



OFFICE of the
REGULATOR

TELECOMMUNICATIONS (GOODS & SERVICE PROMOTIONS AND
ADVERTISING) GUIDELINES
2016

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Government of Samoa

Pursuant to the provisions of the Telecommunications Act 2005 (the "Act"), the Regulator is charged with the responsibility of regulating the telecommunications market. In that regard, the Regulator issues this Telecommunications Guideline for Goods & Service Promotions and Advertising in the Telecommunications Sector.

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1. Background:

Regulatory and legislative requirements for advertising and promotion are typically expressed in very general terms, such as positive requirements to be truthful and fair, and prohibitions on being false or misleading.

These general requirements are important but need to be expanded to be useful as a guide for both the Office of the Regulator ("OOTR") and licensed operators in the sector to follow in making day-to-day decisions about compliant promotions and advertisements.

The Regulator is also aware that there has been a rising number of complaints about promotions and advertisements not only between licensees but also between licensees and end users. These Guidelines will assist in the resolution of such complaints and to a reduction in their number.

The objectives of the Guidelines are to:

- i. Provide greater clarity in the explanation of the obligations of licensed operators when they have promotions or undertake advertising;
- ii. Promote and maintain fair and efficient market conduct and effective competition between service providers engaged in promotional activities connected with telecommunications;
- iii. Encourage, facilitate and promote industry self-application of appropriate standards for promotion and advertising in the telecommunication market in Samoa, and
- iv. Promote and protect the interests of the consumers.

The guidelines have been developed to assist all licensees plan for and conduct goods and service promotions and advertisements that will be in line with the Telecommunications Act 2005 and any other relevant laws in Samoa.

2. Scope

Unless otherwise stated, the provisions of this guideline shall apply to all licensees providing telecommunication goods and services in Samoa. The Guidelines do not apply to Broadcast Licensees in relation to advertising that is placed with them by advertisers or agencies.

3. Definitions:

For the purpose of this guideline, the following table provides the definitions of terms that form parts of this guideline but not limited to the following:

TABLE 1

LICENSEE	Has the same meaning as in the Telecommunications Act 2005 ("Act")
SERVICE PROVIDER	Has the same meaning as in the Act

DAY

Means calendar day including weekends and any recognized public holidays in Samoa;

ADVERTISEMENTS

Any form of communication made to the public or a section of the public for the purpose of promoting the supply of goods and services; For the purpose of these Guidelines it could also mean any such communication if made by an employee, contractor or other agent on behalf or at the request of a licensee

GOODS AND SERVICE PROMOTION

An offer that is typically of a limited duration and intended to stimulate demand or encourage purchase of goods or services.

4. Principles

The following principles provide the foundation for this Guideline and will guide the OOTR's implementation of its provisions.

- i. A promotion or advertisement should accurately reflect the nature and content of the offer that is being made;
- ii. Licensees should be held accountable to the public in the way they promote or advertise their goods and services. No promotions and advertisements should contain any content that discriminates in terms of race, sex, religion, age or culture and demeaning or likely to cause serious or widespread offense to the public;
- iii. The guidelines are not intended to restrict or impede creative and/or innovative competitions, promotions and advertisements. Rather they highlight certain types of content that service providers/licensees should avoid when providing goods and service promotions and advertisements and to ensure consumers are protected from any unfair tactics by licensees;
- iv. These guidelines also are not intended to identify every type of extreme or offensive content that could lead to a violation; they merely provide illustrative examples.

5. Relevant Laws:

Pursuant to the provisions of the Telecommunications Act 2005 (the "Act"), the Regulator is charged with the responsibility of regulating the telecommunications market.

Sub-section 3 (1) of the Act provides the Objectives, which require the Regulator:

- (a) *to facilitate the development of the telecommunications sector in order to promote social and economic development;*

- (b) to promote the efficient and reliable provision of telecommunications services, relying as much as possible on market forces, such as competition and private sector investment...;*
- (f) to establish a framework for the control of anticompetitive conduct in the telecommunication sector;*
- (h) protect the interests of subscribers and other customers of telecommunications services;*
- (i) to define and clarify the institutional framework for policy development and regulation of the telecommunications sector, as well as the separation of government policy and regulatory functions from those of providing telecommunications services; and*
- (m) to establish measures to enforce the implementation of this Act and to prohibit certain types of conduct contrary to the orderly development and regulation of the telecommunications sector.*

Sub-section 3 (2) *“The Regulator shall carry out the responsibilities, functions and powers of the Regulator with a view to implementing the objectives set out in section 3”.*

It is also relevant to consider **Section 8(1)** of the Act which sets out the following responsibilities, functions and powers of the Regulator which includes:

- (b) implement this Act, the regulations and facilitate the implementation of this Act;*
- (r) make orders respecting any matter or thing within the jurisdiction of the Regulator under this Act, a regulation or rule, including orders to compel a person to comply with or implement the purposes of this Act, a regulation, rule or licence, and upon publication by the Regulator such orders shall have the same legal force as a rule;*
- (v) take such other actions as are reasonably required to carry out this Act, the regulations and rules, and to perform such other responsibilities, functions, and powers conferred on the Regulator under any other law.*

Furthermore, where providers fail to comply with their obligations under the Act with respect to their dealings with customers and potential customers, it is the Regulator who typically must consider intervening to ensure that consumers are not misled or otherwise disadvantaged. **Section 47(5):**

“No service provider shall make, or cause to be made, any false or misleading claim or suggestion regarding”:

- a) the availability, price or quality of the service provider’s telecommunications services or equipment; or*
- b) the telecommunications services or equipment of another service provider.*

Other relevant laws:

- Competition and Consumer Act 2016

6. Goods & Service Promotions and Advertising Guidelines:

6a.) Goods & Services Promotions:

