

## **Public Consultation on Telecommunications and Broadcasting Licensing Rules, Licence Fees and related instruments**

Issued by the Regulator: 08 August 2017

### **(1.) Introduction**

The Office of the Regulator has undertaken a review of telecommunications and broadcasting licensing to determine whether improvements might be made and the extent to which some of the recent trends in licensing practice worldwide might be usefully introduced in Samoa.

This paper sets out some of the main themes and issues that have been considered and also proposals for change. Public and industry comment on the proposed changes is invited so that broader sector and public perspectives might be considered before the Regulator takes any further action on this matter.

### **(2.) Issues associated with modern operator licensing**

#### **2.1 The role of a licensing regime**

A licensing regime is fundamentally a means of ensuring that the participants in a market are adequately qualified and readily identifiable. It is also often used as a means to foster the development of a particular market structure, allocate entitlements and resources, provide regulatory certainty for licensees and their investors, and ensure that other important considerations of the government are addressed. However, licensing arrangements can also act as a barrier to market entry that can deter potential investment or hinder market expansion, thereby undermining broader policy objectives for the development of the ICT sector. Onerous licensing processes and procedures can also impose undue administrative burdens on both the licensor and the licensee. Licensing regimes must therefore strike a careful balance between these competing considerations if they are to be effective.

The key functions that Samoa's telecommunications and broadcasting licensing regimes should serve today are:

- to ensure that market participants are appropriately qualified;<sup>1</sup>
- to provide a mechanism to aid the enforcement of the obligations established in the broader legal and regulatory framework for telecommunications; and
- to provide a means for market participants to contribute to the recovery of the Regulator's operating costs.<sup>2</sup>

---

<sup>1</sup> Qualification' in this context refers simply to the fulfilment of the necessary conditions to be eligible to hold a licence, whatever those conditions may be specified to be. Ideally, such conditions should not be barriers to entry nor require the licensor to make subjective judgments as to the suitability of an applicant or its business plan or its commercial prospects. An appropriate minimum is the specification of the acceptable legal forms for the prospective licensee, for example, whether a company must be incorporated locally, whether a natural person is eligible and if so any minimum age requirement; whether partnerships or government bodies or education institutions are eligible.

## 2.2 International trends and best practices in telecoms licensing

Internationally the key trends in telecommunications licensing can be summarised as follows:

- reducing the range of activities that require a licence and increasing the flexibility of licensees to change and expand their service offerings and operations within those activity areas;
- separating the licensing of scarce resources from service authorisation;
- moving away from service or technology specific individual licences to more general authorisation;
- adopting unified or multi-service licensing regimes that facilitate convergence;
- consolidating the types of licences;
- simplifying the licence documentation, maximising the use of class licensing and including only minimal licence conditions in the licences themselves, relying instead on standard licence conditions in legislation;
- reducing the administrative requirements of licensing for both the licensor and the licensee;
- ensuring all decisions, processes, grants of licences and fees (and how they are determined) are transparent and published; and
- ensuring certainty around any licence renewal process, including whether there is a presumption of renewal and the basis on which renewal will not be granted.

These trends are explained and discussed further in Attachment D.

### **(3.) Samoa's current telecommunications licensing arrangements**

The telecommunications licensing regime established by Part III of the Telecommunications Act requires a person to have a telecommunications licence if they wish to:

- supply a telecommunications service to the public; and/or
- own or operate of a telecommunications network that is used to provide a telecommunications service to the public (s. 12).

The licence term must be specified in the licence itself and there is a presumption of renewal upon expiry (s. 19).

The Regulator may exempt specified activities or a class of persons from this requirement (s. 14). These are set out in the 2007 Rules (Art. 7) however the circumstances described therein do not actually require exemption because they do not require a licence in the first place. For example:

- operation of a private network;
- ownership of telecommunications equipment that does not form part of a telecommunications network;
- supply of a telecommunications service to the public for no compensation;
- supply of a broadcasting distribution service.

The Telecommunications Act provides for the Regulator to issue two types of telecommunications licence: an individual licence and a class licence (s. 15(1)). The Telecommunications Act intends that service providers eligible for a class licence do not

---

<sup>2</sup> Refer s. 10(3)(a) of the Telecommunications Act and s. 9(c) of the Broadcasting Act

need to apply for the licence but would, by implication, be automatically covered by its general authorisation if certain criteria were fulfilled (s. 2).

The Telecommunications Act envisages that the Regulator will make rules identifying the types of telecommunications services that may be authorized by an individual licence, and those that may be authorized by a class licence (s. 15(2)). This was done in the Rules on Licensing Telecommunications Services 2007 (“the 2007 Rules”), which states that the determining characteristics will be whether or not the licensee requires access to ‘scarce physical and other resources’, or ‘is subject to particular obligations or enjoys particular rights’ (Art. 4(3)). The 2007 Rules also establish various licence sub-types as shown in Figure 1 (shown together with the associated licence fees set by the Telecommunications Licence Fee Regulations 2007 (“the Fee Regulations”)).

