity to correct, contradict or comment on the draft Order before it was finalised.

4.1.2 Decision

The Court considered the ground of appeal and decided as follows:

- (i) The Office had failed to accord procedural fairness by not providing Digicel access to the cost models, the findings and recommendations of the consultants and a copy of the draft Order, and an opportunity to review and comment on those matters before the Order was issued.
- (ii) The Office had failed to inform Digicel about the change to the consultants' assessment the cost models supplied by Digicel and SamoaTel, from LRAIC modelling to FAC modelling, and upon which the interconnection charges were based.
- (iii) The Office had not adequately handled the confidentiality/disclosure issue by exploring options through which a consultation process with the parties could still have been implemented, though a number of key documents had been supplied in confidence.
- (iv) The Order 2007/4 was unlawful.

The Court allowed the parties to make submissions on costs, but as at 30 June 2008, a decision on costs has not been announced.

5. Activities within the Office

Within the period under review, minor adjustments have been made to the staffing within the Office, but more importantly, the organisation was unable to identify suitable candidates to fill its divisional manager positions. The year-end also signalled the early departure of the Regulator, and the need for interim arrangements to be instituted.

Staff members participated in two formal training programmes, one held locally, the other overseas. Additionally, the Spectrum Management and Technical Division benefited from the presence of a radio communications expert, who was stationed at the Office for a month, and whose services were made available through the International Telecommunications Union.

5.1 Staffing

The staff complement for the Office remained unchanged during the period under review, but a new position was created and one was suspended. As at 30 June 2008, the staff complement was eight. Save and except the occurrences that are detailed below, the staff members have remained unchanged.

5.1.1 Suspension of the Position of Cleaner

The position of Cleaner has been suspended, after it was abandoned by the incumbent, who failed to report for work when scheduled to return. The employment contract was officially terminated on 31 August 2007.

In preference to filling the position, the Office has arranged for the regular cleaning of its premises by an independent contractor. It is expected that this arrangement will be maintained for the foreseeable future.

5.1.2 Appointment of Receptionist/Records Clerk

With effect from 21 November 2007, Ms. Etenauga Taniela was appointed the Receptionist/Records Clerk to the Office. Under the direction and supervision of the Principal Accountant and Administration Officer, the Receptionist/Records Clerk is

required to provide clerical support to the organisation. Key duties include, but are not limited to:

- Serving as a receptionist;
- Being responsible for the receipt, recording, storage and retrieval of all documents in physical and electronic form; and
- Providing clerical support as required.

5.1.3 Resignation from the Position of Samoan Telecommunications Regulator

On the grounds of ill health, Mr. John Morgan requested that he be released early from his contract in the position of Samoan Telecommunications Regulator. He had been appointed to the position with effect from 10 July 2006 for a term of three years. He demitted office on 27 June 2008.

5.1.4 Appointment of an Interim Regulator

Following Mr. Morgan providing notice in January 2008 of his intention to vacate his position, the Government of Samoa (“Government”) advertised the position and initiated the recruitment process for a replacement.

After interviews had been conducted, it was the general view that a suitable candidate did not exist among those short-listed. In order to allow for the re-advertisement of the position and the exploration of other recruitment options, provision was made for the appointment of an Interim Regulator, which is permitted under subsection 6(4) of the Act as amended.

In accordance with subsection 6(6), the position of Interim Regulator was designed to be a short-term appointment for a period of no more than 6 months. Notwithstanding, the appointee would be vested with the full powers and authority of the Regulator.

The Government entered into a contract for service with Network Strategies Limited to provide interim regulatory services for a period of three months in the first instance. By Cabinet Directive [F.K. (08) 22] and subsection 6(4)(b) of the Act as amended, Ms. Michele Marius of Network Strategies was appointed to the position of Interim Regulator with effect from 30 June 2008.

5.1.5 Organisational Structure

The organisational chart for the Office has been updated to reflect all current positions as at 30 June 2008. Note should be made that save and except the positions Manager-

Spectrum Management and Technical and the three in the Regulatory and Consumer Services Division, all other positions are filled.

