



**TELECOMMUNICATIONS
BILL 2009**

(NO. 22 OF 2009)



TELECOMMUNICATIONS BILL 2009

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A

BILL

Entitled

AN ACT TO REGULATE THE TELECOMMUNICATIONS SECTOR,
TO ESTABLISH THE TELECOMMUNICATIONS COMMISSION AND
TO REPEAL THE TELECOMMUNICATIONS ACT (CAP. 115) AND
THE SOLOMON TELEKOM (LIMITATION OF LIABILITY) ACT (CAP.
114) AND RELATED MATERS

ENACTED by the National Parliament of Solomon Islands.

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TELECOMMUNICATIONS BILL 2009

PART 1- PRELIMINARY

Short title and commencement

1. This Act may be cited as the Telecommunications Act 2009, and commences on a date appointed by the Minister, by notice in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires –

“access” means the making available of facilities by one service provider to another for the purpose of providing telecommunications services;

“affiliate” means, in relation to any one person, any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person;

“annual licence fee” means the fee payable under section 20;

“class licence” means a licence published pursuant to section 40;

“commencement date” means the date on which this Act commences pursuant to section 1;

“commissioner” means the individual appointed as such to the Telecommunications Commission under section 7;

“consumer” means any individual, small business, organisation or other user who contracts or may wish to contract for a telecommunications service that is offered on standard conditions that are generally applied and not negotiated individually with that user;

“control” means the power to determine, directly or indirectly, the actions of another person in any manner, whether through the ownership of shares or other securities (held directly or through intermediary entities) or an agreement or arrangement of any type;

“Dispute and Appeal Panel” means a Panel established under section 103, and “Panel” has a corresponding meaning;

“dominant service provider” means a service provider having a position of economic strength affording it the power to behave to an appreciable extent independently of competitors and users in a telecommunications market: PROVIDED THAT –

- (a) a service provider shall be deemed to be a dominant service provider in the telecommunications markets for –
 - (i) interconnection services for the termination of voice calls to its users on its telecommunications network; and
 - (ii) access to its essential facilities; and
- (b) Solomon Telekom shall, as at the commencement date, be deemed to be a dominant service provider in all telecommunications markets except in the market for mobile telecommunications services, except that Solomon Telekom may at any time apply to the Telecommunications Commission to have its position as a deemed dominant service provider under this paragraph revoked on the basis that it is not in fact a dominant service provider in those telecommunications markets;

“essential facility” means a facility that satisfies all the following criteria–

- (a) the facility is owned or controlled by a service provider;
- (b) the facility is essential for the provision of telecommunications services;
- (c) that for technical, legal, economic or other reasons cannot practicably be duplicated by another service provider;
- (d) the lack of access to the facility presents a barrier to entry into the market of a new service provider or to expansion of an existing service provider;

- (e) there is likely to be significant demand from users or potential users for the telecommunications services for which access to the facility is required;
- (f) it is technically, economically and legally feasible for the service provider that owns or controls the essential facility to provide access to it;

“Evaluation Committee” means the Evaluation Committee established under section 7;

“exemption order” means an order made by the Telecommunications Commission under section 36(1);

“facility” means any apparatus, infrastructure, building, including without limitation switching equipment locations, mast sites, towers, poles, trunk lines, user access lines, ducts and other underground facilities, or other thing that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications;

“funding deficit”, in relation to the Telecommunications Commission, means an insufficiency of cash (not including reserves for provisions or other anticipated expenses) available in the Telecommunications Commission Special Fund such that the Telecommunications Commission cannot meet its liabilities as they fall due or otherwise perform its functions and duties and exercise its powers effectively under this Act;

“government authority” means any Ministry, department, other state entity, provincial assembly or executive, local council, state-owned enterprise or any other person or body under its control;

“gross revenues” means revenues earned by a service provider from the provision of telecommunications services and access, after deducting amounts paid on an arms’ length basis to domestic and foreign service providers for telecommunications services and access but before any deduction for costs, taxation, accounting or other purposes;

“individual licence” means a licence issued pursuant to section 39;

“individual licensee” means a licensee to whom an individual licence has been issued pursuant to section 39;

“interconnection” means the physical and logical linking of telecommunications networks and systems used by the same or a different service provider in order to allow the users of one service provider to communicate with users of the same or another service provider, or to access the services of another service provider;

“interim commissioner” means the individual appointed as such under section 10 or taking office as such under section 132 on an interim basis until the appointment of a commissioner in accordance with section 7;

“Internet Assigned Numbers Authority” means the organisation responsible for the international coordination of the DNS Root, IP addressing and certain other Internet protocol resources (www.iana.org) and includes any successor to that organisation;

“licence” means an authorisation to provide telecommunications services or use radio frequencies, as applicable;

“licensee” means a person to whom a licence has been issued under this Act;

“List of Experts” means a list of experts appointed in accordance with section 99;

“message” means any sign, signal, writing, image, sound, instruction, information, or intelligence of any nature;

“Minister” means the Minister responsible for this Act;

“Ministry” means the Ministry responsible for Communications;

“new entrant” means the first person other than Solomon Telekom selected to receive a licence to provide telecommunications services and use radio frequencies pursuant to section 128;

“new entrant launch date” means the date on which the new entrant begins offering mobile telecommunications services to the public generally in Solomon Islands pursuant to section 128(5);

“new mobile licence” means a licence issued pursuant to section 128 to the new entrant substantially in the form set out in Schedule 2;

“President of the List of Experts” means a person appointed as such under section 99, and “President” has a corresponding meaning;

“price” means financial consideration charged to a user for the provision of a telecommunications service or access, whether on a wholesale or retail basis;

“price cap method” means the method of price regulation described in section 70;

“prior licence” means an authorisation for the operation of a telecommunications network or provision of a telecommunications service or use of any radio frequencies issued or given prior to the commencement date;

“public land” has the meaning given to it in section 2 of the Land and Titles Act (Cap. 133);

“recognised service provider association” means an association recognised as such by the Telecommunications Commission under section 35;

“reference offer” has the meaning assigned to it in section 65;

“Secretary” means the person specified as such pursuant to section 99;

“service licence” means an individual or a class licence issued pursuant to this Act but does not include a prior licence;

“service provider” means a person providing or entitled to provide a telecommunications service in Solomon Islands under a service licence or an exemption;

“Solomon Telekom” means Solomon Telekom Company Limited, a company formed under Companies Act (Cap. 175);

“Solomon Telekom’s new licence” means the licence to be issued to Solomon Telekom pursuant to section 127 substantially in the Form set out in Schedule 1;

“Solomon Telekom’s prior licence” means the Telecommunications Licence issued by the Telecommunications Authority of Solomon Islands to Solomon Telekom Company Limited, dated 17 November 2003;

“telecommunications” means the conveyance from one device to another of any message by means of any wire, radio, optical, electric, magnetic, electromagnetic or similar system;

“Telecommunications Commission” means the entity established as such by section 6;

“Telecommunications Commission Special Fund” means the special fund established pursuant to section 17(1)(a);

“telecommunications equipment” means equipment intended to be connected directly or indirectly to a telecommunications network in order to send, transmit or receive telecommunications services;

“telecommunications market” means a market in Solomon Islands for any telecommunications service or access including any other telecommunications service or access that as a matter of fact and commercial common sense is substitutable for it;

“telecommunications network” means a system or series of systems capable of permitting telecommunications;

“telecommunications service” means any service normally provided for consideration whether on a retail or wholesale basis which consists wholly or mainly in carrying out telecommunications, but does not include television broadcasting;

“television broadcasting” means the transmission by a television broadcast station of broadcast matter to a

television broadcast receiver pursuant to provision of a television broadcasting service within the meaning of such terms, as are defined in the Television Act (Cap. 116);

“Universal Access Advisory Committee” means the committee established as such under section 46;

“Universal Access Plan” means the Plan adopted or reviewed under section 47;

“Universal Access Special Fund” means the special fund established under section 17(1)(b);

“user” means any person to whom a service provider provides a telecommunications service, regardless of whether such person is or is not another service provider.

Objective

3. (1) The principal objective of this Act is to enhance the long-term well-being of the population of Solomon Islands, the inclusiveness and fairness of its society and the productivity of its economy by improving the availability, affordability, quality of service and kinds of telecommunications services in Solomon Islands.

(2) The objective in subsection (1) shall be implemented by means of, and all determinations, orders and directions made under this Act shall be made with a view to—

- (a) establishing and maintaining an open, non-discriminatory, competitively and technologically neutral, objective, transparent and proportionate regulatory regime applicable to service providers;
- (b) providing conditions for fair and effective competition among service providers in Solomon Islands;
- (c) ensuring efficient use of radio frequency spectrum, numbers, rights of way and other scarce resources;
- (d) protecting the long term interests of users including where there is insufficiently effective competition to do so; and

- (e) encouraging efficient and sustainable investment in and use of telecommunications networks and services.

4. This Act binds the Crown.

Act binds the
Crown

PART 2 – THE MINISTER AND THE TELECOMMUNICATIONS COMMISSION

5. (1) The Minister shall—

Duties, functions
and powers of the
Minister

- (a) formulate, monitor, review and recommend policies for the telecommunications sector and its development toward the objective in section 3, including without limitation policies for legislation, fiscal incentives, investment promotion, intellectual property and other areas affecting effective competition and sustainable investment in telecommunications; and
- (b) coordinate with other government authorities regarding policies relating to facilitation by telecommunications of rural development, education, health and other areas affected by telecommunications.

(2) The Minister shall review policies under subsection (1)(a) at least every three years and the review shall—

- (a) assess progress in achieving the objective in section 3 since the previous review, including relative progress in Solomon Islands by comparison to other relevant countries;
- (b) identify impediments to such progress;
- (c) recommend policies to address such impediments and improve such progress, having due regard to the need to preserve the value of investment and to minimise uncertainty in the investment environment; and

- (d) recommend legislation, if required, to implement such policies having regard to the rights of service providers and users.
- (3) In preparing and reviewing policies and legislation for the telecommunications sector, the Minister shall—
- (a) request and take into account recommendations and advice from the Telecommunications Commission; and
 - (b) consult with and consider comments from users and service providers, including any recognised service provider association.
- (4) The Minister must allow a reasonable period, which shall not be less than forty-five days, for consideration and comment under subsection (3) on the review and proposed policies and legislation.
- (5) The Minister –
- (a) has the power to appoint the commissioner to the Telecommunications Commission in accordance with section 7, and to suspend or remove the commissioner from the Telecommunications Commission in accordance with section 9;
 - (b) shall ensure Solomon Islands is represented in regional and international organisations, and in negotiating, entering into and adopting regional and international treaties, commitments, recommendations and standards; and
 - (c) has other duties, functions and powers set out under this Act.

Establishment of the
Telecommunications
Commission

6. (1) This section establishes the Telecommunications Commission as a body corporate under that name with perpetual succession and a common seal, which may, in such name—

- (a) sue or be sued;
- (b) enter into contracts;

- (c) acquire, purchase, take, hold and enjoy real and personal property of every description and may convey, assign, surrender and yield up, charge, mortgage, transfer or otherwise dispose of, or deal with, real or personal property (but not charge or mortgage any special fund provided for in this Act); and
- (d) do all other things necessary for or incidental to its duties, functions and powers under this Act.

(2) The Telecommunications Commission shall consist of one commissioner who shall be appointed under section 7.

(3) The commissioner shall be responsible for—

- (a) the performance of the functions and duties of the Telecommunications Commission;
- (b) the exercise of the powers of the Telecommunications Commission; and
- (c) the administration of this Act,

except for the duties, functions and powers of the Minister.

(4) The Telecommunications Commission shall perform its functions and duties and exercise its powers in accordance with this Act.

(5) The Telecommunications Commission shall—

- (a) on its own motion or at the Minister's request, make recommendations to and advise the Minister on policies for the telecommunications sector; and
- (b) at the Minister's request, represent Solomon Islands in regional and international organisations relating to telecommunications and negotiate or adopt regional and international treaties, commitments, recommendations or standards.

7. (1) The commissioner shall be appointed by the Minister by notice published in the *Gazette* pursuant to the recommendation of an

Selection and
appointment of
Commissioner

Evaluation Committee (“Committee”) comprising the following members—

- (a) the Chairperson of Solomon Islands Chamber of Commerce and Industry, as the Chairperson of the Committee;
- (b) the Chairman of the Law Reform Commission; and
- (c) the Governor of the Central Bank of Solomon Islands;

(2) Subject to subsection (3), if any position referred to in subsection (1) is vacant or if any person referred to in subsection (1) is unavailable, the next most senior official of the relevant body shall take the allotted place on the Committee until such vacancy is filled or such person becomes available.

(3) If there is no Chairman of the Law Reform Commission, then until such time as a Chairman is appointed, his place on the evaluation committee shall be taken by the Public Solicitor.

(4) The Minister shall call for and arrange a meeting of the Committee, failing which the Committee shall meet—

- (a) at least three months prior to the expiry of the term of the commissioner;
- (b) within one month of becoming aware that the position of commissioner is likely to become vacant other than due to expiry of the term of the commissioner; or
- (c) within one week of becoming aware of the position of commissioner becoming unexpectedly vacant.

(5) The Committee shall determine its own procedures and may engage consultants to assist it in its duties.

(6) The Committee shall—

- (a) select a person pursuant to an open, competitive and transparent selection process that seeks to identify well-qualified candidates, including publishing

advertisements for applications nationally and (at least until the fifteenth anniversary of the commencement date) internationally, reviewing any available references and holding interviews;

- (b) invite proposals for candidates from the public and invite comments from service providers, including any recognised service provider association, regarding candidates under consideration, and take into account such comments; and
- (c) recommend to the Minister an individual for the position of commissioner from among candidates identified in the selection process.

(7) In recommending an individual for the position of commissioner, the Committee shall—

- (a) be guided by the merit of the individual taking particular account of his expertise and experience relevant to the position;
- (b) consider any technical advice necessary to evaluate the merit of the individual;
- (c) determine the terms and conditions of appointment of the commissioner, including without limitation remuneration, benefits, reimbursements, allowances and time required to be spent in Solomon Islands, taking into account the need to attract suitably qualified candidates for the position; and
- (d) recommend only an individual who has—
 - (i) consented to being appointed as commissioner;
 - (ii) agreed to the remuneration, benefits and allowances of the position; and
 - (iii) agreed to be present in Solomon Islands for a sufficient period to perform his duties effectively.

(8) The members of the Committee are entitled to reasonable fees and expenses in performing their functions, duties and powers under this Act determined by the Minister and payable from the Telecommunications Commission Special Fund.

(9) The Minister may only accept or reject a person recommended by the Committee, and may not appoint any person not so recommended or change the terms and conditions of his appointment determined by the Evaluation Committee.