**Figure 1: SUB-Types of telecommunications licence**

	Licence sub-type	Application fee (WST)	Annual fee (WST)	Minimum annual fee (WST)	Number of licensees <sup>3</sup>
<b>Individual Licences</b>					
1	Calling Card Services	500	5,000	5,000	
2	Cellular Radio Services	1,000	2% Gross revenue	50,000	
3	Fixed Services	1,000	2% Gross revenue	50,000	1
4	International Call Centres	1,000	2% Gross revenue	5,000	
5	International Gateways	1,000	2% Gross revenue	50,000	4
6	Internet Exchange Services	100	100	100	
7	National Transmission Services	500	5,000	5,000	[1]
8	Pay Telephone Services	500	5,000	5,000	
9	Premium Rate Services	500	5,000	5,000	
10	Radio Paging Services	250	500	500	
11	Resale Licence	1,000	2% Gross revenue	25,000	
12	Retail Internet Services	250	0.70 per Gigabyte of incoming and outgoing internet traffic	500	5
13	VoIP and SIP services	500	2% Gross revenue	5,000	
14	Wholesale Internet Services	500	2% Gross revenue	5,000	[1]
<b>Class Licences</b>					
15	Telecommunications Class Licence	25	50	50	

There are a number of problems with the sub-types of telecommunications licence listed in Figure 1:

- categories are service-specific and some are also technology-specific, which is unduly restrictive in the broadband era of convergence;

<sup>3</sup> As reported on the Regulator’s website at [www.regulator.gov.ws/index.php/telecome-providers](http://www.regulator.gov.ws/index.php/telecome-providers)

- there does not appear, or no longer appears, to be a coherent structure to the sub-types—for example, a distinction is made between fixed and mobile for voice services but not for internet services; while a distinction is made between wholesale and retail for internet services but not for voice services);
- it includes activities that are not telecommunications services (as per the definition of that term in the Telecommunications Act), such as premium rate services and international call centres.

The annual licence fee for the Retail Internet Service Licence, determined on the basis of the volume of internet traffic carried, is also regressive in today’s environment and risks undermining the Regulator’s (and the Government’s) broader policy objectives for the ICT sector by deterring licensees from reducing retail pricing and fostering greater used of internet-enabled services.

#### (4.) Telecommunications Licensing Reform

OOTR has identified two reform options that would improve the existing telecommunications licensing arrangements without having to amend the Telecommunications Act. These are outlined below.

##### 4.1 Option A: One licence with a global authorisation per service provider

A relatively simple improvement could be made to the existing licensing arrangements by consolidating licences and giving each service provider a maximum of one licence—an *individual* licence—that provides a global authorisation to the licensee to own and operate all forms of telecommunications network to provide all forms of telecommunications services (as per the definition of those terms<sup>4</sup> in the Telecommunications Act).<sup>5</sup> These authorisations would be intentionally broad, be both service- and technology-neutral, and would accommodate convergence. If there were circumstances that required a particularly narrow authorisation—for example, to limit a submarine cable operator to the supply of wholesale services and/or international connectivity services—this could be achieved by that particular individual licence providing a narrower authorisation tailored to the circumstances or being subject to a special licence condition. Different licence durations could still be specified (given section 19 of the Telecommunications Act requires the licence term to be specified in the licence itself) but ideally would tend to coalesce between 15–25 years to reflect a reasonable time to achieve appropriate returns over the economic life of the investment. This idea is shown in Figure 2.

FIGURE 2: EXAMPLE OF LICENCE MIGRATION UNDER OPTION A

Licensee	Existing licences held	Replacement licence required
Bluesky	<ul style="list-style-type: none"> <li>• Digital cellular (GSM) Telecom Services Licence</li> <li>• Fixed Services Licence</li> </ul>	One Individual Licence authorising: <ul style="list-style-type: none"> <li>• the ownership and/or operation of telecommunication networks used to supply telecommunications services to the</li> </ul>

<sup>4</sup> **Telecommunications service** is defined in the Telecommunications Act as ‘a service provided by means of a telecommunications network, and includes the provision of telecommunications facilities (in whole or part) and any related equipment to a customer by lease, sale or otherwise’. **Telecommunications network** is defined as ‘any wire, radio, optical or other electromagnetic system for routing, switching or transmitting telecommunications services between network termination points’. **Telecommunications facility** is defined as ‘facility, apparatus or other thing that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications’. **Telecommunications equipment** is defined as ‘equipment intended to be connected directly or indirectly to a telecommunications network in order to send, transmit or receive telecommunications services’. **Telecommunications is not defined.**

<sup>5</sup> See Attachment D for a further discussion of these licensing concepts and trends.

Licensee	Existing licences held	Replacement licence required
	<ul style="list-style-type: none"> <li>• Retail Internet services</li> </ul>	<ul style="list-style-type: none"> <li>public; and</li> <li>• the supply of telecommunications services to the public.</li> </ul>
CSL	<ul style="list-style-type: none"> <li>• Retail internet services</li> <li>• National Transmission Services</li> </ul>	One Individual Licence authorising: <ul style="list-style-type: none"> <li>• the ownership and/or operation of telecommunication networks used to supply telecommunications services to the public; and</li> <li>• the supply of telecommunications services to the public.</li> </ul>
Digicel	<ul style="list-style-type: none"> <li>• Digital cellular (GSM) Telecom Services Licence</li> <li>• Fixed Services Licence</li> <li>• Retail Internet services</li> </ul>	One Individual Licence authorising: <ul style="list-style-type: none"> <li>• the ownership and/or operation of telecommunication networks and telecommunications facilities used to supply telecommunications services to the public; and</li> <li>• the supply of telecommunications services to the public.</li> </ul>
SSCC	<ul style="list-style-type: none"> <li>• Wholesale Internet Services Licence</li> <li>• International Gateway licence</li> <li>• Submarine Cable Landing Licence</li> </ul>	One Individual Licence authorising: <ul style="list-style-type: none"> <li>• the ownership and/or operation of telecommunication networks and telecommunications facilities used to supply telecommunications services to the public; and</li> <li>• the supply of telecommunications services to the public.</li> </ul>

The class licence could then be reserved for those persons or activities that fall within the definition of a service provider under the Telecommunications Act but which do not warrant close regulatory oversight, such as the operation of Internet cafés or a hotel’s supply of internet access to its guests. This would be an alternative to exempting such activities from the licensing regime entirely as is provided for under section 14 of the Telecommunications Act.

