



**TELECOMMUNICATIONS (GOODS & SERVICE
PROMOTIONS AND ADVERTISING)
GUIDELINES
2023**

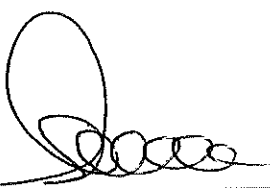
Table of Contents

1. <i>Background:</i>	4
2. <i>Scope:</i>	4
3. <i>Definitions:</i>	4
4. <i>Principles:</i>	5
5. <i>Relevant Laws:</i>	6
6. <i>Goods & Service Promotions and Advertising Guidelines:</i>	7
7. <i>Enforcement</i>	11
8. <i>Modification</i>	11



Government of Samoa

The Telecommunications Act 2005 (the "Act") indicated that the Regulator is responsible for regulating the telecommunications market. In that regard, the Regulator issues this Telecommunications Guideline for Goods & Service Promotions and Advertising in the Telecommunications Sector. The Guideline is developed to provide service providers with a framework to guide them in their promotions and advertisements.

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Date: 3 July 2023

1. Background:

Regulatory and legislative requirements for advertising and promotion are 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 Telecommunication licensed service providers to follow in making day-to-day decisions about compliant promotions and advertisements.

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

The objectives of the Guidelines are to:

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

The Guidelines have been developed to assist licensed service providers in planning and conducting goods and service promotions and advertisements that will be in line with the Act 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 Broadcasting Licensees advertisements that are placed with them by advertisers, Ministries and State-Owned Enterprises, businesses, and others.

3. Definitions:

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

TABLE 1

LICENSEE	means a person who holds a license under the Telecommunication Act 2005
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SERVICE PROVIDER	means a person that provides a telecommunications service to the public, owns or operates a telecommunications network used to provide telecommunications services to the public
DAY	This means calendar day including weekends and any recognized public holidays in Samoa;
WORKING DAY	Means a day of the week, other than a Saturday, a Sunday or a public holiday.
ADVERTISEMENTS	Any form of communication made to the public or a section of the public to promote the supply of goods and services; For these Guidelines, it could also mean any such communication if made by an employee, contractor, or another agent on behalf or at the request of a licensee;
GOODS AND SERVICE PROMOTION	An offer that is typically a limited duration and intended to stimulate demand or encourage the purchase of goods or services.
TARIFFS	Any charges raised by a service provider for telecommunications services that the Regulator has approved.
PROMOTIONAL TARIFF	Is a promotion on approved telecommunication service tariff that is offered for a specific period of time.

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 reflect the nature and content of the offer that is being made and ensure customers are not misled;

- 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 is 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 to ensure consumers are protected from any - false and misleading practices by licensees;
- iv. These guidelines 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 section 3 of the Telecommunications Act 2005 (the "Act"), the Regulator is charged with the responsibility of regulating the telecommunications market.

Section 3 (1) of the Act provides for 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.*

Section 8 (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".*

Further responsibilities, functions and powers of the Regulator to take in consideration are stipulated under **section 8(1)(b)(r)(v)** as follows:

8. Responsibilities, functions and powers of the Regulator- (1) In line with Article 32 of the Constitution, subject to the approval of the Cabinet, the Prime Minister, or the Minister, the Regulator shall carry out the following:

- (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 license, 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.*

In addition, **section 47(5)**, the service provider shall not make or cause to be made any false or misleading claim or suggestion regarding, the availability, price, or quality of the service provider's telecommunications services or equipment, the telecommunications services or equipment of another service provider.

If service providers make or cause to be made any false or misleading claim or suggestion the Regulator may intervene according to section 47(7).

6. Goods & Service Promotions and Advertising Guidelines:

A) Goods & Services Promotions:

1. All promotions must be organized and conducted fairly and transparently as judged by a reasonable person who is suitably briefed.
2. Promotions on approved telecommunication service tariffs (promotional tariffs) can only be offered on the approved 12 months tariffs;
3. Promotional materials must clearly state any information knowledge 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 the 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 the collection, delivery, or use of a good or service;
 - Information on specific retailers or locations for winners to redeem their prizes