(10) Subject to section 9, the term of office of the commissioner shall be up to five years, which term may be renewed by the Minister acting on the advice of the Committee in accordance with this section up to a maximum total period of ten years.

(11) A person shall not be disqualified or otherwise prevented from being appointed as commissioner by virtue of his nationality or residency.

(12) The Telecommunications Commission is not in the service of the Crown.

(13) The office of commissioner is not an office of emolument in the public service, and neither the commissioner nor the officers, consultants or employees of the Telecommunications Commission are public officers for the purposes of Chapter XIII of the Constitution.

(14) All government authorities shall take all reasonable steps to ensure that the commissioner and the officers, consultants, employees and agents of the Telecommunications Commission can assume their positions and carry out their duties.

Disqualifications,
removal, etc

8. A person is not eligible to be appointed or reappointed to, and may be suspended or removed from, office of commissioner if the person —

- (a) is the Minister or a member of the Evaluation Committee;
- (b) has committed a serious breach of the terms and conditions of his appointment;

- (c) persistently breaches a significant term or condition of his appointment;
 - (d) materially fails to perform the functions and duties or exercise the powers of the Telecommunications Commission in accordance with this Act;
 - (e) has violated section 11 or 12;
 - (f) has a conviction for or is convicted of any offence in Solomon Islands or elsewhere under a law—
 - (i) involving dishonesty or corruption; or
 - (ii) where the penalty prescribed for such offence includes imprisonment for one year or longer, irrespective of whether such penalty has been or is imposed in relation to such conviction;
 - (g) is an undischarged bankrupt in Solomon Islands or elsewhere;
 - (h) is determined by two medical practitioners to be unable due to any physical or mental incapacity to perform the functions or duties, or exercise the powers, of his position;
 - (i) is a member of Parliament or member of Honiara City Council or a provincial assembly;
 - (j) is an office-bearer or employee of any political party in Solomon Islands; or
 - (k) has had any direct involvement, whether as an officer, consultant, employee or agent, in the operations of any service provider in Solomon Islands or its affiliate during the twelve month period prior to his appointment.
- 9.** (1) The office of the commissioner shall become vacant upon—
- (a) expiration of the term of office without renewal;
 - (b) death;
- Vacation of office

- (c) resignation; or
- (d) removal by the Minister in accordance with this section on the grounds that the commissioner has become ineligible for office under section 8.

(2) The commissioner shall provide to the Minister written notice of his resignation at least one hundred and twenty days in advance except in exceptional circumstances.

(3) If the Minister has reason to believe that the commissioner is not eligible to continue in office in accordance with section 8, the Minister shall –

- (a) call for and arrange a meeting of the Evaluation Committee; and
- (b) inform the Evaluation Committee and the commissioner by written notice that the Minister is considering suspending or removing the commissioner and of the grounds under section 8 for such removal or suspension.

(4) The commissioner shall be given an opportunity to make representations in response to the Minister's notice and the Evaluation Committee shall give him an opportunity to be heard if he so requests, including being represented by a legal practitioner.

(5) The commissioner shall not be removed from office on the grounds in section 8(b), (c), (d) or (e) unless—

- (a) the allegation of his actions is enquired into by an independent and impartial person appointed by the Evaluation Committee;
- (b) the commissioner is given an opportunity to make representations in such enquiry, including being represented by a legal practitioner; and
- (c) the Evaluation Committee advises the Minister for the removal of the commissioner as a result of its enquiry.

(6) If the Minister, acting on the advice of the Evaluation Committee, is satisfied that the commissioner is ineligible under section 8 to continue in office, the Minister may remove the commissioner from office with no less than twenty-eight days' notice in writing, providing the detailed grounds under section 8 for such ineligibility.

(7) In advising the Minister under this section, the Evaluation Committee shall consider any relevant advice that is necessary to determine whether suspension or removal from office is reasonably justified in the circumstances.

(8) The Evaluation Committee shall seek to minimise the period of vacancy of the position of commissioner and in any event shall make a recommendation for the position of commissioner within six months of the office of commissioner becoming vacant.

10. (1) Where the office of the commissioner is or is expected to become vacant and the Minister or the Evaluation Committee considers that the process of selection, recommendation, approval and employment of the commissioner will require more than one month before he can assume his duties—

Interim
commissioner

- (a) the Evaluation Committee may, without carrying out the full selection process required by section 7(6), recommend to the Minister an individual who, taking into account his qualifications, it considers to be suitable to act as an interim commissioner taking into account the functions, duties and powers of such position under this Act; and
- (b) the Minister shall promptly appoint such individual as interim commissioner.

(2) The term of office of an interim commissioner shall terminate upon the commencement of duties by a commissioner appointed under section 7.

(3) An interim commissioner shall have the functions, duties and powers of the commissioner set out under this Act and all provisions in this Act which refer to the commissioner including without limitation section 8 shall, with necessary modifications, apply to the interim commissioner.

Leadership code

11. (1) Without limiting the application of any other provision of any law, Chapter VIII of the Constitution, the Leadership Code (Further Provisions) Act 1999 and Part X of the Penal Code (Cap. 26) shall apply to the Minister, the commissioner and any officer, consultant, employee or agent of the Telecommunications Commission in relation to the performance of their functions and duties and exercise of their powers under this Act.

(2) The commissioner shall make the disclosures to the Leadership Code Commission required in Part II of the Leadership Code (Further Provisions) Act 1999 within three months of his appointment to the Telecommunications Commission and thereafter at intervals not exceeding two years, in respect of himself, his spouse and each of his children, or such other disclosures as may be required from time to time under such other legislation as may amend the leadership code or otherwise apply.

Disposal of interests in service providers

12. (1) A person to whom section 11(1) applies—

- (a) shall, within three months after his appointment or engagement, sell or dispose of all interests in any prohibited entity which, at the time of his appointment, he owns or is interested in for his own benefit;
- (b) shall not, whilst he holds office under this Act, purchase or become interested in, for his own benefit, any interests in any prohibited entity; and
- (c) if becomes entitled, for his own benefit, under any will or succession, to any interests in any prohibited entity, shall sell or dispose of the whole within three months after he has become entitled to it.

(2) Any person to whom section 11(1) applies who retains, purchases, takes or becomes or remains interested in any interests in any prohibited entity in contravention of this section shall be disqualified from, and shall be deemed to have vacated, his office, and an entry to that effect shall be made in the records of the Ministry or the Telecommunications Commission, as applicable, as soon as practicable after the fact of any such contravention is known.

(3) The fact of any person disqualified under this section having acted in the capacity of Minister or commissioner before such entry in subsection (2) has been made in the relevant records shall not invalidate any resolution or proceeding of the Minister or any determination, order or direction of the Telecommunications Commission, as applicable.

(4) In this section "interests in any prohibited entity" means any stock, shares, debentures, debenture stock, bonds or other securities of any service provider or associated entity in Solomon Islands, and includes any interest in any unincorporated undertaking similarly engaged, other than solely as a member of the Solomon Islands National Provident Fund or similar funds where the person does not have any influence over the buying or selling of any such interests.

13. (1) The Telecommunications Commission shall—

Independence of
the Commission

- (a) act in a manner that is independent of, separate from, and not accountable to any person or service provider, including any service provider in which the Government or Solomon Islands National Provident Fund holds an interest; and
- (b) make determinations, orders and directions, and follow procedures, that are impartial with respect to all service providers.

(2) Nothing in this Act shall prevent the Telecommunications Commission from—

- (a) consulting with any person or organisation on any matter related to the Telecommunications Commission's functions, duties and powers; or
- (b) making a determination, order or direction that has a differential or prejudicial effect on one service provider where such effect is objectively justified or is otherwise contemplated by this Act.

(3) In the performance of the Telecommunications Commission's functions and duties and exercise of its

powers under this Act, the Telecommunications Commission shall not be subject to the direction or control of any other person or authority except a direction of the Appeal and Dispute Panel pursuant to section 107(7) or the High Court or Court of Appeal pursuant to section 31, 42, 59 or 110.

(4) Without limiting the generality of subsection (3) and notwithstanding that the commissioner is appointed by the Minister and the commissioner's right to consult with the Minister or any other Minister from time to time, the Telecommunications Commission shall not —

- (a) act on the instructions of the Minister or any other Minister or person; and
- (b) require the consent or tacit approval of the Minister or any other Minister regarding any determination, order or direction or other action of the Telecommunications Commission.

(5) Notwithstanding subsection (4), the Telecommunications Commission shall—

- (a) have regard to general policy directions given from time to time by the Minister or any other Minister provided such directions are consistent with this Act; and
- (b) comply with directions from the Prime Minister or Cabinet in the interests of national security, public order and the defence of Solomon Islands.

(6) The Telecommunications Commission may consult with any other government authority or organisation including without limitation the consumer affairs division where it considers it necessary or useful to do so.

Officers and
employees of the
Commission

14. (1) For the performance of its functions and duties and exercising its powers under this Act, the Telecommunications Commission may employ such officers, employees and engage such agents or consultants as it thinks fit and necessary to ensure it has sufficient legal, economic and technical resources to exercise its powers and functions and perform its duties under this Act.

(2) Without prejudice to subsection (1), the Telecommunications Commission shall generally seek to develop expertise and experience in telecommunications regulation among nationals of Solomon Islands.

(3) The Telecommunications Commission may—

- (a) appoint persons under subsection (1) on such terms and conditions and on such remuneration as it thinks fit; and
- (b) establish or cause to be established and contribute to such scheme or schemes in accordance with the laws of Solomon Islands for the payment of superannuation allowances, pensions or gratuities to officers and employees who retire or otherwise cease to hold office, by reason of age, infirmity of body or mind or abolition of office as it thinks fit.

(4) The Telecommunications Commission may apply to the Minister responsible for the Solomon Islands National Provident Fund Act (Cap. 109) for an order under section 50 of that Act to exempt any officer or employee of the Telecommunications Commission from the provisions of that Act if—

- (a) the officer or employee is not a citizen of Solomon Islands; and
- (b) the officer or employee consents to not being subject to the Solomon Islands National Provident Fund Act (Cap. 109); and
- (c) the Telecommunications Commission makes alternative provision for superannuation allowances, pensions or gratuities for the officer or employee.

(5) The Telecommunications Commission shall take reasonable measures to ensure that no conflict of interest exists in relation to its officers, employees, agents or consultants in relation to any service provider.

(6) The Telecommunications Commission may delegate its functions, duties and powers (except the power of delegation) to any authorised person who shall work under its direction.

(7) A person shall not be eligible for delegation of the Telecommunications Commission's functions, duties or powers and any such delegation shall be promptly withdrawn if any of the conditions in section 8 apply to the person.

PART 3 – FINANCIAL PROVISIONS

Budget of the
Commission

15. (1) The Telecommunications Commission shall, within three months before the end of each financial year, prepare and deliver to the Clerk to Parliament (who shall lay before Parliament for its approval) a rolling budget of the Telecommunications Commission including estimates of its revenue and expenditure for the following three financial years, including without limitation reasonable and sufficient provision for legal and other costs in case of appeal and judicial review proceedings under this Act.

(2) A budget of the Telecommunications Commission approved by Parliament with respect to any period shall remain valid for such period unless otherwise changed by Parliament.

(3) A budget of the Telecommunications Commission shall not be an Appropriations Bill as referred to in Chapter X of the Constitution except if and only to the extent it provides for appropriation of moneys from the Consolidated Fund.

(4) The Telecommunications Commission shall publish its budget as approved by Parliament on its website and make copies available on the written request by any person.

(5) Upon application from one or more service providers made after the fifth anniversary of the commencement date and at five year intervals thereafter, the Telecommunications Commission shall commission at the expense of such applicant or applicants an independent review by an international expert of the Telecommunications Commission's budget and expenditures, comparing such budget and expenditures with relevant international best

practice among regulatory authorities and making recommendations in light of such comparison.

(6) The independent expert referred to in subsection (5) shall, on the advice of the Telecommunications Commission, be appointed by the World Bank, International Telecommunication Union or another independent body with international experience in telecommunications regulation.

(7) The Telecommunications Commission shall publish the results of the review produced under subsection (5) and take into account the recommendations.

(8) In this section, “rolling budget” means a method in which a budget established at the beginning of a financial year is continually amended to reflect variances that arise due to changing circumstances or a budget that is always available for a specified future period by adding a period, such as a month, quarter or year, to the period that just ended.

16. (1) The funds of the Telecommunications Commission shall comprise the following—

Funds of the
Commission

- (a) fees and levies prescribed pursuant to section 18;
- (b) moneys received from a competitive selection process, if any, carried out under section 39(2) for the issuance of an individual licence;
- (c) loans, grants and donations, if any, made to or for the benefit of the Telecommunications Commission;
- (d) moneys appropriated from the Consolidated Fund by Parliament.

(2) The Telecommunications Commission is exempt from—

- (a) all taxes on its income; and
- (b) stamp duty on all instruments executed by it or on its behalf and stamped under the Stamp Duties Act (Cap. 126).

(3) For the avoidance of doubt, instruments executed between the Telecommunications Commission and a service provider are not exempt from any applicable stamp duties payable by the relevant service provider.

Administration of
special funds

17. (1) Within one month of the commencement date, the Minister responsible for Finance shall establish in accordance with section 100(2) of the Constitution—

(a) a special fund for the Telecommunications Commission, called the Telecommunications Commission Special Fund; and

(b) a special fund for universal access, called the Universal Access Special Fund.

(2) All moneys received by or for the benefit of the Telecommunications Commission—

(a) under section 16(1) or for the purposes of funding the Telecommunications Commission shall be paid into the Telecommunications Commission Special Fund; and

(b) under section 51 or otherwise for the purposes of funding universal access shall be paid into the Universal Access Special Fund.

(3) Subject to section 134, all moneys in the Telecommunications Commission Special Fund shall be at the sole disposal of the Telecommunications Commission for the sole purpose of funding its activities under this Act.

(4) All moneys in the Universal Access Special Fund shall be at the sole disposal of the Telecommunications Commission for the sole purpose of funding universal access under Part 6.

(5) Subject to the Constitution and this Act, the Telecommunications Commission shall administer and account for its finances and those of universal access—

(a) separately from one another; and

(b) independently of the Government and service providers.

(6) Subject to section 131(3), no money shall be issued or schedule of payments authorised from either special fund except as duly signed by the commissioner.

(7) The Telecommunications Commission may, with the approval of the Minister responsible for Finance —

- (a) establish such bank accounts as it requires for the management of funds; and
- (b) invest the funds at its disposal in low risk investments.

(8) In accordance with section 100(3) of the Constitution, the receipts, earnings and accruals of each special fund established pursuant to subsection (1) and the balance of such fund at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained in the relevant special fund for the purposes of such special fund in its following financial year.

(9) The Telecommunications Commission shall, upon request by a licensee stating the reasons for such request, disclose the balance of each special fund to the licensee.