The annual licence fee for individual licences could be standardised at a fixed percentage of gross revenues (less interconnection charges). The class licences could be free of charge.

To implement this option it will be necessary to:

- prepare a new individual licence templates—this would be simple and only 1–2 pages in length (there is no need for the class licence to be in the form of a document; a list of class licensees on the Regulator’s website would be sufficient);
- replace the 2007 Rules with new simpler rules (for the purposes of s. 15(2)) that specify that the grant of a single individual licence authorises the supply of all types of telecommunications services and the ownership/operation of all types of telecommunications networks and facilities; these rules may also specify general licence conditions
- replace the Fee Regulations with new regulations (to be made by the Head of State for the purposes of s. 10) specifying the annual licence fee formula for individual licences (and stipulating that there is no annual fee for class licences);
- revise and document new licensing procedures (for the purposes of s. 16).

Draft instruments intended to meet these requirements are enclosed at Attachments A, B and C to this paper.

## 4.2 Option B: Licences to distinguish between network operation and services

A reform that would align Samoa’s licensing structure more closely with international practice would be to distinguish between network ownership/operation and service provision. This could be overlaid onto the two existing types of licence specified in the Telecommunications Act so that an individual licence would authorise the ownership/operation of telecommunications networks (including the supply of telecommunications services using those networks) and a class licence would authorise the supply of telecommunications services over a telecommunications network (operated either by the same or another licensee). This idea is shown in

FIGURE 3. It would closely resemble the telecommunications licensing arrangements in Australia.<sup>6</sup>

FIGURE 3: EXAMPLE OF LICENCE MIGRATION UNDER OPTION B

Licensee	Existing licences held	Replacement licence required
Bluesky	<ul style="list-style-type: none"> <li>• Digital cellular (GSM) Telecom Services Licence</li> <li>• Fixed Services Licence</li> <li>• Retail Internet services</li> </ul>	<ul style="list-style-type: none"> <li>• One Individual Licence</li> <li>• One Class Licence</li> </ul>
CSL	<ul style="list-style-type: none"> <li>• Retail internet services</li> <li>• National Transmission Services</li> </ul>	<ul style="list-style-type: none"> <li>• One Individual Licence</li> <li>• One Class Licence</li> </ul>
Digicel	<ul style="list-style-type: none"> <li>• Digital cellular (GSM) Telecom Services Licence</li> <li>• Fixed Services Licence</li> <li>• Retail Internet services</li> </ul>	<ul style="list-style-type: none"> <li>• One Individual Licence</li> <li>• One Class Licence</li> </ul>
SSCC	<ul style="list-style-type: none"> <li>• Wholesale Internet Services Licence</li> <li>• International Gateway licence</li> <li>• Submarine Cable Landing Licence</li> </ul>	<ul style="list-style-type: none"> <li>• One Individual Licence</li> <li>• One Class Licence</li> </ul>

Similar to Option A, the individual licence would be a global authorisation to own/operate any type of network technology/facilities and would be service- and technology-neutral. If circumstances required a particularly narrow authorisation or a restriction to be imposed on the individual licensee this could be achieved by way of a special licence condition. Different licence durations could continue to be specified (given section 19 of the Telecommunications Act requires the licence term to be specified in the licence itself) but once again it would be better if licence terms were standardised somewhere between 15–25 years.

Consistent with its definition in the Telecommunications Act,<sup>7</sup> the class licence would apply to service providers without the need for that service provider to submit a licence application to the Regulator for its consideration. Instead, a simple registration process could be imposed so that the Regulator had a record on who are class licensees.

The annual licence fee for individual licences could be standardised at a fixed percentage of gross revenues (less interconnection charges). The class licences could be free of charge.

To implement this option it would be necessary to:

<sup>6</sup> For further information about Australia’s carrier licensing regime, see [www.acma.gov.au/Industry/Telco/Carriers-and-service-providers/Licensing/carriers-carriage-providers-licensing-i-acma](http://www.acma.gov.au/Industry/Telco/Carriers-and-service-providers/Licensing/carriers-carriage-providers-licensing-i-acma)

<sup>7</sup> Section 2 of the Telecommunications Act defines class licence as ‘a licence issued pursuant to sections 13 and 15 [of the Act] to a defined class of service providers and which applies to a person falling within the defined class without that person having to apply for the licence’.

- prepare a new individual licence templates (1–2 pages in length; there is no need for the class licence to be in the form of a document; a list of class licensees on the Regulator’s website would be sufficient);
- replace the 2007 Rules with new rules (for the purposes of s. 15(2)) that specify that the ownership/operation of a telecommunications network used to supply telecommunications services to the public requires an individual licence, and that the supply of a telecommunications service is covered by automatically authorised by a class licence; these rules may also specify general licence conditions;
- replace the Fee Regulations with new regulations (to be made by the Head of State for the purposes of s. 10) specifying the annual licence fee formula for individual licences (and stipulating that there is no annual fee for class licences); and
- revise and document new licensing procedures (for the purposes of s. 16).

If Option B were to be adopted, then the draft instruments enclosed at Attachments A, B and C could be adapted accordingly.

