



TELECOMMUNICATIONS LICENCE FEE REGULATIONS 2007

Pursuant to section 81 of the Telecommunications Act 2005, I, **TUI ATUA TUPUA TAMASESE EFI**, Head of State of the Independent State of Samoa, acting by and with the advice of Cabinet, **MAKE** the following Regulations.

DATED at Apia this 25th day of September 2007.

Original Signed by

(His Highness Tui Atua Tupua Tamasese Efi)
HEAD OF STATE

REGULATIONS

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1. Short title and commencement

- (1) These Regulations may be cited as the Telecommunications Licence Fee Regulations 2007.
- (2) These Regulations shall come into force on the date they are made by the Head of State.

2. Interpretation

- (1) In these Regulations, unless the contrary intention appears:
 - Act* means the Telecommunications Act 2005;
 - annual licence fee* means the fee specified in the Schedule in respect of the particular category of licence for one year;
 - Gross Revenue* means the total revenue derived from the licensed services during a licence year.
 - licence year* means the period of 12 months from the anniversary of the date that the licence was issued.

3. Licence application fee

- (1) A person applying for an individual licence must pay the application fee specified in the Schedule in relation to the particular category of licence applied for.
- (2) The Regulator may refuse to process an application for a licence if the relevant application fee or renewal fee is not paid.
- (3) The application fee is not refundable if the application is unsuccessful.

4. Annual licence fee

- (1) The annual licence fee for a category of licence for the provision of telecommunications services is the fee calculated in accordance with the Schedule in relation to the particular licence.
- (2) The minimum annual licence fee specified in the Schedule in relation to a particular licence category will apply where forecast or achieved revenues or traffic levels would otherwise result in an annual fee that is less than that minimum annual fee.

5. Due date for payment

- (1) Annual licence fees for an individual licence issued prior to 1 January 2007 for the provision of fixed or mobile telecommunications services shall be payable from the 1st day of November 2006 and each subsequent anniversary thereof.
- (2) Annual licence fees for all other individual licences are due and payable on the date of issue of the licence or the expiry of the licence year.
- (3) Annual licence fees for a class licence are due and payable on the date of issue of the licence or the expiry of the licence year.
- (4) A licensee who holds an individual licence for the provision of telecommunications services where fees are based on a percentage of gross revenue shall pay the annual licence fee applicable to each licence year in advance and in two instalments as follows:

- (a) a first instalment of 50% of the annual licence fee determined by having regard to a reasonable estimate of the expected annual revenue for the licence year, payable within one month of the licence start date or its anniversary; and
- (b) a following instalment of 50% of the annual licence fee determined by having regard to revised revenue estimates for the licence year and including an adjustment for under or over payment for the first payment of the year, payable within 6 months of the licence start date or its anniversary.

6 Penalty for non-payment

Where the licence fee is not paid:

- (a) within the time period specified in regulation 5, a surcharge of 10% of the licence fee shall be payable in addition to the licence fee; and
- (b) before the expiry of a period of 90 days from the time period specified in regulation 5:
 - (i) the 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.

7 Calculation of gross revenue

- (1) For the purposes of calculating the annual licence fee payable by a licensee who holds an individual licence for the provision of telecommunications services where annual fees are based on a percentage of gross revenues, gross revenue shall be determined according to a fair and reasonable provisional estimate of the licensee's total annual turnover derived from the licensed service during the licence year.
- (2) A licensee shall calculate its estimate of the annual gross revenue on a self-assessment basis, having regards to:
 - (a) its most recent financial statements;
 - (b) projected sales revenue for the licence period; and
 - (c) the amount of gross revenue derived during the previous licence period.

8. Licensee to provide information

- (1) Every licensee who holds an individual licence for the provision of telecommunications services shall provide to the Regulator when requested any information that is reasonably necessary for the Regulator to verify the calculation of estimated and actual annual fees due and payable by that licensee.
- (2) For the avoidance of doubt, where annual fees are based on a percentage of gross revenue, the information required by the Regulator under subregulation (1) may include, but is not limited to the following:
 - (a) Audited financial statements;
 - (b) information on adjustments required to compensate for under or overpayments in respect of prior annual fee payments; and

- (c) reports prepared by a qualified auditor that includes a statement that the information complies with any requirements of the Regulator.
- (3) Any information provided pursuant to subregulation 8(2) shall be held in confidence by the Office of the Regulator. The Regulator may elect to publish figures to provide total market statistics but will not release details pertaining to any individual licences or licensees.
- (4) All persons holding a license for which annual fees are calculated as a percentage of gross revenue or traffic measurements shall submit written forecasts of the gross revenue or total traffic to the Regulator no later than thirty (30) days prior the date on which the next annual fee payment is due. The forecasts shall clearly state the assumptions used in preparing the forecast.

9 Regulator may issue revised estimate

The Regulator may issue a revised estimate and require payment of a revised annual licence, where the Regulator reasonably considers that the information provided by the Licensee under regulation 8 is incomplete or unreasonable with regards to estimates of annual turnover for the licence period.

10 Adjustment in case of shortfall or excess

- (1) A licensee who holds an individual licence for the provision of telecommunications services where annual fees are based on a percentage of gross revenue shall submit to the Regulator audited financial statements which disclose the licensee's actual gross revenues derived from the licensed service within 4 months of the licensee's fiscal year end.
- (2) Within 2 months after the end of each licence year a licensee who holds an individual licence for the provision of Retail Internet Services shall submit to the Regulator certified true copies of the Wholesale Internet Service Provider's monthly traffic statements showing the total incoming and outgoing internet traffic for the licence year.
- (3) Where there is a shortfall or excess between the estimate of gross revenue or total traffic used for the estimate of the annual licence fee and the actual gross revenue or traffic levels in a period, the shortfall or excess shall be added to, or subtracted from, the annual licence fee payable for the licence period that immediately follows the period under review.

SCHEDULE

Type of Licence (See Note 1)	Application Fee	Annual Fee	Minimum Annual Fee
<u>Individual Licences</u>			
Calling Card Services	500	5,000	5,000
Cellular Radio Services	1,000	2% GR*	50,000
Fixed Services	1,000	2% GR	50,000
International Call Centres	1,000	2% GR	5,000
International Gateways	1,000	2% GR	50,000
Internet Exchange Services	100	100	100
National Transmission Services	500	5,000	5,000
Pay Telephone Services	500	5,000	5,000
Premium Rate Services	500	5,000	5,000
Radio Paging Services	250	500	500
Resale Licence	1,000	2% GR	25,000
Retail Internet Services	250	0.70/GB**	500
VoIP and SIP services	500	2% GR	5,000
Wholesale Internet Services	500	2% GR	5,000
<u>Class Licences</u>			
Telecommunications Class Licences	25	50	50
Radio Spectrum Class Licences	No charge	No charge	No charge

Notes:

1. Refer to the *Rules on Licensing Telecommunications Services 2007* for a detailed description of the services authorized by each type of licence.
2. * GR refers to gross revenue derived from the licensed services during a licence year.
3. ** GB refers to the total incoming and outgoing Internet traffic in gigabytes during the licence year