1. All promotions must be organized and conducted in a fair and transparent manner, as judged by a reasonable person who is suitably briefed.
2. Promotional materials must clearly state any information knowledge of which is likely to affect a decision to participate, including:
 - The commencement and closing dates;
 - Drawing date and time (if applicable);
 - Relevant terms and conditions, including any restrictions on the number of entries or prizes which may be won;
 - An adequate description of prizes and other items offered to all or a substantial majority of participants, including number of major prizes;
 - Any significant age, geographic or other eligibility restrictions;
 - Any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of a good or service;
 - Information on specific retailers or locations for winners to redeem their prizes
3. A promotion must not exceed 90 days within a 12 months period. Any promotion that exceeds 90 days in a 12 month period or 30 days at any one time will be a tariff and subject to the approval of a tariff by the Regulator. This provision will apply only where the service is offered by a dominant licensee.
4. (a) There must be no misleading or deceptive conduct attached to any promotion by any licensee or third party acting on behalf of or at the request of a licensee.

(b) Without limiting the general application of paragraph (a), in relation to texting, for example, phrases like “text and win”, “You are X number of texts away from winning the prizes”, or similar phrases, must be used with care to ensure it does not mislead the public. Terms and conditions of such promotions must be clear enough for the public to understand to avoid any confusion.
5. Draws must be done in a transparent manner with records kept properly for verification by any party wishing to do so. Licensees should advertise the results of draws and prize competitions on their websites and in the media in which the competition was advertised in the first place.
6. Licensees should provide an avenue to consumers to raise complaints in regards to a promotion and/or advertisement, and make provision for any complaints lodged to be

investigated and addressed expeditiously by suitably qualified staff. This does not restrict the consumer's right to lodge his/her complaints with the OOTR

7. Promotional offers including terms and conditions must be communicated clearly to all customers given that the promotion is for all customers, without exaggeration as to worth or value. In the case where promotions are intended for a specific group of customers i.e. prepaid customers/postpaid customers, this should be clearly demonstrated in all mediums of advertisement used by the licensees. Promotional Offers can be advertised in the same medium as the advertisement or on other media, such as operator websites. However, in the latter case, customers must be notified where they might conveniently access full promotional offers with full terms and conditions applied.
8. Promotional offers may have benefits that differ in proportion to use or amount spent by the customer for the relevant service. Discrimination in terms of other factors (i.e. race, sex, age, religion or culture) is not permitted.
9. All promotions must provide eligibility conditions.
10. Licensees should respect the right of the customer to control messages they receive. Licensees should clearly outline a simple termination/opt-out process so that customers can stop receiving messages and to enable customers to be able to exercise their opt-out choice from any message

6b.) Advertisements

11. Licensees shall not provide any advertisement or engage in conduct that is misleading or deceptive or likely to mislead and deceive.
12. All licensees must ensure advertisements fulfil the following principles:
 - i. Advertisements must be truthful, genuine, maintain decency and good taste to the standards prevailing in the Samoan community, and comply with the Act, license and any relevant laws in Samoa;
 - ii. Advertisements must have clearly understood terms and conditions which must also be readily accessible to customers;
 - iii. Any statements or references included in advertisements regarding the service provider's business or service must be factually correct and shall be capable of being supported by evidence upon request by customers or OOTR; and
 - iv. Advertisements must use words with care, including technical terms and technological comparisons, to ensure that they do not mislead the public.
13. Advertisements should avoid the use of superlatives and any claims made for products and services must be able to be substantiated by evidence.

14. Advertisements must not unfairly discredit, disparage or attack competing products and services, advertisements or companies or exaggerate the nature or importance of differences from competing products or services.
15. Licensees should not imitate the slogans or illustrations of another licensee in such a manner as to mislead the consumer about the product or the supplier involved.
16. All service providers' advertisements and promotional materials shall include the identity of the service provider and, where reasonably practicable, include information on how the service provider may be contacted
17. Where relevant, advertisements and promotions should clearly indicate whether a service is a subscription, and the terms and conditions of the promotion and service pricing information that apply.
18. Where relevant, advertising of complicated price structures and information should not only appear in transient types of media such as radio and television but must be accompanied with detailed print and media explanations, and on the licensee's website. The transient media must specifically instruct consumers to see the printed explanation for details.
19. Where relevant, advertising, promotional materials and service help messages should clearly display the consumer's right "opt out" of any promotion whether subscription based or otherwise.

7. Enforcement

The Regulator has adopted a cooperative regulatory approach and provides guidelines to assist all licensees to comply with the regulatory framework. Any non-compliance with the guidelines will attract enforcement action and remedies.

OOTR will monitor the industry compliance accordingly and where necessary take action in accordance with Regulator's powers and responsibilities provided in the Act.

If contravention of these guidelines by an individual service provider continues after an initial breach has been addressed by the Regulator, the Regulator will take the following steps:

- (a) Issue the service provider with a warning that, unless the continuing contraventions cease on or before a date nominated in the warning, the Regulator will subject the service provider to a pre-approval process for such period of time as the Regulator considers to be appropriate in relation to advertisements and promotions of the kind that are subject to the warning;
- (b) Invite the service provider to attend a meeting with the Regulator to ensure that the nature of the contravention is fully understood by the service provider and to give the service provider an opportunity to question the Regulator on alternatives and their acceptability; and

(c) Should contraventions continue beyond the date in the warning, to take action to implement a pre-approval process for such period of time as the Regulator considers to be appropriate in relation to advertisements and promotions of the kind that are in question.

8. Modification

OOTR reserves the right to amend and approve the modifications to the Guideline as and when necessary, but will typically do so in consultation with the industry and with appropriate notice to licensees.