#### 4.3 Next steps

The Regulator has not made a final decision on the matter of future licensing directions and will not do so until the benefit of responses to this public consultation paper from the industry and other stakeholders can be fully taken into account. However, the Regulator has an initial preference for Option A for the following reasons.

- Option A is likely closer than Option B to the licensing regime that is envisaged in the Telecommunications Act. (Refer to the discussion about the international conception of an individual license vis-à-vis a class licence in Attachment D).
- The Telecommunications Act is not based on a distinction between the role of network operator and the role of a service provider. If a network/service distinction was to be introduced into Samoa’s licensing arrangements, it would be more cohesive if it was reflected in the Telecommunications Act by way of a legislative amendment. All obligations under the Telecommunications Act are imposed on ‘service providers’, which the Telecommunications Act defines as ‘a person that provides a telecommunications service to the public or that owns or operates a telecommunications network used to provide telecommunications services to the public’. Adopting a licensing distinction between network operation and service provision, when such a distinction is not recognised in the Telecommunications Act, would risk introducing inconsistencies or confusion into the regulatory regime.
- Option A would significantly improve the existing licensing arrangements with minimum disruption to the rest of the regulatory regime.
- There is little benefit to be gained from Option B given how the Telecommunications Act defines a ‘service provider’. As all statutory obligations are imposed on ‘service providers’, individual licensees and class licensees would be subject to identical obligations and have identical rights under the Telecommunications Act. The principal difference would be that a class licence would not attract an annual fee.
- There is little benefit to be gained from Option B given there is minimal resale activity in Samoa at present. Under Option B it would effectively be only the individual licensees that satisfied the requirements for a class licence (i.e. the only

persons supplying a telecommunications service to the public would be would those that owned/operated their own telecommunications network).

The Regulator has considered the issue in terms of the two options described. Respondents to this paper may have other options in mind and wish to advocate them. The discussion above, which concentrates on two options, is not intended to preclude other approaches. One other option is to do nothing and to continue with the current arrangements. For the reasons already stated the Regulator considers that the status quo no longer serves the needs of the Samoan industry or community well and that the inadequacy will increase in future.

### **(5.) Samoa's current Broadcasting Licensing arrangements**

- The broadcasting licence regime established by Part IV of the *Broadcasting Act 2010* is substantially the same as that for telecommunications in the Telecommunications Act. In summary:
  - a person requires a broadcasting licence if they wish to supply a broadcasting service to the public; and/or own or operate of a broadcasting facility that is used to provide a broadcasting service to the public (s. 21);
  - a broadcasting service is defined to mean a service that delivers television programmes or radio programmes 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 or 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;<sup>8</sup>
  - the Regulator may exempt specified activities or a class of persons from this requirement (s. 23);
  - the licence term must be specified in the licence itself and there is a presumption of renewal upon expiry (s. 28);
  - the Regulator may issue two types of broadcasting licence: an individual licence and a class licence (s. 24(1)), and those service providers eligible for a class licence do not need to apply for it but are considered to be covered by a class licence automatically if certain criteria were fulfilled (s. 2);
  - the Regulator is to make either rules or an order specifying which types of broadcasting services require an individual licence and which are authorised by a class licence (s. 24(2));
  - the Regulator's procedures and criteria for issuing broadcasting licences are to be published on the Regulator's website (s. 25(3));
  - copies of all broadcasting licences are to be made 'available for inspection by the public' (s. 22(3)); and
  - a broadcasting licence does not assign any rights to use the radio spectrum and a broadcasting licensee therefore must also obtain a radio spectrum licence issued under section 22 of the Telecommunications Act.

---

<sup>8</sup> This definition of broadcasting service was introduced by a 2016 amendment to the Broadcasting Act. Previously the definition was 'the electronic delivery of programs or advertisements in any format, including but not limited to radio, video and internet protocols by means of a broadcasting facility'. A broadcasting facility was (and still is) defined as 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.



The *Broadcasting (Licence Fee) Regulations 2015* (the 2015 Regulations) identifies various licence sub-types as shown in Figure 4 (shown together with the associated licence fees). The formal status of these sub-types is unclear as they do not appear to derive from any rules or orders made by the Regulator pursuant to s. 24(2) of the Broadcasting Act. Further, each broadcasting licence (i.e. the actual licence document) explicitly authorises the licensee to supply all forms of broadcasting service (i.e. both ‘audio’ and television, including subscription television) and the ownership/operation of any and all broadcasting facilities necessary to supply those services.

**Figure 4: SUB-Types of broadcasting licence**

	Licence sub-type	Application fee (WST)	Annual fee (WST)	Renewal fee (WST)	Number of licensees <sup>9</sup>
1	Commercial Broadcasting Licence (TV)	130	6,500	100	7
2	Non-Commercial Broadcasting Licence (TV)	130	3,900	100	
3	Non-Commercial Radio Licence	100	1,000	100	
4	Community Broadcasting Licence	130	0	100	
5	Commercial Radio (AM) Licence	130	3,900	100	1
6	Commercial Radio (FM) Licence	130	3,900	100	8
7	Subscriber TV Licence	130	9,100	100	[3]

It is noted that class licensing is not used at all for broadcasting in practice.

All of the broadcasting licences are subject to conditions that, among other things,

- impose a geographic coverage obligations of 85% by third year of operation (cl. 4.2, 5.1(a)(ii)); and
- specify an annual licence fee that is different to that specified in the 2015 Regulations (cl. 3.1(d)), however there is not clause in Broadcasting Act, the 2015 Regulations, or the licence identifying an order of precedence in the event of inconsistency between the instruments.