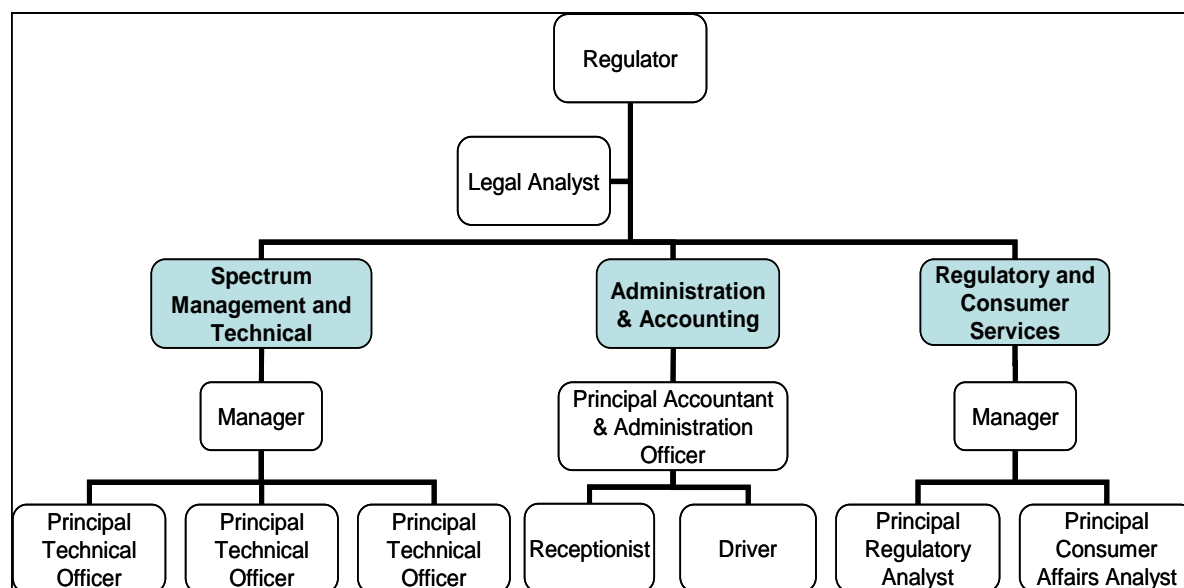


Figure 5.1: Current positions within Organisational for the Office as at 30 June 2008.

5.2 Training and Professional Development

During the period under review, staff members of the Office were able to avail themselves of learning opportunities, as reflected in Table 5.1. The Microsoft Excel course was attended by all staff members and was conducted locally. With regard to the *Spectrum Management Module* that was facilitated by the Australia Communications and Media Authority (“ACMA”) and the International Telecommunications Union (“ITU”), financial assistance was secured under the ongoing World Bank Telecommunications and Postal Sector Reform Project. It was attended by Mr. Tuuaga Aviata of the Spectrum Management and Technical Division.

Programme	Period	Organisation (Location)
Microsoft Excel (Beginner and Intermediate)	June 2008	Computer Services Limited (Samoa)
Spectrum Management Module	October / November 2007	ACMA/ITU Training Program for the Asia and Pacific Region (Australia)

Table 5.1: List of Training Programmes attended by Staff Members.

In addition to formal training opportunities, the Office facilitated team building and knowledge transfer among its staff members through a retreat that was held in May at Vavau, Lotofaga.

5.3 ITU Technical Assistance

In response to a request by the Office, the ITU offered the services of Mr Barry Matson, an Australian radio engineer with extensive experience in radio communications systems. Mr Matson, who was resident at the Office for the month of May 2008, was required to conduct a review of the telecommunication and broadcasting frequency band plans, as well as licensing forms and procedures. At the end of his tenure, Mr Matson communicated the following observations:

- Radio spectrum management in Samoa is being performed at a fairly basic level, but consistent with the resources available to the Office.
- Frequency planning and assignments were based on the New Zealand approach.
- Elementary precautions are being taken to minimise the likelihood of interference for new assignments. However, more concerted efforts and resources will be necessary to undertake the level of frequency coordination that is required to achieve higher density frequency assignments and to realise efficient spectrum use.
- While the members of the technical unit have had basic training, professional leadership is required in order for the Office to be in a position to undertake more complex spectrum management activities.