(10) Notwithstanding any other law, the Minister responsible for Finance may direct that a special fund shall be wound up but only—

- (a) after the discharge of all outstanding obligations; and
- (b) if the Telecommunications Commission has been abolished by an Act amending this Act and no substitute institution with responsibility for regulation of telecommunications has been established with powers over such special fund.

(11) Any funds remaining upon the winding up of a special fund established under subsection (1) shall be paid into the Consolidated Fund.

(12) Notwithstanding any other provision of law, the Minister responsible for Finance may give directions for control and management of either special fund established under subsection (1) but such directions—

- (a) shall be strictly in accordance with this Act and facilitate the proper use of funds by the Telecommunications Commission for the purposes set forth for such funds; and
- (b) may not require any additional permission for use of such funds.

(13) Nothing in this Act shall prevent or restrict the acceptance by the Telecommunications Commission of any moneys from any person who is not a service provider to be applied to either of the special funds.

(14) The Telecommunications Commission may not accept any moneys from any person if such acceptance is subject to conditions which are reasonably likely to interfere with the proper performance of its functions and duties and exercise of its powers under this Act.

Fees and levies

18. (1) The Telecommunications Commission may, by regulations, prescribe fees and levies set out in sections 19, 20, 21, 39(8), 51 and 57(3).

(2) Fees and levies prescribed under this section shall be set in an open, transparent, non-discriminatory, objective and competitively neutral manner, which may include adjustment of such fees and levies to encourage and accommodate the needs of small businesses in Solomon Islands.

(3) Fees and levies levied under this Act shall—

- (a) be evidenced by a certificate signed by the commissioner; and
- (b) constitute a debt due to the Telecommunications Commission and may be recovered in court.

(4) In any proceeding to recover such debt the certificate referred to in subsection (3) shall be *prima facie* evidence of the existence and amount of such debt.

Administration fees

19. (1) The Telecommunications Commission may prescribe administrative fees payable to cover its costs of processing—

- (a) applications and registrations for service and frequency licences, including applications for renewal of licences; and
- (b) the lodgement and consideration of any application for a determination, order or direction or of a dispute under section 100 or 111.

(2) Administrative fees prescribed under subsection (1) shall as far as practicable be within a range properly chargeable for the costs of processing the matters referred to in that subsection and shall not be unreasonable.

20. (1) The Telecommunications Commission may prescribe an annual licence fee payable by licensed service providers as a percentage of their gross revenues in their most recent financial reporting year.

Annual licence fees

(2) The annual licence fee for any given financial year shall not exceed two percent (the “percentage cap”) of a service provider’s gross revenue for such financial year.

(3) The percentage referred to in subsection (1) shall be set at a level intended to cover the Telecommunications Commission’s budgeted costs (including without limitation provision for legal and other costs as contemplated in section 15) of all of its activities other than those set out in section 19.

(4) The percentage referred to in subsection (1) shall, if necessary, be adjusted each year to meet the requirements of the budget programme of the Telecommunications Commission for the following year taking into account any balance retained in the Telecommunication Commission Special Fund at the close of the previous financial year pursuant to section 17(8) and as reflected in the audited and approved accounts of the Telecommunications Commission.

(5) During the financial year, the licensee shall pay four provisional instalments towards its annual licence fee, each payable—

- (a) within twenty-eight days after the end of each of the licensee’s financial quarters; and

- (b) in an amount equal to one fourth of the licensee's annual licence fee for its previous financial reporting year.

(6) If after finalising its audited financial statements for a financial reporting year the sum of instalments paid under subsection (5) and any amount paid under subsection (7) for that year—

- (a) is less than the annual licence fee payable for such year, the licensee shall within twenty-eight days of finalising such audited financial statements pay the amount required to pay for the balance required to meet the total annual licence fee payable in respect of such financial reporting year; or
- (b) exceeds the annual licence fee payable for such year, a credit in an amount equal to such excess shall apply towards the licensee's fee in the following year, applied against the first instalment, and if required, any subsequent instalment.

(7) If the licensee's audited financial statements are not finalised within four months of the end of its financial reporting year, the licensee shall pay on or before the last day of such fourth month a provisional amount, if any, equal to the balance required to meet the total annual licence fee calculated on the basis of the licensee's results of the first half of the relevant financial year, grossed up on an annualised basis for such financial year.

(8) If a licensee changes the dates of its financial reporting year, the calculation of its gross revenues for the purposes of determining the amount of any payment shall be made in such manner as ensures that there is neither a gap in payment nor a double payment of it.

(9) This section is subject to section 133 during the transitional funding period referred to in that section.

Supplementary
licence fees

21. (1) Subject to the other provisions of this section, the Telecommunications Commission may set a supplementary licence fee ("supplementary licence fee") payable by licensed service providers as a percentage of their gross revenues in their most recent financial reporting year.

(2) A supplementary licence fee may be set only to make up a funding deficit resulting, or which will result, from any appeal or legal proceedings, including—

- (a) any appeal under section 42(2), 59(2), 103(b) or 110;
- (b) judicial review proceedings commenced in relation to any determination, order or direction of the Telecommunications Commission or any determination or order made by an Appeal and Dispute Panel.

(3) No supplementary licence fee shall take effect until approved by the Accountant-General who shall grant such approval if he is reasonably satisfied that it is justified in accordance with subsection (2).

(4) The Telecommunications Commission shall notify the Accountant-General of –

- (a) the amount of any costs that the Telecommunications Commission has incurred and reasonably expects to incur in connection with the relevant appeal or judicial review proceedings;
- (b) the amount of any actual funding deficit and an estimate of the reasonably expected funding deficit; and
- (c) a revised and updated budget of the Telecommunications Commission relating to the period for which the supplemental licence fee is requested.

(5) The Telecommunications Commission shall, at the same time as providing the notice to the Accountant-General in accordance with subsection (4), provide a copy of such notice to the Minister and all licensees, and promptly thereafter publish it on its website.

(6) The purpose of this section is to ensure that the Telecommunications Commission is at all times sufficiently funded to respond effectively to appeals and judicial review proceedings.

Audit

22. (1) The Telecommunications Commission shall, within three months of the end of each financial year, submit to the Auditor-General—

- (a) its accounts for the financial year; and
- (b) the accounts of the Universal Access Special Fund for the financial year.

(2) The Auditor-General shall examine and audit the accounts submitted under subsection (1) pursuant to Part VIII of the Public Finance and Audit Act (Cap. 120), which shall apply to the Telecommunications Commission.

(3) Without limiting subsections (1) and (2), the Telecommunications Commission may, after consulting the Auditor-General and with the approval of the Minister responsible for Finance, appoint a person or firm that is qualified for appointment as an auditor to be an additional auditor of the Telecommunications Commission for the purposes of undertaking any duties under subsection (2).

(4) The Telecommunications Commission shall publish the audited financial statements referred to in subsection (1) on its website together with the auditors' report and make copies available on request.

Annual report

23. (1) Within three months after the end of each financial year, the Telecommunications Commission shall prepare and deliver to the Clerk to Parliament who shall lay before Parliament the Telecommunications Commission's annual report which shall include—

- (a) a summary of the activities of the Telecommunications Commission since the last annual report laid before Parliament, including without limitation—
 - (i) determinations, orders and directions made;
 - (ii) steps taken in connection with universal access policy and disbursements from the Universal Access Special Fund;

- (iii) applications, disputes and complaints filed with the Telecommunications Commission and actions taken;
 - (iv) investigations undertaken;
 - (v) material procurement and outsourcing activities;
 - (vi) material litigation involving the Telecommunications Commission;
- (b) an assessment of progress towards the objective in section 3 and a plan of activities for the following year to advance progress towards such objective;
 - (c) a summary of the income and expenditures of the Telecommunications Commission and an explanation of compliance with or variance from its approved budget;
 - (d) a list of licences and exemption orders in force under this Act;
 - (e) a list of interconnection and access agreements filed;
 - (f) a summary of radio frequencies allocated or assigned;
 - (g) a summary of regulated prices; and
 - (h) such other matters as are reasonably necessary or appropriate to enable understanding of its activities.

(2) The commissioner shall upon reasonable request appear before any Parliamentary committee to respond to questions relating to the annual report, budget and activities of the Telecommunications Commission.

(3) The Telecommunications Commission shall publish its annual report on its website and make copies available on written request by any person.

PART 4 – ADMINISTRATION

Applications for
determinations, etc

- 24.** (1) Any interested person may apply to the Telecommunications Commission to make a determination, order or direction clarifying, interpreting, enforcing, or otherwise performing its functions and duties or exercising its powers under this Act and any determination, order, direction or licence issued under it.
- (2) The Telecommunications Commission may, by regulation, prescribe the method of applications to be made to it, including the application processes and associated time schedules for applications.
- (3) Subject to section 110, in connection with any application to the Telecommunications Commission, the determination of the Telecommunications Commission that a person is or is not an interested person is binding and conclusive.
- (4) Unless specified otherwise in this Act in respect of a particular application, the Telecommunications Commission shall use its reasonable endeavours to, within forty-five days of receiving an application —
- (a) approve the application unconditionally or subject to conditions;
 - (b) deny the application;
 - (c) request a change to and resubmission of the application; or
 - (d) specify and request from the applicant or any other person such further information or advice as the Telecommunications Commission considers useful or necessary for it to consider the application.
- (5) If the Telecommunications Commission requests further information or advice under subsection (4)(d), it shall take one of the actions under subsection (4) within forty-five days from receipt of the information or advice and notify the applicant of such extended period.
- (6) If there is a good reason that the Telecommunications Commission is likely to exceed either period specified in subsection (4) or (if applicable) subsection (5), it shall prior

to the expiry of the relevant period provide written notice to the applicant of—

- (a) the delay;
- (b) the reasons for such delay; and
- (c) the date on which it intends to respond.

(7) If the Telecommunications Commission fails to respond to an application from a service provider with respect to a change in its pricing of retail services requiring the approval of the Telecommunications Commission under subsection (4) or (if applicable) subsection (5) or a date which it has set for response under subsection(6), the application shall be deemed to be approved.

(8) Nothing in this Act shall prejudice the Telecommunications Commission's or an interested party's right to legal professional privilege.

25. (1) If the Telecommunications Commission considers necessary or expedient for carrying into effect any of the purposes or provisions of this Act, the Telecommunications Commission may make, determinations, orders or directions, which service providers and any other person in Solomon Islands shall comply with them.

Determinations,
orders and
directions

(2) In making any determination, order or direction which establishes, defines or changes significant legal rights or obligations of a person, the Telecommunications Commission shall—

- (a) provide reasonable written notice to persons who may be significantly affected and, in cases of significant public interest, carry out a public consultation process;
- (b) allow such persons a reasonable opportunity to make representations within forty-five days, unless the Telecommunications Commission specifies a longer period;
- (c) publish on its website and provide interested parties with a draft determination, order or direction as the case may be and allow any persons who may be significantly affected a reasonable opportunity to make

representations in relation to the draft within fifteen days, unless the Telecommunications Commission specifies a longer period;

- (d) consider representations duly made by such persons under paragraph (b) or (c);
- (e) provide reasons in writing for its determination, order or direction; and
- (f) set the time for compliance taking into account the nature of the determination, order or direction.

(3) A determination, order or direction of the Telecommunications Commission shall not be valid unless it is –

- (a) signed by the commissioner or a duly authorised representative; and
- (b) published in the *Gazette* except in the case of interim orders made under section 26.

(4) For the avoidance of doubt, any determination or order or direction made under this Act is not regarded as subsidiary legislation made under this Act.

(5) The Telecommunications Commission shall also promptly publish any determination, order or direction on its website.

(6) Subject to section 26(2), any reference in this Act to a determination, order or direction of the Telecommunications Commission shall be a reference to a determination, order or direction of the Telecommunications Commission made under and in accordance with this section.

(7) A determination, order or direction of the Commission may only establish, define or change rights or obligations as authorised under and in accordance with this Act.

Interim
determinations and
orders

26. (1) If the Telecommunications Commission considers that an application made to it has a reasonable prospect of being approved and serious harm to a service provider, user or other person or a substantial threat to competition is likely to result if no interim determination or order

were made, the Telecommunications Commission may make any interim determination or order it deems appropriate in the circumstances in accordance with this Act or any determination, order or direction issued hereunder.

(2) In cases of urgency, the Telecommunications Commission may make *ex parte* interim determinations or orders under subsection (1), in which case subsections 25(2) and (3) do not apply.

(3) An interim determination or order shall have force upon signature of the commissioner and the Telecommunications Commission shall—

(a) immediately notify it to any person that is the subject of the interim determination or order; and

(b) publish it in the *Gazette* promptly thereafter.

(4) In the case of an *ex parte* interim determination or order, the Telecommunications Commission shall—

(a) thereafter allow interested persons a reasonable time to make representations regarding the interim determination or order; and

(b) consider representations duly made by such persons regarding the interim order, including whether it should remain in force, be amended or be dissolved, and decide on such matter.

(5) An interim determination or order shall include a date by which it will cease to have effect, but such provision shall not prevent the making of another interim determination or order on the same terms in accordance with this section.

27. (1) The Telecommunications Commission may, upon *ex parte* application, apply to a Judge for any determination, order or direction made by it or any determination, order or direction of any Dispute and Appeal Panel be enforced pursuant to any court rules made under section 90 of the Constitution or any other written law, as if it were an order of the High Court.

Enforcement of
determination, etc.,
as if orders of the
High Court

Monitoring and
enforcement

(2) The Telecommunications Commission or any Dispute and Appeal Panel may exercise any of its powers under this Act in relation to its determination, order or direction irrespective of whether or not an order has been made under subsection (1).

28. (1) The Telecommunications Commission may, for the purposes of performing its functions and duties and exercising its powers under this Act —

- (a) order the production of specified documents and information or classes of documents and information by service providers and any other persons (which shall only be used by the Telecommunications Commission for the purpose for which it requires those documents and that information); and
- (b) order a person to undertake specific actions or to cease specific actions necessary to cease or remedy a violation of this Act, or of a determination, order, direction or licence issued under it.

(2) A magistrate may, if satisfied by sworn statement that there are reasonable grounds to believe that a violation of this Act, or of a determination, order, direction or licence issued under it, has occurred or is occurring, issue a warrant authorising the Telecommunications Commission—

- (a) to search premises and seize documents, equipment and other items; and
- (b) to require attendance and examination of witnesses, who shall have the right to be represented by a legal practitioner.

(3) The Telecommunications Commission may seek the assistance of the Police Force in the execution of a warrant issued under subsection (2).

(4) A person is not excused from giving information or producing a document or a copy of a document under subsection (1) on the ground that the information or the production of the document or copy might tend to incriminate the person or expose the person to a penalty under this Act.

(5) Information or documents provided to the Telecommunications Commission shall not be admissible against that person in criminal proceedings.