## **(6.) Broadcasting Licensing reform**

OOTR has reviewed the arrangements for broadcasting licensing to determine what, if any, changes or new categories of broadcasting licence should be introduced to accommodate the future digital TV broadcasting regime. It has concluded that there are no substantial changes that are necessary to accommodate the proposed digital terrestrial television service provider; the Regulator could simply issue the digital television broadcast operator a broadcasting licence as per its practice to date.

However, OOTR considers that the broadcasting licensing arrangements can and should be improved by clearly documenting the licensing structure in rules made for the purposes of subsection 24(2) of the Broadcasting Act.

The existing structure is generally fine and can be largely retained with some relatively minor changes to emphasise the broadcast medium (i.e. television, radio) licensing and to maintain technology neutrality (e.g. by removing classifications such as satellite or IP in the case of television, and AM or FM in the case of radio). The proposed licensing structure is shown in Figure 5.

<sup>9</sup> As reported on the Regulator’s website at [www.regulator.gov.ws/index.php/telecome-providers](http://www.regulator.gov.ws/index.php/telecome-providers)

It is proposed to adopt of class licensing for non-commercial broadcasting services (described as community services in Figure 5) however that particular aspect is not an essential reform.

**Figure 5: PROPOSED arrangements for broadcasting licensing**

<b>Type of service/network</b>	<b>Purpose</b>	<b>Type of licence</b>	<b>Duration</b>
Television Broadcast	Commercial	Individual Licence	10 years
	Community service	Class Licence	5 years
Subscription Television Broadcast	Commercial	Individual Licence	10 years
Radio Broadcast	Commercial	Individual Licence	10 years
	Community service	Class Licence	5 years

To implement this proposal it will be necessary to:

- prepare a new individual licence templates (1–2 pages in length; there is no need for the class licence to be in the form of a document; a list of class licensees on the Regulator’s website would be sufficient);
- prepare rules for the purposes of subsection 24(2)) of the Broadcasting Act that specify the types of activities that require an individual licence and those (if any) that are covered by a class licence; these rules may also specify general licence conditions;
- replace the 2015 Regulations with new regulations (to be made by the Head of State for the purposes of s. 9) specifying the annual licence fees for individual licences (and stipulating that there is no annual fee for class licences); and
- revise and document new licensing procedures (for the purposes of s. 25).

These instruments will be prepared in due course and follow the overall templates set out in Attachments A to C inclusive for telecommunications licensing.

**(7.) Attachments**

- A. Draft Licensing Rules
- B. Draft Licensing Fee Regulation
- C. Draft Licensing Template (Telecommunications)
- D. International Trends and Best Practices in Telecommunications Licensing

**ATTACHMENT A: DRAFT LICENSING RULES**

**TELECOMMUNICATIONS (LICENSING) RULES 2017**

**SAMOA**

**Arrangements of Provisions**

**PART 1  
PRELIMINARY**

1. Citation and commencement
2. Definitions

**PART 2  
TYPES OF LICENCE**

3. Individual Licences
4. Class Licences

**PART 3  
LICENCE TERMS AND CONDITIONS**

5. Term of Licence
6. Conditions of Individual Licences
7. Conditions of Class Licences

**SCHEDULE 1  
STANDARD LICENCE CONDITIONS**

**PURSUANT** to subsection 8(1)(q) of the Telecommunications Act 2005 (“the Act”), I, **LEFAOALI’I UNUTOA AUELUA-FONOTI**, Regulator, **MAKE** these Rules—

**DATED** this ..... day of.....2017.

.....  
(Unutoa Auelua-Fonoti)  
**REGULATOR**

## RULES

### PART 1 PRELIMINARY

**1. Citation and commencement** – (1) These Rules may be cited as the *Telecommunications (Licensing) Rules 2017*.

(2) These Rules commence on the date it is signed by the Regulator.

**2. Definitions** – (1) In these Rules, unless the context otherwise requires, terms used in these Rules have the same meaning as in the Act.

(2) In these Rules, unless the context otherwise requires:

“Act” means the *Telecommunications Act 2005*;

“premises” includes land and a group of buildings that is located in the same vicinity;

NOTE: The following terms are defined in the Act:

- Class Licence;
- Government;
- Individual Licence;
- Regulation;
- Regulator;
- Service Providers;
- Telecommunications Facility;
- Telecommunications Network;
- Telecommunications Service.

### PART 2 TYPES OF LICENCE

**3. Individual Licences** – For the purposes of subsection 15(2) of the Act, an Individual Licence shall authorise:

- (a) the provision of any Telecommunications Service to the public for direct or indirect compensation; and
- (b) the ownership and/or operation of any Telecommunications Network used to provide a Telecommunications Service to the public for direct or indirect compensation.

**4. Class Licences** – For the purposes of subsection 15(2) of the Act, a Class Licence shall authorise:

- (a) the provision of any Telecommunications Service to the public for direct or indirect compensation; and
- (b) the ownership and/or operation of any Telecommunications Network used to provide a Telecommunications Service to the public for direct or indirect compensation;  
where:
  - (c) the Service Provider manages a business or other activity carried on at a particular Premises; and
  - (d) that business or activity is the sole or principal use of the Premises; and
  - (e) all of the customers of the Telecommunications Service are physically present on the Premises.

NOTE: Examples of such businesses or other activities include hotels, motels, hospitals, and cafes.