- Opt-in and opt-out for promotional services – the process for opting in and out must be clearly spelled out in both languages;
 - Additional or bonus (free) offers for any service in bundled services are prioritized for consumption first;
4. 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.
 5. Without limiting the general application of paragraph (8), in relation to texting, for example, phrases like “**chance to win**” or similar phrases, must be used with care to ensure it does not mislead the public. The terms and conditions of such promotions must be clear enough for the public to understand to avoid any confusion;
 6. Draws must be done transparently with records kept properly for verifications by any party wishing to do so. Licensees should advertise the results of draws and prize competitions on their websites where necessary and in the media in which the competition was advertised in the first place.
 7. Promotional offers including terms and conditions must be clearly communicated in both Samoan and English languages to all customers without exaggeration as to worth or value. In the case where promotions are intended for a specific group of customers’ e.g., prepaid customers/postpaid customers, this should be clearly demonstrated in all chosen mediums of advertisement used by the licensees. Promotional Offers must be advertised on the operator’s websites and may be on all media platforms. 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 the use or amount spent by the customer for the relevant service. Discrimination in terms of other factors (i.e., race, sex, age, disability, religion, and culture) is not permitted.
 9. All promotions must provide eligibility conditions.
 10. Licensees should respect the right of the customer to control the 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.

B) Advertisements

11. Licensees must 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 fulfill 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 be simple and 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 the evidence upon request by customers or OOTR;
- iv. That advertisement must also be in Samoan language in the assurance that all customers are well or fairly informed and to alleviate any language difficulty in translations and interpretations of terms and conditions of the promotion; and
- v. When creating and doing advertisements to refrain from promoting violence acts (including graphic, realistic and gratuitous depictions).

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, advertising, 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 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 by detailed print and media explanations on the licensee's website and official social media pages. The transient media must specifically instruct consumers to see the printed explanation for details.

19. Where relevant, advertising, promotional materials, and service help should display the consumer's right to "opt-out" of any promotion (where relevant), whether subscriptions based or otherwise.

C) Applications and Timelines

20. Promotional tariff offers must exist at a minimum of 30 days and shall not exceed 90 days (maximum) at any one time within 12 months;

20.1 A promotional tariff can be allowed for more than 90 days at any one time within 12 months. This promotional tariff can only be granted upon assessment of the request or application submitted **5 working days** prior to the expiration of the promotion.

20.2 Any promotional tariff that exceeds 90 days at one time without intending to be an extended promotion within 12 months will automatically become a tariff; and will be included in the active list of tariffs by way of an Order of the Regulator. This provision will apply only where the service is offered by a dominant licensee;

21. A promotional tariff (same) shall not be offered more than 2 times consecutively in 12 months. The promotional tariff will automatically become a tariff on the third (3rd) application for extension;

22. A service provider may be granted an extension of one (1) time or relaunching of promotion upon submission for the request of extension or relaunch and satisfying the following requirements;

22.1 Requirements for an extension:

- i.** No changes made to the original promotion;
- ii.** Extension shall be awarded one time only for another 30 days minimum or 90 days maximum.
- iii.** Request for extension must be filed **5 working days** before the end date of promotion;
- iv.** application for an extension will not be considered if (iii) has not been complied with;

22.2 Requirement for Re-launching of promotion:

- i.** To relaunch or reoffer, the promotion must be the original promotion;
- ii.** **No changes made;**
- iii.** Re-launched is awarded once within 12 months from the original date;
- iv.** Application must be submitted **5 working days** before relaunching;

22.3 Requirements for revisions:

- i.** Application for a revised promotion must be accompanied by the current approved offers with revised changes highlighted;
- ii.** **Revised promotion must only be a revamped promotion with increased benefits;**
- iii.** Revision of promotion is allowed during the approval period of the promotion only if there are added benefits;
- iv.** Notification for revision must be submitted **5 working days** prior to the commencement of the promotion
- v.** Revisions include:
 - a.** Name of promotion;
 - b.** Name of offers (bundles, plans, etc.);
 - c.** Revamped price plans (services)
 - d.** Customer base;

e. Offered services

23. Letters of applications must be clearly noted whether it's revised, new, or for extension, etc.;
24. A dominant service provider must file with the OOTR for approval of new promotion applications **7 working days** before the effective date of the promotion;
25. A dominant service provider shall notify and make all its customers aware **immediately for 7 days**, of any new changes or amendments to any of its services as applied for prior to such changes becoming effective.
26. A dominant service provider wishing to offer promotions using shortcodes that contain a gambling nature for monetary or product prizes (e.g., opt into code #111# to win or text win to code 111) must file applications for use of short codes together with a Gaming Control Authority "GCA" license of approval. Applications received without an accompanying GCA license will not be evaluated;

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 and remedies.

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

If the 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 as the Regulator considers to be appropriate concerning the advertisement and promotions of the kind that is 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
- c) Should contraventions continue beyond the date in the warning the Regulator will issue an Order to be complied with.

8. Modification

OOTR reserves the right to amend and approve the modifications to the Guidelines as and when necessary.