29. (1) Subject to subsection (5), the Telecommunications Commission, and its officers, employees, agents and consultants, shall not disclose confidential information without the written consent of the party who has provided such information.

Confidential
information

(2) For the purposes of subsection (1), information shall be “confidential” where—

- (a) the information is not already in the public domain;
- (b) the provider of information has requested in writing to the Telecommunications Commission that it keep the information confidential;
- (c) the provider of the information has shown to the satisfaction of the Telecommunications Commission that disclosure of the information is reasonably likely to result in a significant adverse effect on such person or the telecommunications market because—
 - (i) of the commercially confidential nature of the information;
 - (ii) its secrecy is important to ensure effective competition;
 - (iii) there is a risk of reprisals from another person if the information or its source is disclosed; or
 - (iv) the provider of the information is subject to an obligation to keep the information confidential.

(3) The Telecommunications Commission may also designate information as “confidential” where the information—

- (a) relates to deliberations of the Telecommunications Commission and its officers, employees, agents or consultants; or
 - (b) relates to a matter of national security, public order or defence of Solomon Islands.
- (4) The details of prices for interconnection and access in interconnection and access agreements shall not be considered confidential.
- (5) Subsection (1) does not apply to disclosure of information made—
- (a) in connection with the investigation of any offence or for the purposes of any proceedings for such offence;
 - (b) in connection with any appeal proceedings under this Act or any other civil proceedings;
 - (c) by requirement of the provision of any written law or order of a court; or
 - (d) where and to the extent that the Telecommunications Commission considers that the benefits of such disclosure in furthering the objective in section 3 outweigh the benefits to the relevant person of confidential treatment under the circumstances.
- (6) The Telecommunications Commission shall provide reasonable prior written notice to a person of its intention to disclose confidential information pursuant to subsection (5) and allow such person a reasonable opportunity to make representations, with such period being not less than fourteen days.

Burden of
regulation

- 30.** (1) The Telecommunications Commission shall, when performing its functions and duties and exercising its powers under this Act—
- (a) refrain from introducing and remove any determination, order or direction where it reasonably anticipates that the presence of effective competition in a telecommunications

market or Part 8 are sufficient to achieve the goals of such determination, order or direction within a reasonable period of time in a telecommunications market; and

- (b) ensure that each determination, order and direction, including each obligation therein, is proportionate to its purpose.

(2) The Telecommunications Commission may allow effective self-regulation by service providers in place of determinations, orders or directions issued by it.

(3) In determining whether measures for self-regulation are effective, the Telecommunications Commission shall consider, in particular—

- (a) whether those procedures are administered by a person who is sufficiently independent of the persons to whom the procedures apply;
- (b) whether adequate arrangements are in force for implementing, monitoring, enforcing and funding the activities of such person in relation to those procedures; and
- (c) whether the outcomes achieved or likely to be achieved through self-regulation are materially different from the outcomes that would have been likely to have resulted from a determination, order or direction of the Telecommunications Commission.

31. (1) This Act does not affect any right to apply to the High Court for judicial review of a determination, order or direction of the Telecommunications Commission, or a determination or order of a Dispute and Appeal Panel.

Judicial review

(2) Where any determination, order or direction of the Telecommunications Commission or determination or order of a Dispute and Appeal Panel is subject to judicial review proceeding, it shall remain in full force pending the determination of such proceeding unless the Court orders to the contrary.

32. (1) The Minister, the members of the Evaluation Committee, the Telecommunications Commission, the commissioner,

Exemption of liability

Secretary, mediator engaged or Panel member appointed under Part 17 in connection with a dispute and an officer, employee, agent or consultant of the Telecommunications Commission, shall not be subject to any action, liability, claim or demand or be liable for any matter or thing done or omitted to be done in good faith (whether negligently or not), in the performance or for any purported performance of any function or duty, or exercise or purported exercise of any power under this Act.

(2) No costs order may be made against the Telecommunications Commission in connection with an appeal of, or judicial review proceeding concerning, any of its determination, order or direction except where the Telecommunications Commission appeals under this Act.

(3) Nothing in this section shall prohibit—

- (a) an appeal under section 42(2), 59(2), 103(b) or 110;
- (b) the making of an application to the High Court for leave to apply for judicial review of a determination, order or direction of the Telecommunications Commission; or
- (c) an action, liability, claim or demand against the Telecommunications Commission in connection with procurement by it of services or property.

Records of the
Commission

33. The commissioner shall keep records of his activities in proper form.

Website

34. The Telecommunications Commission shall establish an official website accessible to the public which it shall regularly update and on which it shall publish updated information that is useful to service providers, users and investors in understanding the legal and regulatory conditions relevant to the telecommunications sector of Solomon Islands.

Service provider
associations

35. (1) Subject to subsection (3), a body shall be a recognised service provider association for the purposes of this Act if—

- (a) the Telecommunications Commission has approved its application to be recognised as such; or

- (b) the Evaluation Committee has recognised it as such while the office of the commissioner is vacant.

(2) An association is qualified to be a recognised service provider association for the purposes of this Act if—

- (a) it is open for membership of any service provider in Solomon Islands;
- (b) its representatives are selected and decisions are made in a manner that is fair to all members;
- (c) it applies procedures to ensure that no exchange of confidential information or other cooperation occurs that may constitute or lead to collusion or other contravention of section 60; and
- (d) the Telecommunications Commission or Evaluation Committee, as applicable, has no other reason not to recognise the body.

(3) The Telecommunications Commission may after providing prior written notice withdraw recognition of a service provider association if the Telecommunications Commission considers that it no longer qualifies under subsection (2).

PART 5 – SERVICE LICENCES

36. (1) The Telecommunications Commission may issue service licences and exemption orders made in accordance with this Part, and such orders shall be granted on a non-discriminatory and competitively neutral basis.

Service licences
and exemption
orders

(2) No person shall provide a telecommunications service except under and in accordance with a service licence or an exemption order issued by the Telecommunications Commission under subsection (1).

37. (1) A service licence authorises the licensee to provide such telecommunications service or services as may be specified in the licence.

Service licences
and exemption
orders generally

(2) Where reasonably practicable, the Telecommunications Commission shall treat a person seeking a licence to provide a telecommunications service and the right to use radio frequencies for such service under a single or coordinated application or registration process or other arrangement which minimises the administrative burdens and uncertainties for such persons of dual application or registration processes.

(3) An exemption order exempts the provision of a specified telecommunications service by any person from the requirement of a licence under section 36.

(4) Regardless of their form or content, service licences and exemption orders comprise the grant of rights to licensees and are unilateral administrative actions of the Telecommunications Commission pursuant to its powers under this Act and not bilateral agreements or contracts.

Individual and class
licences

38. (1) The Telecommunications Commission may issue the following types of service licences –

- (a) individual licences; and
- (b) class licences.

(2) An individual licence —

- (a) is issued by the Telecommunications Commission to a specific person; and
- (b) comes into force pursuant to an application process conducted under section 39.

(3) A class licence —

- (a) is issued under an order or direction of the Telecommunications Commission setting out the terms and conditions of the licence and any applicable qualification criteria and is generally available to any qualifying person; and
- (b) comes into force with respect to any person upon effective registration under section 40 and any determination, order or direction under subsection (5).

(4) The Telecommunications Commission shall issue individual licences (rather than issue class licences) only if it is necessary to specify particular terms relevant to a particular licensee or it considers that other reasons make an individual licence necessary.

(5) Subject to sections 39 and 40, the Telecommunications Commission shall make such determinations, orders or directions as it thinks fit with respect to—

- (a) procedures for and information required in applications for individual licences and registrations for class licences;
- (b) qualification criteria for persons applying for individual licences or registering for class licences;
- (c) expected time periods for issuance of licences;
- (d) appropriate use of individual and class licences; and
- (e) geographical coverage, service deployment, key performance and quality of service requirements.

39. (1) Subject to section 129, the Telecommunications Commission shall issue individual licences from time to time pursuant to requests for applications published in a manner approved by the Commission.

Applications and
renewals of
individual licences

(2) If the Telecommunications Commission intends to restrict the number of service providers to be licensed for any telecommunications service, it shall select such service providers pursuant to a competitive selection process.

(3) A competitive selection process under subsection (2) shall provide for selection by the Telecommunications Commission based upon objective criteria which shall include one or more of the following—

- (a) applicants' financial bids, whether submitted with applications or made in an auction;

- (b) relevant experience, track record, capability or other qualifications of applicants;
 - (c) commitments of applicants with respect to the type, quality and geographical coverage of the relevant services or other factors; or
 - (d) any other relevant matter.
- (4) Individual licences shall be for a term of not less than five years and not more than twenty years.
- (5) An individual licensee may request renewal of such licence by application made at least one year prior to the end of the term of its individual licence or such shorter period, if any, as the Telecommunications Commission may allow.
- (6) In connection with making substantial new investments in its telecommunications network and services, a licensee may apply for early renewal of its individual licence at a time sufficiently, which may be several years, before its expiration with a view, if renewal is granted, to ensuring that the licensee will have certainty regarding its licence rights and obligations for a period of sufficient length to permit it to earn a reasonable return on the new investments.
- (7) The Telecommunications Commission may, on application made under subsection (5), renew the individual licence on the same or modified terms, and shall make a determination of the matter within three months of the date of the application.
- (8) In addition to any administrative fee levied under section 19(1)(a), the Telecommunications Commission may levy a renewal fee payable by an individual licensee in connection with the renewal of its individual licence taking into account the economic value of the renewed individual licence.
- (9) There is no presumption that an individual licence will or will not be renewed.

Class licences

40. (1) The Telecommunications Commission shall publish a standard registration form for class licences issued under section 38(3).

(2) Subject to section 129, any person (“applicant”) who meets the specified qualification criteria may register for a class licence under section 38(3) by filing with the Telecommunications Commission a complete, correct and signed registration form published under subsection (1).

(3) The Telecommunications Commission shall provide written notice of non-effective registration to an applicant filing a registration form under subsection (2) or (5) if –

- (a) the applicant fails to meet any criteria applicable to, and so is ineligible for, the relevant class licence; or
- (b) the registration form is incomplete or incorrect.

(4) Unless the Telecommunications Commission provides the notice under subsection (3), registration shall take effect forty-five days after filing with the Telecommunications –

- (a) the registration form; or
- (b) a completed or corrected registration form filed in response to a notice under subsection (3)(b).

(5) An applicant registered under a class licence shall, at least forty-five days before every anniversary of the date on which its original registration took effect, file with the Telecommunications Commission a complete, correct and signed updated version of the relevant registration form.

(6) The Telecommunications Commission shall provide written notice to an applicant who fails to re-register under subsection (5) and if the applicant fails to re-register within forty-five days of such notice, the Telecommunications Commission shall de-register the applicant who thereupon shall cease to be a licensee and shall immediately cease to provide any activities under the relevant class licence.

(7) De-registration under subsection (6) shall not prevent an applicant from registering again under this section.

(8) The Telecommunications Commission may not restrict the number of applicants that may register under a class licence.

Licence conditions

41. (1) The Telecommunications Commission may, by order or regulation, prescribe standard licence conditions for all licences or for different types of licences which, subject to subsection (2), shall apply to all licences or the applicable types of licences.

(2) The Telecommunications Commission may impose by order or direction such special conditions or make such modifications, variations or restrictions to the application of any of the standard licence conditions as it may reasonably require.

(3) Any standard licence conditions prescribed under subsection (1) may amend the existing licence rights of an individual licensee only in accordance with section 42.

Revocation, etc.,
of licences

42. (1) The Telecommunications Commission may, by order or direction, amend the conditions of, suspend or revoke, any licence without compensation if—

- (a) the licensee agrees to the amendment, suspension or revocation;
- (b) the licensee has failed to comply with this Act or a licence condition, determination, order or direction under this Act and has failed to cure the failure within a reasonable time after service by the Telecommunications Commission of written notice to the licensee specifying the failure and requiring it to be cured;
- (c) the licensee made in the licence application or any documents submitted for registration any false statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
- (d) the licensee has entered into liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order by a court or tribunal for its compulsory winding-up or dissolution; or
- (e) the licensee has entered into receivership except if it is, and the Telecommunications

Commission is satisfied that it is likely to remain, in full compliance with the terms and conditions of its licence despite entering into receivership.

(2) Where –

- (a) the Telecommunications Commission suspends or revokes a licence under subsection (1); and
- (b) the licensee alleges or claims that such suspension or revocation constitutes a deprivation or an acquisition of property under the Constitution,

the licensee may appeal to the High Court for the determination of his interest or right, the legality of the suspension or revocation, and if compensation is payable contrary to subsection (1), the amount of any compensation payable and the period of time within which it shall be paid.

(3) The Telecommunications Commission may, by determination, order or direction, amend a licence if such amendment is required as a result of applicable international treaties, commitments, recommendations or standards legally binding Solomon Islands: PROVIDED THAT such amendment shall —

- (a) be made only to the extent reasonably required as a result of such treaty, commitment, recommendation or standard as applicable; and
- (b) make the minimal change necessary to the original clause of the licence.

(4) The Telecommunications Commission shall pay reasonable compensation (the valuable consideration of which may take the form of cash or some other form and may be payable by way of lump sum or by instalments) within a reasonable time after an amendment under subsection (3) having due regard to all the relevant circumstances.

(5) The Telecommunications Commission shall provide prior written notice to a licensee that it intends to amend its

licence under subsection (3) and such licensee may within thirty days appeal to the High Court for the determination of his interest or right, the legality of the amendment, and the reasonableness of the compensation and the time within which it shall be paid.

(6) The Telecommunications Commission may provide that amendments or revocations of class licences apply only to specified licensees or to all licensees under the class licence.

(7) In amending, suspending or revoking any licence, the Telecommunications Commission shall take into account continuity of service to users and any hardship that may result to the licensee.

Transfers of
licences and
control of
licensees

43. (1) Except as otherwise provided in this section, no approvals are required for the transfer of a licence or control of a service provider.

(2) Registrations for class licences may not be transferred.

(3) Subject to section 130, any transfer of control of an individual licensee shall require the prior approval in writing by determination or order of the Telecommunications Commission, and such approval is not to be unreasonably withheld.

(4) Subject to section 130, no transfer of an individual licence shall have any legal force without the prior approval in writing by determination or order of the Telecommunications Commission.