**PART 3**  
**LICENCE TERMS AND CONDITION**

**5. Term of Licence** – Subject to section 18 of the Act:

- (a) the term of an Individual Licence shall be 20 years; and
- (b) the term of a Class Licence shall be indefinite.

**6. Conditions of Individual Licences** – An Individual Licensee shall comply with:

- (a) the standard licence conditions specified in Schedule 1 to these Rules; and
- (b) the special licence conditions (if any) specified by the Regulator in an order under section 17 of the Act.

**7. Conditions of Class Licences** – A Class Licensee shall comply with the standard licence conditions specified in Schedule 1 to these Rules.

**SCHEDULE 1**  
**STANDARD LICENCE CONDITIONS**

**1. Compliance with the Act and other instruments** – The Licensee shall comply with:

- (a) the Act;
- (b) any Regulations; and
- (c) any rules, orders and directions made by the Regulator under the Act.

**2. Payment of fees** – The Licensee shall pay all applicable fees and levies.

**3. Compliance with international conventions and agreements** – The Licensee shall perform and observe the requirements of international conventions and agreements relating to Telecommunications Networks and Telecommunications Services and radio frequency spectrum to which Samoa is a party, except to the extent that the Regulator may, by order, exempt the Licensee from that compliance.

**4. Indemnification of the Government** – The Licensee shall indemnify the Government against any actions, suits, claims or proceedings arising out of or in relation to any breach or failings on the part of the Licensee.

**5. Protection of life and property** – The Licensee shall, in respect of all Telecommunications Facilities under the Licensee's direct or indirect control, take all proper and adequate safety measures to safeguard life and property, including exposure of any person to any electrical emission or radiation emanating from the apparatus, equipment or installations so used.

**ATTACHMENT B: DRAFT LICENSING FEE REGULATION**

**SAMOA**

**Arrangements of Provisions**

**PART 1**

**PRELIMINARY**

1. Citation and commencement
2. Definitions

**PURSUANT** to section 81 of the Telecommunications Act 2005 (“the Act”), I, **TUIAANA TUIMALEALIFANO VAALETOA SUALAUVI II**, Head of State, acting on the advice of Cabinet, **MAKE** the following Regulations—

**DATED** this ..... day of.....2017.

.....  
(Tuiaana Tuimalealiifano Va’aleto’a Sualauvi II)  
**HEAD OF STATE**

## REGULATIONS

- 1. Citation and commencement** – (1) These Regulations may be cited as the *Telecommunications Licence Fee Regulations 2017*.  
  
(2) These Regulations commence on 1 January 2018.
- 2. Repeal** – The *Telecommunications Licence Fee Regulations 2007* are repealed.
- 3. Interpretation** – In these Regulations, unless the contrary intention appears:
  - (a) *Act* means the *Telecommunications Act 2005*;
  - (b) *Eligible Revenue* means, in respect of a Licensee, the gross revenues earned during a Fiscal Year from the supply of Telecommunications Services by that Licensee, less interconnection charges remitted to other Licensees;
  - (c) *fiscal year* means a 12 month period ending on 30 June.
- 4. Individual Licence application fee** – (1) A person applying for an Individual Licence shall pay the application fee specified in Column 1 in the Schedule.  
  
(2) The Regulator may refuse to process an application for an Individual Licence if the relevant application fee or renewal fee is not paid.  
  
(3) An application fee is not refundable if the application is unsuccessful.
- 5. Individual Licence annual fee** – (1) Each Individual Licence shall pay an annual licence fee.  
  
(2) An annual licence fees shall be paid in advance of the Fiscal Year to which it relates.  
  
(3) The licence fee payable by an Individual Licensee under subsection (1) shall be:
  - (a) if the Individual Licensee’s Eligible Revenue for the previous Fiscal Year is below the threshold amount specified in Column 2 in Schedule 1, the fixed amount specified in Column 3 in Schedule 1;
  - (b) if the Individual Licensee’s Eligible Revenue for the previous Fiscal Year is equal to or above the threshold amount specified in Column 2 in Schedule 1, an amount that is calculated as a percentage of the Licensee’s Eligible Revenue for the previous Fiscal Year.  
(4) For the purposes of paragraph (b) the fixed percentage shall be that specified in Column 4 in Schedule 1.
- 6. Individual Licensee to provide information** – (1) An Individual Licence shall, within 60 calendar days of the end of a fiscal year, lodge with the Regulator an annual return for that fiscal year, in the form (if any) notified by the Regulator, reporting:
  - (a) the amount of its eligible revenues for that Fiscal Year;



(b) the amount of annual licence fee payable by the Individual Licensee for the subsequent Fiscal Year, calculated in accordance with section 5; and

(c) sufficient details of the method used to calculate the amount in paragraph (b) as would enable the Regulator to verify the Licensee's calculations.

(2) The Regulator may notify Individual Licensees of the form in which annual returns referred to in subsection (1) must be lodged (including, but not limited to, by publishing the form on its website).

**7. Audit requirements** – As soon as practicable after submitting an annual return under section 6, an Individual Licensee must submit to the Regulator a certificate signed by a qualified auditor, stating that the reported Eligible Revenues are true and correct in all respects.

**8. Invoicing of Individual Licence annual fee** – (1) Subject to subsection (4), the Regulator shall invoice an Individual Licensee for the annual licence fee in two equal instalments.

(2) The invoice for the first instalment under subsection (1) will be issued on or before 15 September.

(3) The invoice for the second instalment under subsection (1) will be issued on or before 15 March.