These views are consistent with those of the Office and re-emphasise the urgent need for the successful recruitment of a Manager-Spectrum Management and Technical, to provide greater guidance to the team and to improve the skills and capabilities available within the organisation.

6. Financial Review

The year ended 30 June 2008 marks the first year that the Office managed its own accounts. It was therefore in a position to have an external financial audit performed at the end of this reporting period. For the previous financial year, the Ministry of Communications and Information Technology handled all financial transactions on behalf of the organisation.

For the 2007/2008 financial year the Government approved a budget of WST 1,264,647 for the Office. As at June 2008, the Office had collected revenue in the amount of WST 4,140,358 and had incurred expenses of WST 1,245,291. It therefore realised a net income of WST 2,895,067, which has been transferred to the Government's accounts.

6.1 Revenue

The key sources of revenue for the Office were telecommunications licence and radio spectrum fees, accounting for 90% and 9.6% respectively. The balance is represented by application fees.

6.1.1 Telecommunications Licence Fees

The total amount invoiced as telecommunications licence fees for the year ended June 2008 was WST 3,729,758. It comprised the fees payable by licensed telecommunications services providers, in accordance with the Telecommunications Licence Fee Regulations 2007.

As at the end of the reporting period, there was WST 1,137,659 outstanding. However, the invoices for that amount were generated towards the end of June, and they are expected to be settled before the end of first quarter of the next financial year.

6.1.2 Radio Spectrum Fees

The total amount invoiced as radio spectrum fees for the year ended June 2008 was WST 398,120. It comprised the fees payable by licensed radio spectrum users, in

accordance with the Radio Spectrum Fee Regulations 2007, which was promulgated in the previous reporting period.

As at the end of the reporting period, there was WST 286,845 outstanding as radio spectrum fees and application fees, based on 60 unsettled invoices. However, note should be made that five (5) of those invoices account for over 80% of the outstanding amount, and these are likely to be settled by the end of September 2008, as those invoices were generated just prior to the end of the financial year.

6.2 Expenditure

In the 2007/2008 financial year, the usage of the Office's income was primarily limited to operating expenses, but included WST 11,589 in fixed assets. There were no major procurement initiatives during the period under review.

As reflected in Figure 6.1, approximately 80% of the organisation's expenses comprised salaries, wages and allowance for staff members, and depreciation of assets. The segment labelled "Other", which accounted for approximately 5% of the total expenditure, included payments towards advertising, audit fees, loss on disposal of fixed assets, bank charges, and other miscellaneous operating expenses.