(5) An application for a transfer requiring approval of the Telecommunications Commission under subsection (4) shall include information material to a determination of approval under this section about the proposed transaction including without limitation –

- (a) a description of the terms of the transaction, which shall not include any statement of monetary consideration for the transaction;
- (b) information about persons who will have control over the licensee as a result of the transaction, including –

- (i) a description, and the identities, addresses and jurisdictions of incorporation or residence, of such persons and any persons having more than a five per cent direct or indirect ownership interest in them, and any affiliated persons;
 - (ii) a description of any markets in which they provide telecommunications services;
 - (iii) their annual revenues from telecommunications services identified by such markets;
 - (iv) the declared approximate value of their assets devoted to telecommunications business; and
 - (v) copies of their most recent annual and quarterly reports and financial statements;
- (c) any changes in support and assistance to be provided to the licensee by its affiliates; and
 - (d) such other information as the Telecommunications Commission may reasonably require to enable it to make a determination under subsection (4), including but not limited to information relevant to the matters specified in subsection (8).

(6) Subsections (3) and (4) do not apply to any transfer of a licence or control of a licensee to a person where such transfer is part of a corporate reorganisation or similar transaction and does not result in a change of control of the ultimate parent entity or person.

(7) Notwithstanding any other provision in this section, in the case of an encumbrance by a licensee of its licence in favour of a reputable financial institution where—

- (a) the encumbrance is granted in security for a loan or other financial accommodation made in the ordinary course of such financial

institution's business to the licensee or its affiliate for the purpose of the licensee's telecommunications business in Solomon Islands;

- (b) the security is necessary for the making of such loan or other financial accommodation; and
- (c) the terms and conditions of the encumbrance provide that upon its exercise all of the rights and obligations under the licence will be transferred to a person to be approved by the Telecommunications Commission in writing, as the substitute licensee,

but such approval of the Telecommunications Commission for a person to become a substitute licensee under paragraph (c) is not to be unreasonably withheld.

(8) The Telecommunications Commission shall not withhold its approval of transfer of an individual licence under subsection (4) or of a person to become a substitute licensee under subsection (7)(c) if such person—

- (a) has at the time of the transfer of the licence relevant experience, capability and qualifications in the operation of telecommunications networks and provision of telecommunications services of at least the level that the licensee had at the time the licence was issued to it;
- (b) is ready and able to commence operation of a telecommunications network and provision of telecommunications services in accordance with the licence; and
- (c) is not disqualified under any law or determination, order, direction or regulation from being a licensee in Solomon Islands,

unless there are some special circumstances as to why approval should be withheld.

(9) The exercise by a financial institution of any encumbrance, short of the transfer of any rights and

obligations under the licence, will not contravene this section.

(10) No approval by the Telecommunications Commission under subsection (3), (4) or (7) shall relieve the original licensee from any obligation under the licence unless the Telecommunications Commission consents to the licensee being relieved from such obligation.

44. (1) Nothing in this Part shall be construed to allow a licensee to conduct the licensed activities in breach of any applicable provision of any law, determination, order or direction or to grant it rights not granted in the licence.

Other requirements
not affected

(2) An exemption from licensing requirements shall not affect the requirement for persons providing telecommunications services or using radio frequencies to comply with all other applicable provisions of this Act or any other law, and determinations, orders and directions issued under this Act.

45. (1) Regardless of any licensing requirement under this Part, every service provider shall file with the Telecommunications Commission—

Reporting by
service providers

- (a) a summary of each telecommunications service it provides;
- (b) a general description of the service provider's telecommunications network;
- (c) the number of users of each telecommunications service it provides;
- (d) its annual gross revenue from each telecommunications service it provides;
- (e) its annual financial statements, including any audited financial statements such service provider prepares; and
- (f) such other information as the Telecommunications Commission may specify by determination, order or direction.

(2) Service providers shall provide the information under subsection (1) annually within four months after the end of

their respective financial reporting years or on such other periodic basis and in such form as the Telecommunications Commission may specify by determination, order or direction.

(3) Information provided under this section may refer to information previously submitted.

(4) Subject to subsection (5), information filed under subsection (1) shall not be “confidential” for the purposes of section 29.

(5) A service provider may request confidential treatment under section 29 of the information referred to in—

- (a) subsection (1)(d) except for the total annual gross revenue from telecommunications services it provides; and
- (b) subsection (1)(e) and (f).

PART 6 –UNIVERSAL ACCESS

Universal Access
Advisory
Committee

46. (1) The Telecommunications Commission shall establish the Universal Access Advisory Committee (“Committee”) to advise the Telecommunications Commission in developing a Universal Access Plan.

(2) The Committee shall consist of the following members—

- (a) the commissioner, as Chairperson;
- (b) a representative of the Ministry;
- (c) a representative of a recognised service provider association or if there is no recognised service provider association, a representative of service providers generally; and
- (d) such other persons, invited in writing by the Committee, as it considers useful and appropriate.

(3) The Committee shall consult with –

- (a) representatives of the Ministries responsible for rural development, education, health and other areas affected by telecommunications; and
- (b) such other persons as it considers appropriate.

47. (1) The Telecommunications Commission may by determination adopt and shall thereafter review annually a plan called the “Universal Access Plan” for the development of universal access to telecommunications services throughout Solomon Islands in accordance with subsection (2).

Universal access
plan

- (2) The Universal Access Plan shall set forth—
 - (a) the objectives for the development of universal access;
 - (b) the telecommunications services to be included in universal access obligations; and
 - (c) the method of selection of service providers to whom universal access obligations shall apply.
- (3) The Universal Access Plan shall promote the availability of at least the following services—
 - (a) a telephone service, whether fixed or mobile;
 - (b) emergency service with priority routing, enabling any member of the public to contact the police, fire brigade, ambulance and marine division services;
 - (c) reasonable disaster relief services;
 - (d) operator assistance service, enabling any user to obtain assistance regarding, amongst other things, accessing services, setting up calls and remedying faults; and
 - (e) such other services as may reasonably be determined by the Telecommunications Commission.

(4) The Universal Access Plan shall promote the provision of the telecommunications services referred to in subsection (3) —

- (a) twenty-four hours a day, seven days a week;
- (b) at a reasonable level of quality as such may reasonably be determined by the Telecommunications Commission;
- (c) in a manner that to the extent feasible minimises discrimination among users; and
- (d) in the case of the services under subsection 3(b) and (c), free of charge to the user.

(5) In preparing the Universal Access Plan, the Telecommunications Commission shall consider—

- (a) technologies that may be available to further the objectives;
- (b) impediments to meeting universal access obligations;
- (c) the availability of services in particular areas or to particular groups of persons; and
- (d) the advice of the Universal Access Advisory Committee under section 46.

Eligible universal
access areas

48. (1) The Telecommunications Commission may, by determination, order or direction, identify, publish and thereafter update annually a list of geographic areas that are to be eligible for the application of universal access obligations and funding under the universal access policy.

(2) The Telecommunications Commission shall invite submissions from service providers or would be service providers wishing to introduce or improve telecommunications services in a geographic area and shall take into account such submissions in identifying eligible universal access areas under subsection (1).

(3) The areas identified in subsection (1) shall meet one of the following criteria—

- (a) the level of provision of telecommunications services is non-existent or considerably poorer than that in the more advanced areas of the country; or
- (b) the cost of providing telecommunications services in such areas apparently prevents their provision on a reasonable commercial basis.

49. (1) A “universal access obligation” is an obligation of a service provider to provide telecommunications services defined in the Universal Access Plan in an eligible geographic area designated pursuant to section 48.

Universal access obligations

(2) A service provider may become subject to a universal access obligation if it assumes a universal access obligation pursuant to a tender for universal service funding under section 52.

(3) The Telecommunications Commission shall ensure that universal access obligations of services providers—

- (a) are administered in an open, transparent, non-discriminatory, objective and competitively neutral manner; and
- (b) are not more burdensome than necessary to achieve the objectives of the Universal Access Plan.

(4) A universal access obligation of a service provider shall not be regarded as anti-competitive under Part 8.

50. (1) Subject to subsection (2), a service provider subject to a universal access obligation is entitled to funding from the Universal Access Special Fund and disbursed pursuant to section 52.

Universal access subsidies

(2) No service provider is entitled to funding under Universal Access Special Fund for the provision of telecommunications services in a geographic area, and any entitlement previously established shall cease, where a substantial level of access to reasonably substitutable telecommunications services is already available from another service provider without such funding.

51. (1) The funds of the Universal Access Special Fund shall

Funding of universal access

comprise —

- (a) universal access levies imposed under this section;
 - (b) any grants or donations made to or for the benefit of the Universal Access Special Fund; and
 - (c) any moneys appropriated by Parliament from the Consolidated Fund.
- (2) The Telecommunications Commission may levy licensees annually to fund the Universal Access Plan.
- (3) A universal access levy under subsection (1)—
- (a) shall be set as a percentage of a service provider's gross revenues in the most recent financial year, up to a maximum of two per cent of such gross revenues;
 - (b) shall be adjusted each year to take into account any balance retained in the Universal Access Special Fund at the close of the previous financial year pursuant to section 17(8) and as reflected in the audited and approved Universal Access Special Fund accounts; and
 - (c) shall not be levied for a period of at least five years following the new entrant launch date and only then upon a determination of the Telecommunications Commission that the Universal Access Plan requires such funding.

Disbursements of
Universal Special
Access Fund

52. (1) Subject to subsections (8) and (10), the Telecommunications Commission may only disburse moneys from the Universal Access Special Fund to a service provider, or a person that intends (subject to being granted a licence under subsection (7)) to be a service provider, to fund costs of establishing and operating telecommunications networks and providing telecommunications services in areas eligible under section 48 for funding under the Universal Access Special Fund.

- (2) The Telecommunications Commission may make a determination, order or direction after consulting with the Universal Access Advisory Committee concerning

procedures, controls and criteria to apply to rules for tender processes and other matters for the administration of the Universal Access Special Fund under this section.

(3) Where there is a reasonable prospect of more than one person wishing to be considered for funding under the Universal Access Special Fund, the Telecommunications Commission shall select the recipient of the funds pursuant to an open public tender process, conducted in accordance with this section.

(4) The Telecommunications Commission may initiate a tender process under subsection (3) —

- (a) on its own motion; or
- (b) on application by any existing service provider, government authority or members of the public,

to serve an eligible area with the funding support under the Universal Access Special Fund.

(5) A call for tenders under subsection (3) shall —

- (a) describe the area to be served;
- (b) state the service to be provided; and
- (c) set the rules and timing of the tender process and any other applicable conditions.

(6) Subject to the procedures established under subsection (2), the Telecommunications Commission shall respond no later than sixty days after the receipt of tenders.

(7) If a successful tenderer entitled to receive funds under this section does not have a licence, the Telecommunications Commission shall grant a licence, subject to Parts 5 and 7, on such terms as necessary to enable such tenderer or applicant to fulfil its obligations under the proposal approved by the Telecommunications Commission.

(8) The Telecommunications Commission may disburse funds from the Universal Access Special Fund to cover expenses of administering the Universal Access Plan, including without limitation reasonable expenses of

consultants and legal advisers.

(9) The Telecommunications Commission may disburse funds from the Universal Access Special Fund at such time as it thinks fit in accordance with the Universal Access Plan, including without limitation—

- (a) disbursing funds to the successful tenderer that is entitled to receive funds under this section;
- (b) disbursing funds as they become available, or periodically, or after accumulating funds over a period of time; and
- (c) disbursing funds for existing or future projects or to reimburse prior aid agency contributions to projects which were contributed in accordance with the Universal Access Plan applicable at such time and on condition of such reimbursement.

(10) Any disbursements of funds from the Universal Access Special Fund other than pursuant to subsections (8) or (9) shall have the prior written approval of the Minister and the Minister responsible for Finance.

PART 7 – RADIO SPECTRUM

Management of
radio spectrum

53. (1) The Telecommunications Commission has the exclusive power to allocate and assign all frequencies in the radio spectrum in Solomon Islands.

(2) No person may use radio frequencies, including transmitting and receiving radio communications, in a manner that is inconsistent with or in violation of any determination, order or direction.

Objectives of radio
spectrum
management

54. In performing its functions and duties and exercising its powers under this Part, the Telecommunications Commission shall ensure that radio spectrum is managed and used in a manner that—

- (a) is open, non-discriminatory, competitively neutral, objective and transparent;

- (b) relies where reasonable on voluntary industry standards and self-regulation in lieu of regulations;
- (c) is consistent with any applicable international treaties, commitments, recommendations or standards legally binding Solomon Islands, including without limitation those of the International Telecommunications Union;
- (d) is economically efficient and permits evolution to new technologies and services taking into account investment in existing equipment configured for specific radio frequencies and the cost of migration to other radio frequencies; and
- (e) meets the needs of government departments and agencies referred to in section 56(a).

55. (1) The Telecommunications Commission shall advise the Minister on matters relating to use and management of the radio spectrum.

Advice to and
facilitation by
Minister

(2) The Minister shall facilitate the Telecommunications Commission's relations with other government Ministries and departments in relation to the allocation and assignment of radio spectrum.

56. The Telecommunications Commission shall—

Consultation on
radio spectrum

- (a) establish a liaison committee to address allocation and assignment of radio spectrum for use by government departments and agencies including without limitation—
 - (i) the Police Force;
 - (ii) any military, defence or security services duly authorised to operate in Solomon Islands;
 - (iii) fire brigade, ambulance, marine division and other emergency services; and
 - (iv) radio and television broadcasting;
- (b) conduct public inquiries and consult with service providers in Solomon Islands, including

representatives of any recognised service provider association, relating to the use and management of radio spectrum; and

- (c) consult with and coordinate the use of radio spectrum with other countries and international users and organisations.

Radio spectrum
planning,
allocation,
assignment and
fees

57. (1) The Telecommunications Commission shall—

- (a) prepare, issue and maintain an updated national radio spectrum plan and any other required radio spectrum plans, frequency band plans and, where necessary to meet the objectives in sections 3 and 54, plans for the migration of spectrum use to different bands; and
- (b) allocate and assign frequency bands and determine any other matters relating to the transmission or reception of radio communications (whether by satellite, terrestrial or any other means) in accordance with the plans issued under paragraph (a).

(2) The Telecommunications Commission may, by order or regulation, prescribe—

- (a) classes or other types of radio spectrum and radio equipment;
- (b) requirements for radio spectrum licences authorising the use of radio spectrum;
- (c) requirements for authorisation of use of radio equipment, including technical requirements and standards in relation to radio interference; and
- (d) procedures, conditions and restrictions applicable to the use of radio spectrum and radio equipment.

(3) The Telecommunications Commission may, by regulation, prescribe annual fees for the right to use particular radio spectrum bands.