(4) The Regulator may adjust the amount of the second instalment in the event of a material difference between the Eligible Revenues reported in an annual return under section 6 and an auditor's certification received under section 7, in which case the invoice for second instalment shall be for the amount that is the annual licence fee payable based on the Eligible Revenues reported in the audited financial statements less the amount of the first instalment.

**9. Invoicing of annual licence fees in the first year** – Where an Individual Licensee obtains its Individual Licence after the first day of a Fiscal Year, the Regulator shall:

(a) make a pro rata reduction of any fixed amount payable by an Individual Licensee under section 5; and

(b) issue an invoice to the Individual Licensee for payment in a single instalment on a date the Regulator considers appropriate.

**10. Payment of annual licence fee** – An Individual Licensee must pay the annual licence fee to the Regulator no later than 20 business days after the Regulator issues the Individual Licensee with an invoice under section 8 specifying the amount of licence fee payable.

**11. Penalty for non-payment** - Where an annual licence fee or instalment is not paid:

(a) within the time period specified in section 10, a surcharge of 10% of the annual licence fee shall be payable in addition to the annual licence fee; and

- (b) before the expiry of a period of 90 days from the time period specified in section 10:
- (i) the Individual Licence may be revoked by the Regulator under section 18 of the Act;  
and
  - (ii) the Regulator may take such action as is necessary to recover the licence fees under subsection 10(4) of the Act.

## SCHEDULE 1

### FEES payable by INDIVIDUAL licensees

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Application (and Renewal) Fee</b>	<b>Eligible Revenue Threshold</b>	<b>Fixed annual fee amount</b>	<b>Minimum Annual Fee</b>
1,000.00	500,000.00	10,000.00	2% of Gross Revenue

Note: All amounts are expressed in Tālā.

## ATTACHMENT C: DRAFT LICENSING TEMPLATE (TELECOMMUNICATIONS)

### *Telecommunications Act 2005*

#### Section 13

### INDIVIDUAL LICENCE

I, Lefaoali'I Unutoa Auelua-Fonoti, the Regulator, acting under section 13 of the *Telecommunications Act 2005 (the Act)*, grant an Individual Licence to [company name] (company registration number [company number]).

Subject to the requirements of the Act and the Regulations relating to the payment of fees and the amendment and revocation of Licences, this Individual Licence shall continue in force until the end of the period that is twenty (20) years from the date of its issue.

Dated the [DATE] day of [MONTH] 2017

---

Lefaoali'I Unutoa Auelua-Fonoti  
**REGULATOR**

## NOTES – LICENCE CONDITIONS OF INDIVIDUAL LICENCES

Under the *Telecommunications Act 2005* (**the Act**), Individual Licences are subject to:

- (a) the standard licence conditions specified in the *Telecommunications (Licensing) Rules 2017*; and
- (b) any special licence conditions imposed by an Order made by the Regulator under section 17 of the Act.

## **ATTACHMENT D: INTERNATIONAL TRENDS AND BEST PRACTICES IN TELECOMMUNICATIONS LICENSING**

There are a number of international trends that have been developing in telecommunications operator licensing policy and practice over many years (although the development of these trends and their adoption worldwide has been far from uniform). The key elements that are discernible in these trends are:

- the simplification of licences;
- the consolidation of licences;
- flexibility in the particular activities authorised by licences;
- facilitating convergence; and
- the reduction of the administrative requirements of licensing.

### **The simplification of licences**

Licences are being progressively simplified with the inclusion of licence terms and conditions in legislation or sub-legislation. There are many older licences still in effect in some countries that show a tendency to include all obligations and other terms in the licence document itself. Sometimes this was done to include all terms in a single document, often before a regulatory framework was established and before suitable legislation was used as a more appropriate vehicle in which to record general policy conditions. However, this approach becomes problematic as convergence blurs service and technology boundaries. Among other things it can lead to differences between licences for the same or similar services and a potential risk of inconsistency between licences and the parent legislation as the latter is amended over time. In effect, the more complex and detailed the licences, the more opportunity for later misalignment with other licences and legislative instruments. The introduction of regulations, which are essentially subordinate legislative instruments, add further complexity to the regime and increases the risk of inconsistency amongst the three types of instruments (i.e. primary legislation, licences and subordinate regulations). Complex and all-inclusive licences also have the further difficulty that change to the licence is made more difficult as some level of agreement by the licensee is required. In short, the more licence conditions, the more there is to argue about with the licensee.

It is good practice to separate out the special and general conditions of licences, and to strive over time to maximise the movement of conditions from the former category to the latter. With the standardisation of traditional types of licence conditions in subordinate regulation and other mandatory instruments such as rules, there is not much need to load-up individual licences with general conditions. However some licences necessarily have special conditions and these are typically annexed to, or referenced in, the licence in some way and are ideally converted at the earliest time to general conditions. A typical continuing special condition associated with network licences is a deployment timetable for network construction and the rollout of services.

### **The consolidation of licences**

The movement from single service licences to unified (or multi-service) licences has been documented by the International Telecommunications Union (ITU) and is illustrated in Figure D.1.<sup>10</sup> It is a particularly important consideration if the licensing function is to operate effectively in the era of broadband convergence, when multi-media services will be provided

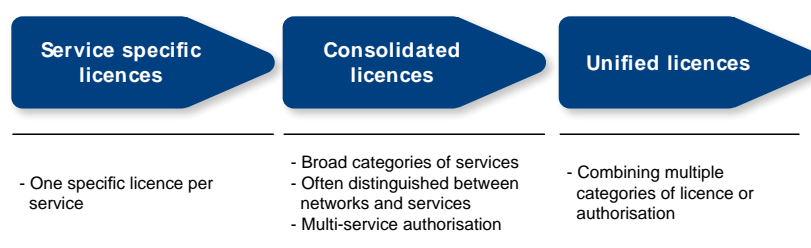
---

<sup>10</sup> ITU-D Study Group 1, Document 1/251-E of 21 July 2009: "Draft Final Report on Question 10-2/1: Regulatory trends for adapting licensing frameworks to a converged environment"

from single platforms. Services such as Internet Telephony, IPTV and Mobile TV are examples that challenge the existing service specific framework even today.