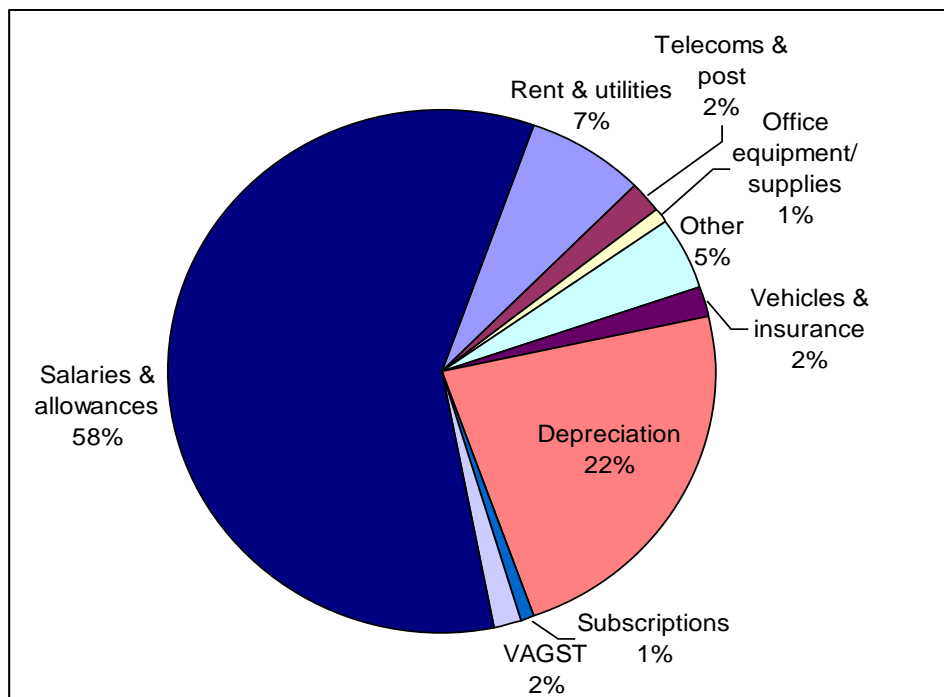


Figure 6.1: Distribution of expenses for the year ended 30 June 2008.

6.3 Financial Audit Reports

A report by the Audit Office for the Government on the accounts of the Office has been supplied as Appendix E of this report. Note should be made that as at 30 June 2008 the audit exercise did not include examination of financial statements and accounts in respect of the Universal Access Fund, as the fund has not yet been established.

7. Expectations for the Next Financial Year

The Office is expected to continue to undertake its responsibilities and to provide direction to the telecommunications sector in Samoa. However, with the departure of the Regulator at end of the 2007/2008 financial year, it is expected that administratively, the next financial year will be one of transition for the organisation and by extension, the sector.

7.1 Appointments

In the next reporting period, priority will likely be given to ensuring that the necessary staffing for the Office is secured, the most important of which is the Regulator. Once those vacant positions are filled, a period of orientation for both the Office and stakeholders should be anticipated.

7.1.1 Samoan Telecommunications Regulator

At the end of the period under review, the Government was continuing its efforts to recruit a new Samoan Telecommunications Regulator. As at 30 June 2008, the Government was still inviting applications for the position, hence it is unlikely that a successful candidate, if identified, would assume the position until early in 2009.

The new financial year will begin with an Interim Regulator, who though vested with the powers of the Regulator, would also require time to become oriented and apprised of the telecommunications sector in Samoa. Further, having due regard to the temporary nature of the appointment, it is possible that to the extent permissible, the Interim Regulator might be inclined to limit the number of far-reaching or controversial decisions that are made, to allow the permanent Regulator as free a hand as possible to set the course for the sector.

7.1.2 Divisional Manager Positions

With the divisional manager positions still vacant, the professional expertise and capacity to directly manage junior staff members is absent. As a result and until such time that they are filled, the Regulator would be required to fill that void, but which in

turn dilutes the activities that can be undertaken and limits the volume of work that the organisation can complete. It is therefore hoped that a concerted effort will be made by the Public Service Commission to secure the services of persons who can competently fill those two positions.

7.2 Capacity Building and Institutional Strengthening

For vacant positions that are likely to be filled in the next financial year, it will be critical that appointees are not only adequately oriented to the Office, but that their knowledge in telecommunications and telecommunications regulation is augmented as needed. It is likely that persons appointed to divisional manager positions in particular, might not possess prior experience in telecommunications or in regulation, and would require access to learning opportunities to address that deficiency.

In addition to training, some of which might be implemented in-house, all staff members, as guided by the Regulator, would need to consider and then implement institutional strengthening initiatives. These measures would not only provide guidance to stakeholders, but would also improve the Office's understanding of regulatory issues and processes, further improving its competence to perform its functions.

It is anticipated that in the first instance, many of these activities would be focussed in-house, to ensure that the Office's operations promote prudent regulatory and administrative practices. Thereafter, attention would need to be given to measures that could be introduced to improve and better guide sector. The preparation of the procedures on the licensing of Retail ISPs and the policy guidelines on television frequency assignments during the period under review, have provided a starting point for additional activities through which key elements of the current legal and regulatory framework can be expounded.