- (4) Annual fees payable under subsection (3) shall be paid into the Universal Access Special Fund.
- (5) Annual fees shall be set out under subsection (3) only in such manner and to such extent as is reasonably required to ration the use of radio spectrum bands for which the Telecommunications Commission reasonably expects demand to exceed supply.
- (6) Unless provided otherwise in a licence including a right to use particular radio spectrum bands, the price paid for the acquisition of such licence shall be deemed to have included all fees payable for the right to use such radio spectrum bands and no annual or other fee may be prescribed under subsection (3) in respect of the right to use such radio spectrum bands.
- (7) The Telecommunications Commission may, by order or direction, made on application or on its own motion, declare that any radio spectrum that has been duly assigned to a person is comprised of two or more separate allocations by geographical area.
- (8) For the purposes of subsection (7), the Telecommunications Commission may define the geographical boundaries of the separate allocations as it thinks fit, provided that the sum of the geographical areas of the separate allocations is equal to the geographical area of the original allocation.
- (9) Where an original allocation is assigned without geographical boundaries, its geographical area shall be deemed to be national.
- (10) For the avoidance of doubt, the separate allocations described in subsection (7) shall remain assigned to the person to whom the original allocation was assigned.
- (11) The Telecommunications Commission may by order or direction made on application or on its own motion, without compensation, declare that all radio spectrum assigned within any frequency band is assigned on a non-exclusive basis, and make further allocations of spectrum in that frequency band to any other person or persons: PROVIDED THAT all the conditions in subsection (12) are satisfied.

(12) The conditions referred to in subsection (11) are, after a public consultation period of at least three months, the Telecommunications Commission makes a determination that

–

- (a) the amount of unallocated radio spectrum in the frequency band, and in any other frequency band that is a reasonable alternative to that frequency band, is not reasonably sufficient for another person to provide a commercially viable service; and
- (b) use of radio spectrum in the frequency band by multiple licensees on a shared basis can be achieved efficiently and without undue harm to licensees with existing allocations of radio spectrum in that frequency band.

Vacation of radio spectrum without compensation

58. (1) The Telecommunications Commission may, by order or direction, made on application or on its own motion, without compensation, declare vacant any radio spectrum that has been duly assigned to a person, and may assign such spectrum to a different person on any of the grounds under subsection (2) and in accordance with the determination under subsection (3).

(2) The grounds referred to in subsection (1) are –

- (a) where the spectrum is assigned under an individual service licence, such vacation or reassignment is necessary or appropriate to comply with or conform to the laws of Solomon Islands or international treaties, commitments, recommendations or standards legally binding Solomon Islands;
- (b) the person previously assigned the relevant radio spectrum agrees to vacate it;
- (c) the person previously assigned the relevant radio spectrum has failed to comply with this Act or a determination, order, direction, licence or condition under this Act relating to radio spectrum and has failed to cure the failure within a reasonable time following service of written notice specifying failure and requiring cure;

- (d) the person previously assigned the relevant radio spectrum made in connection with the assignment to it of the radio spectrum any false statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
 - (e) the person previously assigned the relevant radio spectrum has entered into liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order by a court or tribunal for its compulsory winding-up or dissolution; or
 - (f) the person has entered into receivership except if the person and the Telecommunications Commission are satisfied that the person is likely to remain, in full compliance with the terms and conditions of its licence despite entering into receivership.
- (3) If after a public consultation (including consultation with the Ministry) period of at least three months, the Telecommunications Commission makes a determination that —
- (a) any radio spectrum is not in significant use in the entire country or in a geographic area;
 - (b) the person to whom such spectrum was assigned has not committed to plans to make significant use of the spectrum in the entire country or the relevant geographic area in the reasonably foreseeable future; and
 - (c) there is demonstrable demand from other persons for making efficient use of all or part of such radio spectrum in the entire country or the relevant geographic area,

the Telecommunications Commission may, make an order or direction under subsection (1) in relation to such spectrum taking into account its existing usage and technical requirements.

(4) The Telecommunications Commission shall allow any person required to vacate any spectrum duly assigned to it a reasonable period of time to vacate such spectrum taking into account its existing usage and technical requirements.

Vacation of radio spectrum with compensation

59. (1) The Telecommunications Commission may, by order or direction made on application or on its own motion, require a person to vacate radio spectrum then assigned to the person, and may assign such radio spectrum to a different person on grounds other than those in section 58(2) if—

- (a) necessary or expedient to further the objective in section 3 and to promote the public benefit;
- (b) there is reasonable justification for the causing of any hardship that may result to any licensee; and
- (c) where the spectrum is assigned in an individual service licence, such vacation or reassignment is necessary or appropriate to comply with or conform to the laws of Solomon Islands or international treaties, commitments, recommendations or standards legally binding Solomon Islands

(2) The Telecommunications Commission shall provide written notice to a person previously assigned radio spectrum that the Telecommunications Commission intends to vacate the relevant radio spectrum pursuant to subsection (1) and such person may within thirty days appeal to the High Court for the determination of the person's interest or right, the legality of the vacation of the spectrum, and the reasonableness of the compensation and the period of time within which the person shall be paid compensation.

(3) The Telecommunications Commission shall pay, or shall procure that new persons assigned the relevant radio spectrum pay, reasonable compensation (the valuable consideration of which may take the form of cash or some other form and may be payable by way of lump sum or by instalments) within a reasonable period of time after the vacation of radio spectrum under this section having due regard to all the relevant circumstances.

(4) The Telecommunications Commission shall to the extent possible assign to a person who is required to vacate any spectrum where subsection (1)(c) applies appropriate available alternative spectrum in order to allow such person to continue its business without unreasonable cost or disruption.

PART 8 – COMPETITION

60. (1) Subject to section 61, no person shall engage in a practice or enter into a contract, arrangement or understanding which has the purpose, effect, or is likely to have the effect, of substantially lessening competition in a telecommunications market.

Anti-competitive
practices

(2) Without limitation, a practice of a service provider or a contract, arrangement or understanding between two or more service providers is *prima facie* likely to have the effect of substantially lessening competition in a telecommunications market if it or the person engaging in it directly or indirectly—

- (a) fixes the retail prices or other conditions of trading of a telecommunications service;
- (b) apports, shares or allocates a telecommunications market or markets among themselves or other service providers;
- (c) prevents or restricts the supply or acquisition of a telecommunications service to or from a person or class of persons;
- (d) requires or unfairly induces a supplier to refrain from selling to another service provider;
- (e) imposes unfair restrictions on whom another person may deal with in a telecommunications market;
- (f) competes unfairly in a telecommunications market by cross-subsidising a service in such market from a service that is not supplied in a competitive telecommunications market; or

- (g) competes unfairly in a retail telecommunications market by reducing the margin of profit available to a competing service provider in such market by effecting a “margin squeeze” whereby it offers the retail telecommunications service at a price that is so low, or provides to a competitor in such retail market a wholesale telecommunications service or access used by the competitor to provide the retail service at a price that is so high, as to prevent the profitable competitive provision of the retail service, where in either case the wholesale service or access —
 - (i) is not supplied in an effectively competitive telecommunications market;
 - (ii) is necessary for the competitor to provide the retail service; and
 - (iii) cannot for economic, technical or legal reasons reasonably be duplicated by the competitor;
- (h) supplies a telecommunications service at prices below cost for a substantial period of time such that competitors are reasonably likely to be driven from the market;
- (i) bundles a telecommunications service that is supplied in an effective competitive telecommunications market with a service that is not supplied in an effective competitive telecommunications market in circumstances where a discount is applied to the effectively competitive service sold as part of the bundle and such discount is not available if the effectively competitive service is acquired on its own;
- (j) pre-emptively acquires or secures scarce facilities or resources, including rights of way, required by another service provider for the operation of its business, with the purpose of unfairly denying the use of the

facilities or resources to the other service provider; or

- (k) adopts technical specifications for networks or facilities with the purpose of preventing interoperability with another service provider's network or facility.

(3) The Telecommunications Commission may, by determination, order or direction, identify other practices which have the purpose, effect, or are likely to have the effect, of substantially lessening competition in a telecommunications market.

(4) The Telecommunications Commission may, by determination, order or direction, exempt a practice, contract, arrangement or understanding from the prohibition in subsection (1) if it—

- (a) contributes to improving the provision or distribution of telecommunications services or to promoting technical, social or economic progress or the objective in section 3 while allowing consumers a fair share of the resulting benefit; and
- (b) does not afford a person engaging in such practice or entering into such contract, arrangement or understanding the possibility of eliminating competition in respect of a substantial part of the telecommunications services in question.

(5) In considering the effective competitiveness of and effects on a telecommunications market, the Telecommunications Commission shall have regard to –

- (a) the extent to which actual or potential service providers constrain the conduct of another service provider, having regard to such factors as significant barriers to entry and expansion;
- (b) the extent to which users have the ability to constrain the market conduct of a service provider, having regard to such factors as the interchangeability or substitutability of

services by reason of their characteristics, prices or intended uses;

- (c) the extent to which the market conduct of a service provider is constrained by countervailing bargaining power;
- (d) the extent to which the conditions of competition are similar in any geographical area; and
- (e) the reliability and availability of relevant information and the time, expertise and other resources available to it to analyse such information.

(6) The existence of any of the purposes specified in subsections (1) and (2) may be inferred from the conduct of any relevant person or from any other relevant circumstances.

Safe harbour for facilities sharing

61. Notwithstanding section 60, a contract, arrangement or understanding among competing service providers to use, own or hold an interest together in facilities, or lease or otherwise share facilities in order to reduce unnecessary duplication of costs, does not contravene that section if—

- (a) the terms of such contract, understanding or arrangement do not unreasonably preclude sharing such facilities with other service providers on non-discriminatory terms; and
- (b) such facilities are essential facilities or it is otherwise unlikely that significant efficiencies would result from the service providers separately acquiring and using such facilities.

PART 9 – INTERCONNECTION AND ACCESS

Commercial negotiation

62. Subject to this Act, any determination, order, direction or licence issued under this Act or any other applicable law, service providers are at liberty to negotiate, conclude and amend agreements with one another for interconnection, access and other services, including the type and amount of charges, in such manner and on such conditions as are mutually acceptable to the service providers.

63. (1) A service provider has the right and, when requested by another service provider in writing, the obligation to negotiate and endeavour to conclude an interconnection agreement with another service provider.

- (2) A service provider shall –
- (a) respond within a reasonable time to a request for negotiation and meet all reasonable requests for interconnection at any economically and technically feasible point of its network;
 - (b) offer conditions that maintain end-to-end operability in order to facilitate the provision of telecommunications services by an interconnecting service provider to the user notwithstanding that the user is directly connected to a different network;
 - (c) incorporate in its interconnection agreement reasonable conditions, including without limitation with respect to the timing, quality, technical, operational and fault handling terms;
 - (d) ensure that such conditions—
 - (i) do not unfairly discriminate among service providers; and
 - (ii) are no less favourable to other interconnecting service providers than those it provides for its own telecommunications services or those of its affiliates;
 - (e) offer interconnection on the terms in its reference offer, if any, approved under section 65;
 - (f) provide access to such of its facilities, systems, software and services as are reasonably required by the interconnecting service provider to interconnect and provide telecommunications services to its users;

- (g) make available to other service providers on a timely basis information, including technical specifications and commercially relevant information that is reasonably required by the interconnecting service provider to interconnect and provide telecommunications services to its users;
- (h) not disclose or otherwise use information received from other service providers in connection with interconnection to obtain a competitive advantage or for any purposes other than for which it was supplied; and
- (i) take such other steps as may be required by determination, order or direction in order to ensure timely and effective interconnection.

Access to essential facilities

64. (1) Subject to subsections (2) and (4), a service provider has the obligation to negotiate and endeavour to conclude an agreement on access to its essential facilities with a service provider which requests such access in writing.

(2) A service provider shall—

- (a) respond to a request for negotiation from, and within a reasonable time meet all reasonable requests for access to any of its essential facilities;
- (b) incorporate in its access agreement reasonable conditions, including without limitation with respect to the timing, quality, technical, operational and fault handling terms;
- (c) ensure that such conditions—
 - (i) do not unfairly discriminate among service providers; and
 - (ii) are no less favourable to other service providers than those it provides for its own telecommunications services or those of its affiliates;

- (d) make available to other service providers on a timely basis information, including technical specifications and commercially relevant information that is reasonably required by the other service providers to provide telecommunications services to its users;
- (e) not disclose or otherwise use information received from other service providers in connection with access to essential facilities to obtain a competitive advantage or for any purposes other than for which it was supplied;
- (f) provide access to its essential facilities in a manner that is sufficiently unbundled to enable another service provider to access the facilities that it reasonably requires in order to provide its telecommunications services; and
- (g) take such other steps as may be required by determination, order or direction in order to ensure timely and effective access to essential facilities.

(3) The Telecommunications Commission may, by determination, order or direction, determine a facility to be an essential facility.

(4) Subsections (1) and (2) shall not apply until the fourth anniversary of the new entrant launch date and thereafter shall only apply upon a determination of the Telecommunications Commission made on application or on its own motion that the provisions of this section are necessary to further the objective in section 3.

65. (1) Subject to subsection (4), the Telecommunications Commission may, by order or direction, require one or more service providers —

- (a) to prepare, periodically update and revise a reference offer for approval by the Telecommunications Commission in such manner and within such time, as the

Reference offers

Telecommunications Commission may, by regulation, prescribe;

- (b) to address in its reference offer such matters as the Telecommunications Commission considers necessary and expedient for the effective implementation of the reference offer; and
- (c) to publish its reference offer on its website and send a copy to any service provider on request.

(2) For the purposes of this section, a “reference offer” is a model agreement, or a group of model agreements, which includes the proposed conditions on which the service provider is prepared to offer requesting service providers interconnection.

(3) The objective of requiring a service provider to prepare a reference offer shall be to accelerate and assist the reaching with other service providers of reasonable and fair agreements for interconnection.

(4) In performing its functions and duties and exercising its powers under this section, the Telecommunications Commission shall, in addition to the matters in section 30, consider—

- (a) existing obligations applying to the service provider under this Act and any determination, order, direction or licence issued under this Act, including without limitation under section 63(2)(d);
- (b) the relative bargaining strengths of the service provider and other service providers likely to request interconnection from it; and
- (c) in light of the foregoing, whether requiring a service provider to prepare a reference offer is likely to further the objective stated in subsection (3).

(5) A service provider required to provide a reference offer under subsection (1) may apply to the Telecommunications Commission to treat an existing

agreement as its reference offer or part of its reference offer.

(6) The Telecommunications Commission shall approve an application made under subsection (5) if it considers that the publication of an existing agreement would, taking into account the obligation of service providers in section 63(2)(d), sufficiently further the objective of requiring a reference offer in subsection (3).

(7) If a service provider fails to prepare a reference offer in accordance with this section to the reasonable satisfaction of the Telecommunications Commission, the Telecommunications Commission may prepare the reference offer and it shall apply to that service provider.

66. Parties to an interconnection agreement shall from time to time negotiate and endeavour to conclude amendments to such agreement if necessary to take into account changes to this Act or a determination, order, direction or licence.

Amendments to
agreements

67. (1) Service providers shall, in good faith, conduct any negotiations required under this Part or any determination, order or direction issued under this Act.