One aspect of the trend has been the separation of operator licensing from the licensing of scarce resources such as spectrum, numbering or Rights of Way. For examples, in Jordan the allocation of spectrum, numbering and Rights of Way form the main basis for distinguishing between what the Jordanian legislation refers to as Unified licences and Class licences.

FIGURE D.1: TRENDS IN LICENCE SIMPLIFICATION <sup>11</sup>



### Flexibility in the particular activities authorised by licences

There are now three broad approaches to authorisations in the information and communications technology (ICT) sector.

**Service-specific authorisations** allow the licensee to provide a specific type of service. Usually, the licensee is required to use a specific type of network and technological infrastructure. However, some service-specific authorisation regimes are technology neutral (e.g., the fixed and mobile services authorisation regime in Saudi Arabia and the Canadian basic international telecommunications services licences). These types of authorisations are sometimes issued as individual licences (particularly in developing and transitional economies) and sometimes issued as general authorisations.

**Unified (or global) authorisations** are technology- and service- neutral. They allow licensees to provide all forms of services under the umbrella of a single authorisation, using any type of communications infrastructure and technology capable of delivering the desired service. In most countries, unified authorisations are issued as individual licences. However, in some countries, the process for issuing the unified authorisation blends aspects of general authorisation processes and competitive licensing regimes. These hybrid processes can best be described as non-competitive individual licensing processes—while applicants do not compete for a limited number of authorisations, they must meet a variety of criteria to qualify for a licence and their applications are subject to close regulatory scrutiny.

This approach has been adopted, or is being adopted, in many countries, including Argentina, Botswana, European Union (EU) Member States, Hong Kong, India, Jordan, Kenya, Nigeria, Peru, Trinidad and Tobago, and Uganda.

**Multi-service authorisations** allow service providers to offer multiple services under the umbrella of a single authorisation, using any type of communications infrastructure and technology capable of delivering the services in question. Like unified authorisations, multi-service authorisations are technology neutral. However, multi-service authorisations are more limited than unified authorisations—licensees are permitted to provide any of a designated set of services, but not any and all services. Multi-service authorisations are sometimes issued as general authorisations and, in other cases, are issued as individual licences. It is not

<sup>11</sup> Adapted from ITU-D Study Group 1 Doc 1/251-e of July 2009

uncommon for a country to have both general authorisation regimes and individual licence regimes for their multi-service authorisations. Individual multi-service authorisations are often issued using a non-competitive individual licensing process.

Examples of multiservice authorizations include Malaysia, Tanzania, Uganda, and Singapore.

Another landmark trend in regulation is the adoption of service and technology neutral principles as far as practicable. Service neutrality involves a policy of indifference to the specific services that a licensee is authorised to provide, usually by a generic reference to services or applications as a whole.

Technology neutrality involves a policy of indifference in the licence to the technologies that the licensee might deploy to provide the services or operate the networks authorised in the licence. This particular trend however has many exceptions such as the widespread specific licensing for 3G mobile networks and services in the past decade.

### Facilitating convergence

All countries are concerned to ensure that their economies and societies are open to the beneficial transformative effects of broadband service adoption at the earliest time. Indeed, most countries have in place some form of National Broadband Plans to facilitate investment in broadband infrastructure, development and rollout of broadband applications and services, improve access to and affordability of broadband, and to ensure the greatest and earliest adoption of broadband that can be achieved. Broadband services and applications will reflect convergence at market, industry, technology and service levels.

One important aspect of making telecommunications policy settings broadband-ready is to remove legacy regulation, and particularly any form of legacy licensing that seeks to give extended life to the service, technology and regulatory distinctions of the past—all of which are barriers to convergence.

### Reduction of administrative requirements

The trend from individual licences to class licences, and beyond, is important in the reduction of administrative effort and cost in market entry as well as managing licences that are in all respects the same and which do not require individual assessment or complex assessment. Figure D.2 shows how this tendency has developed in recent times, although one should bear in mind that different countries may apply the terms mentioned in Figure D.2 in a way that is different from the way they are defined and used in the ITU report from which this nomenclature is drawn. For example, Jordan only issues individual licences but calls them “class licences”.

FIGURE D.2: REDUCTION IN ADMINISTRATION REQUIREMENTS FOR LICENCE ISSUE <sup>12</sup>



Another aspect of the reduction in administration associated with modern licensing is the trend away from constraining licensing to embracing licensing, other than where there is an overwhelming policy and economic need to ration licences. This is a change in the culture of

<sup>12</sup> Adapted from ITU-D Study Group 1 Doc 1/251-e of July 2009



licensing and is partly expressed in the evolution towards “open entry” in Figure D.2. It is also expressed in:

- the encouragement of entry through clear, certain and minimal licensee criteria;
- the encouragement of substantial and long term investment through extended licence lives (duration) or even removing licence expiry dates altogether; and
- by making licence renewal semi-automatic and conditional only on continuing compliance with licence conditions.