Good faith
negotiations

(2) Without limitation, a service provider *prima facie* violates the duty in subsection (1) to negotiate in good faith if it—

- (a) obstructs or delays negotiations or fails to make reasonable efforts to resolve matters on which there is a failure to agree;
- (b) fails to provide information about its telecommunications services, network or other facilities that is necessary for the purposes of the matter; or
- (c) prevents another service provider from communicating with the Telecommunications Commission.

(3) Notwithstanding any other provision of this Act, a service provider shall not be required to enter into any agreement on terms that are reasonably likely to endanger, damage or injure any person or property or materially interfere with the operation, provision, security, quality of service or integrity of its telecommunications network or

provision of its telecommunications services.

Filing of
interconnection
and access
agreements

68. (1) A service provider shall, within fourteen days after execution of an interconnection agreement or agreement for access to essential facilities or an amendment thereto, file a copy with the Telecommunications Commission.

(2) The Telecommunications Commission shall publish a copy of all interconnection and access agreements filed with it under subsection (1) on its website.

PART 10 – PRICING

Price information
to be filed and
published

69. (1) All service providers shall file with the Telecommunications Commission the standard retail prices of all telecommunications services they provide within seven days of setting or changing such prices.

(2) The Telecommunications Commission may, by order or regulation, prescribe the manner of filings under subsection (1), and any other information that shall be filed.

(3) All service providers shall, in a manner that ensures that users are clearly informed, publish—

- (a) the prices for telecommunications services the service providers provide;
- (b) the telecommunications services to which the prices apply; and
- (c) the conditions on which the services are offered.

(4) Service providers shall publish the information under subsection (3) —

- (a) on the website used to present a service provider's services; and
- (b) by circulation for publication at points of sale.

Price regulation

70. (1) The Telecommunications Commission may, on application or on its own motion, regulate the prices of services provided by a dominant service provider in a telecommunications market with reference

to relevant benchmarks in accordance with subsection (2).

(2) In this section, relevant benchmarks shall be determined by—

- (a) reviewing prices of services substantially similar to those services being assessed, derived from jurisdictions in which—
 - (i) a reasonable level of competition exists in the provision of the services in question; or
 - (ii) prices of the services in question are set on the basis of economically efficient costs, including a reasonable return on investment; and
- (b) taking into account adjustments to reflect the relative economic and social development, demographics, geography, state of development of the telecommunications sector and differences in the cost of providing telecommunications services in Solomon Islands and such other factors as the Telecommunications Commission considers appropriate.

(3) On application of an interested service provider, the Telecommunications Commission—

- (a) may regulate the prices of services provided by a dominant service provider in a telecommunications market with reference to detailed information about service providers' costs including based on cost models in addition to or instead of having regard to relevant benchmarks in regulating the prices of telecommunications services in accordance with subsection (1); and
- (b) shall revise any method of price regulation then in force under this section if necessary to ensure that a service provider whose economically efficiently incurred costs have increased for reasons beyond its reasonable control can recover such increased costs.

- (4) The applicant shall bear in advance the reasonable costs of the Telecommunications Commission, including any independent experts the Telecommunications Commission may in its sole discretion engage, required to conduct a process to review and evaluate information provided in connection with subsection (3)(a) and (b).
- (5) The initiation of a process referred to in subsection (3) shall not prevent the Telecommunications Commission from regulating prices with reference to relevant benchmarks in accordance with subsection (1).
- (6) Any price regulation introduced upon completion of a process referred to in subsection (3) shall not apply retrospectively.
- (7) Price regulation under this section may include without limitation applying a price cap method of regulation, the glide path method of regulation, both of the foregoing or such other method of regulation as the Telecommunications Commission considers appropriate.
- (8) A service provider shall not charge or accept a price, or apply or accept conditions, for a service if such price or conditions do not comply in all respects with any requirement or conditions of any approved price, price cap, glide path or other method of price regulation applicable to such service then in force.
- (9) Under the “price cap” method of regulation—
- (a) the Telecommunications Commission approves an upper limit for the average price of services included in a defined “basket” of selected services to which this section applies; and
 - (b) the service provider is at liberty, without limiting the application of section 60, to increase or decrease the prices of individual services within the basket from time to time so long as the average price of the services in the basket does not exceed the upper limit approved under paragraph (a).
- (10) Under the “glide path” method of regulation, the upper limit for the price of a telecommunications service

(which may be a basket of services under the price cap method) is required to be reduced by a specified percentage, generally linked to a retail price index or other measure of inflation, over a given period.

(11) The Telecommunications Commission shall approve a proposed price cap, glide path or other method of price regulation if it is satisfied that such method is likely to be sufficient to limit or reduce prices appropriately.

(12) The Telecommunications Commission shall seek to ensure that a price cap, glide path or any method of price regulation applied to a service provider does not –

- (a) prevent a service provider from achieving a reasonable return on investment; or
- (b) violate section 60(2)(f).

(13) Nothing in this Part prevents the Telecommunications Commission from making an order requiring a service provider to cease and remedy a violation of section 60 or any other provision of this Act, or determination, order, direction, regulations or licence issued under this Act.

(14) The Telecommunications Commission may, by order made on application or its own motion, require a service provider to repay to users amounts received on the basis of prices applied in contravention of this section.

(15) The Telecommunications Commission may consider applications from users or would-be users to establish or change a price, price cap or any other method of price regulation for services to which this section applies.

(16) The Price Control Act (Cap. 64) does not apply to the provision of telecommunications services and access.

PART 11 – RELATIONS WITH CONSUMERS

71. (1) A service provider shall only charge a user for the specific telecommunications services or equipment that the consumer has ordered, and a user shall have no liability to pay for any telecommunications service or equipment that it has not ordered.

Fair dealing

(2) In the case of users who have contracted for services for which they will pay after usage, a service provider shall provide such user with invoices—

- (a) in writing, which may be transmitted electronically if the user consents;
- (b) on a regular basis;
- (c) in a plain and simple format;
- (d) that provide accurate information about the services provided and the amounts due for each service; and
- (e) that clearly indicate the method of calculation of prices for any service for which invoices are based on the length of calls or other measure or usage.

(3) In the case of consumers who have purchased services for which they have paid prior to the provision of such services, a service provider shall permit such users on request to review their expenditures.

(4) No service provider may make or cause to be made any claim or suggestion regarding the availability, price or quality of its telecommunications services or equipment or that of a competing service provider if the service provider knows or reasonably ought to know that the statement or claim is false or misleading in any material respect.

(5) The Telecommunications Commission may, by order or regulation, regulate or prohibit the use of a telecommunications network to provide unsolicited telecommunications in order to reduce or eliminate annoyance, inconvenience or anxiety.

Confidentiality of
user information

72. (1) Subject to subsections (2) and (3) and section 29, a service provider—

- (a) shall not without a consumer's consent collect, use, maintain or disclose information about a user for any purpose; and

(b) shall apply appropriate security safeguards to prevent the collection, use, maintenance or disclosure of such information.

(2) A service provider may disclose a consumer's name, address and listed telephone number in a printed or electronic telephone directory.

(3) The Telecommunications Commission may, by order or directions, require a service provider to retain or prohibit a service provider from retaining specified information relating to consumers, including information about billing, beyond a specified period.

(4) A service provider shall ensure that information it discloses or retains concerning a consumer is accurate and complete for the purposes for which it is to be used.

(5) A service provider shall permit a consumer to inspect its records regarding a service provided to that user and require correction or removal of information that is shown to be incorrect.

(6) A service provider shall disclose to consumers the purpose of requesting or collecting any information about users and shall not use or maintain information about users for undisclosed purposes.

73. (1) A service provider shall take all reasonable steps to ensure the confidentiality of its consumer's communications.

Confidentiality of communications

(2) A service provider shall not intercept, monitor, alter or modify the content of a message, except as provided in section 97 or otherwise in this Act or any other law.

74. Nothing in this Act shall be interpreted to prohibit or infringe upon the rights of government authorities under the laws of Solomon Islands to exercise such rights to access otherwise confidential information or communications of users in a lawful manner.

Access by government authorities

75. (1) Unless otherwise permitted by the Telecommunications Commission by determination, order or direction, service providers shall offer all consumers the same conditions without discrimination, including without limitation quality of service and prices, except where good and objectively justified reasons exist.

No unjustified discrimination

(2) A service provider that discriminates among

consumers shall submit to the Telecommunications Commission its reasons for such discrimination.

(3) If the Telecommunications Commission is not satisfied that the reasons submitted by the service provider are good and objectively justified, the Telecommunications Commission shall issue an order to cease the discrimination.

Terms of service,
complaints and
disputes

76. (1) Unless such matters are already addressed in a dominant service provider's licence, the Telecommunications Commission may, on application or its own motion, make an order requiring a dominant service provider to take the following steps in any telecommunications market in which it is dominant —

- (a) establish fair and reasonable standard conditions for the provision of services to consumers, procedures for dealing with complaints from and disputes with consumers and providing remedies including without limitation refunds and compensation where circumstances warrant;
- (b) submit such conditions, procedures and remedies, or proposed amendments thereto, to the Telecommunications Commission for its approval;
- (c) make such changes to such conditions, procedures and remedies as may be reasonably required by the Telecommunications Commission;
- (d) publish such conditions, procedures and remedies on its website and circulate them to points of sale for publication in a manner that ensures that consumers are clearly informed of them; and
- (e) comply with such conditions, implement such procedures and provide such remedies in accordance with their terms as approved by the Telecommunications Commission.

(2) If a service provider fails to establish, submit or make changes to conditions, procedures or remedies if so required under subsection (1), the Telecommunications Commission may do so and the service provider shall comply with such

conditions, implement such procedures and provide such remedies.

(3) A service provider shall ensure that its complaint and dispute procedures are easy to use and free of charge, provide effectively for impartial and quick treatment and resolution of complaints, and supply contact information to the Telecommunications Commission in the event it requires to make an application to the Telecommunications Commission under subsection (5).

(4) Notwithstanding subsection (3), a service provider may refuse to deal with, and may apply reasonable charges for, frivolous or vexatious complaints and disputes.

(5) A consumer whose complaint or dispute has not been treated by a service provider in accordance with subsection (3) may apply to the Telecommunications Commission for an order—

- (a) requiring the service provider to comply with subsection (3); or
- (b) addressing the complaint or dispute and providing for a remedy,

if such remedy is not inconsistent with any reasonable conditions and procedures established by the service provider pursuant to this section.

(6) The Telecommunications Commission may, by order or direction, require service providers to—

- (a) report to the Telecommunications Commission regarding the types and volumes of complaints and disputes, application of procedures and manner of their resolution; and
- (b) take such other measures as the Telecommunications Commission considers appropriate to ensure that complaints of and disputes with users are satisfactorily addressed.

77. The Telecommunications Commission may, by order or direction, require a service provider to provide its users with directory

assistance in accordance with such conditions as the Telecommunications Commission may from time to time prescribe.

Quality of service

78. (1) Unless such matters are already addressed in a dominant service provider's licence, the Telecommunications Commission may, on application or its own motion, make an order requiring a dominant service provider to take the following steps in any telecommunications market in which it is dominant –

- (a) establish key performance indicators for the quality of its service to consumers;
- (b) submit such indicators or proposed amendments thereto to the Telecommunications Commission for its approval;
- (c) make such changes to such indicators as may be required by the Telecommunications Commission; and
- (d) ensure that its services comply with such indicators.

(2) If a service provider fails to establish, submit or make changes to performance indicators if so required under subsection (1), the Telecommunications Commission may do so and the service provider shall comply with such indicators.

PART 12 – TELECOMMUNICATIONS EQUIPMENT AND TECHNOLOGY

Telecommunication equipment

79. (1) The Telecommunications Commission may, by regulations, prescribe—

- (a) technical rules and standards applicable to telecommunications equipment to ensure against damage or quality degradation to telecommunications networks or services or to public nuisance, health, safety or the environment; and
- (b) conditions and approval processes necessary for the manufacture within or import into

Solomon Islands of telecommunications equipment.

(2) No person may use or supply any telecommunications equipment that does not comply with any technical rules, standards, conditions and approval processes prescribed pursuant to subsection (1).

(3) The Telecommunications Commission may recognise and apply technical rules, standards, conditions and approval processes of other countries.

80. (1) The Telecommunications Commission must carry out public consultations on the effect of intellectual property laws on the development of telecommunications networks and services in Solomon Islands and may make recommendations to the Minister regarding such matters.

Intellectual property
and
telecommunications
technology

(2) The Telecommunications Commission shall use its reasonable endeavours to commence the public consultations under subsection (1) within six months of the commencement date of this Act.

PART 13 – NUMBERS AND DOMAIN NAMES

81. (1) The Telecommunications Commission shall, by determination, order or direction, establish and from time to time revise a national numbering plan, which may replace any existing numbering plan in Solomon Islands, and shall—

National numbering
plan

(a) allocate and assign numbers and number ranges to service providers in accordance with such plan; and

(b) establish requirements relating to the use of numbers by service providers and users.

(2) In preparing the national numbering plan, the Telecommunications Commission shall—

(a) consider any numbering plan proposed by a recognised service provider association, if any, and rely where reasonable upon industry self-regulation;

- (b) have due regard for the existing allocation and assignment of numbers;
 - (c) ensure that numbers are allocated in an open, objective, transparent and non-discriminatory manner; and
 - (d) ensure that it is consistent with the requirements of international treaties, commitments, recommendations or standards to which Solomon Islands has subscribed.
- (3) Service providers shall—
- (a) use the numbers assigned to them by the Telecommunications Commission efficiently and in accordance with the national numbering plan; and
 - (b) not use any numbers not assigned to them in accordance with the national numbering plan or adopt any other private numbering arrangements that conflict with the national numbering plan.
- (4) Any allocation of numbers to a service provider grants the service provider a right to use such numbers, and neither service providers nor users shall have any property rights in such numbers.
- (5) Until any alternative provision is made under a numbering plan established under subsection (1)—
- (a) numbers shall be allocated to licensees in blocks of 1,000 geographic numbers and 10,000 mobile numbers each (or such other size as the Telecommunications Commission considers appropriate);
 - (b) an initial allocation of mobile numbers to Solomon Telekom and the new entrant shall not be less than 500,000 mobile numbers each; and
 - (c) Solomon Telekom shall be entitled to continue to use—

- (i) blocks of fixed line and special service numbers used by it on the commencement date to provide telecommunications services to users; and
- (ii) blocks of mobile numbers used by it on the commencement date to provide telecommunications services to users, subject to migration to an increased number length for mobile services.

82. (1) The Telecommunications Commission may review and make an order, determination or direction on a date that is no earlier than the second anniversary of the commencement date regarding—

Initial numbering
review

- (a) whether and how any geographic number blocks (including any that have been allocated to a user) shall be vacated and migrated to facilitate the introduction of new telecommunications services; and
- (b) whether and how the costs of any such vacation or migration should be distributed among service providers.

(2) The notice required under section 25(2)(a) with respect to an order, determination or direction under subsection (1) shall be issued to all service providers to whom numbers have been allocated and set out –

- (a) the scope of the review, including the geographic number blocks to which it applies;
- (b) the new telecommunications services proposed; and
- (c) a proposal for the distribution of the costs of vacation or migration.

(3) An order, determination or direction made under subsection (1) may require a service provider to vacate all geographic numbers under a particular leading digit to facilitate the introduction of a new telecommunications service.

(4) A service provider shall comply with such order, determination or direction within six months of its date of issuance.

(5) This section is without prejudice to the powers of the Telecommunications Commission under section 81 and any other provision of this Act.

(6) A service provider shall not be entitled to any compensation for any vacation or migration of geographic numbers required by an order, determination or direction made under subsection (1).

Number portability

83. (1) The Telecommunications Commission may, no earlier than the first day of April 2012, commence a review whether to require the introduction of number portability.

(2) In addition to considering the burden of regulation under section 30, the Telecommunications Commission shall, when determining whether to require the introduction of number portability, have due regard to —

- (a) its costs and their fair distribution among service providers and consumers;
- (b) the availability of technology permitting such portability; and
- (c) the likely benefits of number portability to effective competition.

(3) The Telecommunications Commission shall allow a reasonable period, which shall not be less than forty-five days, for consideration and comment by interested persons on the review.

(4) If the Telecommunications Commission concludes following that review that number portability should be introduced, the Telecommunications Commission may, by order, determination or direction, require one or more service providers to—

- (a) develop or assist in the development of an implementation plan providing for conditions for number portability; and

- (b) by a date specified by the Telecommunications Commission, which must be no earlier than the first day of April 2013, implement and comply with such plan as modified and approved by the Telecommunications Commission.
- (5) The costs of introducing and administering number portability must be allocated fairly among service providers and in accordance with the implementation plan and its conditions.
- (6) If a service provider fails to develop or assist in the development of an implementation plan and conditions if so required under subsection (4), the Telecommunications Commission may do so and require the service provider to implement such plan and the service provider must implement such plan and comply with such conditions.
- (7) For the purposes of this Act, “number portability” means a service enabling a user to change service provider for a given telecommunications service while retaining the same telephone number, including the leading digit.

84. (1) Subject to subsection (4) and section 135, the Telecommunications Commission or one or more persons nominated by it (“nominated person”) shall assume responsibility and thereafter be responsible for the registration and allocation of all domains under the “.sb ccTLD” (including without limitation “com.sb”, “net.sb”, “edu.sb”, “org.sb”, and “gov.sb”).

Domain registry
service

- (2) The Telecommunications Commission may make orders, determinations or directions relating to the registration and allocation of domains by it or any nominated person.
- (3) The Telecommunications Commission or any nominated person—
 - (a) may make rules, guidelines and procedures for the registration and allocation of domains under its responsibility including without limitation in relation to applications, transfers, complaints and dispute resolution;

- (b) shall ensure that its rules, guidelines and procedures are transparent and non-discriminatory;
 - (c) may charge reasonable fees to cover its costs for the provision of its services; and
 - (d) shall not have any conflict of interest.
- (4) Any assumption of responsibility for the registration and allocation of domains by the Telecommunications Commission or any nominated person shall be subject to the requisite approvals and consents of the Internet Assigned Numbers Authority.
- (5) The Telecommunications Commission or any nominated person shall comply with the procedures and conditions of and agreements with the Internet Assigned Numbers Authority.
- (6) The Telecommunications Commission shall monitor compliance by any nominated person with the provisions of this section.

PART 14 – ACCESS TO PUBLIC LAND

Procedures,
conditions and
charges for use of
public land

85. (1) Government authorities may determine procedures, including reasonable notice periods, set conditions and levy charges on service providers related to the installation, maintenance, repair or operation of facilities on public land under their jurisdiction.

(2) All procedures, conditions and charges made under subsection (1) shall be reasonable and non-discriminatory among all service providers, and in particular no service provider should be required to pay any charge for any use of public land unless all service providers are required to pay similarly for such use.

(3) Service providers shall not unduly interfere with the public use and enjoyment of public land used by them.

(4) Charges under subsection (1) may include—

- (a) the actual or average administrative costs resulting from collecting and maintaining

information, processing requests, overseeing the public interest where a service provider has been granted permission to use public land, and maintaining public land to the extent such costs result from use by service providers;

- (b) for each service provider, its *pro rata* share (based on the percentage of total capacity used or occupied) of capital improvements (such as ducts, fixtures and other permanent improvements) to such public land on the basis of the cost to the relevant government authority of the improvements.

(5) The Telecommunications Commission may, by determination, order or direction, establish techniques and formulas for fair and reasonable allocation of charges described in subsection (4).

86. (1) No service provider may install, maintain, repair or operate a facility on public land without the consent of the government authority having jurisdiction over such public land.

Requests for use of
public land

(2) A service provider may apply to the Telecommunications Commission for mediation under section 101, if the service provider cannot, on terms acceptable to it —

- (a) obtain the consent of the relevant public authority to install, maintain, repair or operate its facilities on public land; or
- (b) for the purposes in paragraph (a), gain access to support structures or other facilities constructed on, over or along or under public land whether such support structures or other facilities are used for telecommunications, electrical power, broadcast distribution or other purposes.

(3) If after sixty days from a request from a service provider to a government authority for use of or access to land under its jurisdiction, the government authority has not provided its consent on terms acceptable to the service provider, the service provider may apply to the High Court which may make an order granting the permission on such

terms as it finds reasonable taking into account the considerations in section 89.

Alteration of
facilities on public
land

87. On application of a government authority or another person that owns or controls support structures or other facilities on which a service provider has placed or proposes to place its facilities, the High Court may, on such terms as it finds reasonable taking into account the considerations in section 89 —

- (a) by order, permit the service provider to continue to enjoy the use of the public land;
- (b) order a service provider within a reasonable time period to alter the route or location of the service provider's facility situated or proposed to be situated on the support structure or other facility; or
- (c) by order, restrain the installation, maintenance, repair or operation on such support structure or other facility by a service provider of its facilities except as directed in the prohibition order.

Restoration to
original condition

88. (1) If the relevant government authority so requires, the service provider shall at the end of the term of the permitted use promptly remove all fixtures and other permanent improvements installed by it on, in or under public land at its own cost and restore the public land to its original condition.

(2) Any fixtures and other permanent improvements not removed at the end of the term of the permitted use will be classified as part of the public land subject to the authority and control of the relevant government authority and without any compensation being due or payable to the service provider that installed such fixtures or improvements.

(3) All personal property owned by a service provider and located on public land will at all times remain private property of the service provider, and, upon cessation of its permitted use or at such earlier time as it chooses or is otherwise lawfully required to do so, the service provider shall at its own cost remove all such items and restore the public land to its original condition.

Considerations
relating to the use
of or access to
public land

89. In considering an application under section 86(3) or 87, the High Court shall take into account the following considerations –

- (a) the availability of a commercially reasonable alternative to the proposed location or use of or access to the public land by the service provider for the purpose of installation, maintenance, repair or operation of facilities for telecommunications;
- (b) the effect of such use or access on the existing or planned public use of the relevant public land;
- (c) any historical, environmental and health implications;
- (d) whether or not the service provider has sought the mediation of the Telecommunications Commission in accordance with section 100(5); and
- (e) the objective in section 3.

PART 15 – ACCESS TO NON-PUBLIC LAND

90. (1) A service provider shall deal with the relevant persons to agree conditions of use or access, if the service provider requires to —

Negotiations for use
of or access to non-
public land

- (a) install, maintain, repair or operate facilities on, above or below land other than public land; or
 - (b) gain access to such land for the purposes set out under paragraph (a).
- (2) For the purposes of this Part, “relevant persons” are—
- (a) in the case of registered land, the persons who are registered as being the owners of or having an interest in or right over the land; and
 - (b) in the case of unregistered land, persons who purport to be the owners of or to have an interest in or right over the land based on—
 - (i) any final decision of a court;

- (ii) other grounds (which shall not include mere assertions of ownership of, or of an interest in or right over, the land).

(3) The service provider shall provide written notice to relevant persons of—

- (a) the boundaries of the land, demarcated on a map or plan;
 - (b) the purpose for which it requires use of or access to the relevant land and the nature of works to be carried out;
 - (c) the service provider's proposed terms for such use or access as is necessary to meet its need under subsection (1), including—
 - (i) whether the proposed terms comprise a lease, easement, right of way or other interest or right;
 - (ii) the sum or sums proposed to be paid; and
 - (iii) an undertaking to pay compensation in respect of any damage caused in carrying out works together with the amount of compensation proposed;
 - (d) the service provider's proposals for apportioning such amounts among relevant persons;
 - (e) the procedures set out in, and relevant persons' rights under, this Part;
 - (f) contact information for the submission of representations to the Commissioner of Lands and the Telecommunications Commission; and
 - (g) information about how to obtain access to impartial legal advice.
- (4) If the relevant persons are persons referred to in

subsection 2(b), the service provider shall publish the notice referred to in subsection (3) in such manner as is reasonable for the purpose of bringing it to the attention of all persons potentially affected by it.

(5) If a service provider has entered into an agreement relating to the matters in subsection (1) with a relevant person who is the owner of or has an interest in or right over, the land, the service provider may carry out the works and gain access to the land in accordance with the terms of the agreement unless otherwise decided by the High Court.

(6) If a dispute arises with respect to whether any person is a relevant person, the service provider shall lodge the sums payable pursuant to any agreement it has entered into with the Telecommunications Commission to hold on behalf of and distribute to the persons determined to be owners of, or having any interest in or right over, the land.

(7) Subject to the order of a court regarding costs, any person having an interest in or right over the land shall have a right of access to independent legal advice at the reasonable cost payable by the service provider in connection with such negotiations and any further proceedings under this Part.

(8) A service provider –

- (a) may fund the hearing before any court or body on the determination of the ownership of, or any interest or right in, unregistered land or the nature or extent of such ownership, interest or right; and
- (b) shall pay such funds to the Telecommunications Commission for disbursement.

91. (1) If a service provider and the relevant persons fail to reach agreement on conditions of use or access to land under section 90, the service provider shall notify the Commissioner of Lands with a copy to the Telecommunications Commission—

- (a) of its notice published under section 90(3);
- (b) to the knowledge of the service provider, of the identity of the owner or purported owner or person or group of persons having or

Notification of
failure to reach
agreement

purporting to have an interest in or right over the land;

- (c) to the knowledge of the service provider, of the current use of the land and the nature of interest in or right over the land of such owner or person;
- (d) of the reasons why the service provider requires to use or gain access to the relevant land and no commercially reasonable alternative is available for the purposes of section 90(1);
- (e) of the steps the service provider has taken to negotiate with, and terms offered to and refused by, the owner or purported owner and person or group of persons having or purporting to have an interest in or right over the land; and
- (f) that there is no likely prospect of the negotiations being concluded on a basis acceptable to the parties or that the negotiations are subject to an unacceptable delay in arriving at a satisfactory agreement.

(2) The service provider shall deliver a copy of the notice required under subsection (1) to the relevant owner or purported owner or other person or group of persons having or purporting to have an interest in or right over the land within fourteen days after delivery to the Commissioner of Lands.

(3) An owner or person or group of persons having an interest in or right over the relevant land may make written representations to the Commissioner of Lands with a copy to the Telecommunications Commission in response to the notice required under subsection (1) within thirty days after receipt of such notice from the service provider.

Creation of leases,
easements and
right of way

92. (1) The Telecommunications Commission may, but is not obliged to, submit to the Commissioner of Lands its views regarding—

- (a) whether the service provider's use of or access to the land is necessary and no

commercially reasonable alternative is available for the purposes of section 90(1);

- (b) the importance of the service provider's use of or access to the land to further the objective in section 3;
- (c) the reasonableness of the service provider's proposed terms under section 90(3)(c) and any modification that may be appropriate; and
- (d) any other relevant information.

(2) If after thirty days from the deadline for any representations under section 91(3) and after any further inquiry the Commissioner of Lands considers, taking into account any views of the Telecommunications Commission submitted under subsection (1), that the service provider's use of or access to the land—

- (a) is necessary and no commercially reasonable alternative is available for the purposes of section 90(1); and
- (b) is important to further the objective in section 3,

the Commissioner of Lands has the power to create such leasehold right, easement, right of way or such other interest or right in favour of the service provider as is necessary to meet the service provider's need for use of or access to the land.

(3) The Commissioner of Lands shall, if he creates an interest in or right over land under subsection (1) –

- (a) serve notice on the owner of or other person or group of persons having an interest in or right over the land; and
- (b) where the land is not to his knowledge occupied, give notice in such manner as he considers adequate or most effective for the purpose of bringing it to the attention of all persons affected,

requiring such person or group to give up possession to the extent of the interest or right created, and the service provider shall be entitled to enter and take possession to such extent in accordance with the terms of such notice.

Compensation and expenses

93. (1) Where a lease, easement, right of way or other interest or right is created in favour of a service provider under section 92, the service provider is liable to pay to the relevant persons—

- (a) such reasonable compensation (the valuable consideration of which may take the form of cash or some other form and may be payable by way of lump sum or by instalments) within a reasonable period of time having due regard to all the relevant circumstances as the Commissioner of Lands may determine; or
- (b) if such compensation is assessed by the High Court, such reasonable compensation as the High Court may order.

(2) The Telecommunications Commission and the Commissioner of Lands may levy fees for the cost of carrying out their functions under this Part and such fees shall constitute a debt of the service provider due to the Telecommunications Commission or the Commissioner of Lands and recoverable in court.

Application to the High Court

94. An owner or person or group of persons having an interest in or right over land subject to the creation of a lease, easement, right of way or other interest or right under section 92 may apply to the High Court within six months of the creation of such right or interest for the determination of his interest or right, the legality of the creation of the interest or right, and the reasonableness of the compensation and the period of time within which it shall be paid.

Reasonable compensation

95. In determining reasonable compensation for the interest or right under section 93(1) acquired pursuant to section 92, due regard shall be had to—

- (a) the market value of the land or right, exclusive of any increase in its value by reason of its use for telecommunications;
- (b) the value of any improvements on the land;

- (c) compensation for trees and crops, other than crops planted in anticipation of such acquisition;
- (d) any damages that may be caused by severance and disturbance; and
- (e) any other relevant circumstances.

PART 16 – POWERS IN EMERGENCIES AND PRODUCTION OF MESSAGES

96. (1) On the occasion of any public emergency under section 16 of the Constitution, or in the interest of public safety, the Prime Minister or any officer specially authorised in that behalf by the Prime Minister may—

Powers of the
Government in an
emergency

- (a) require a service provider to provide telecommunications on behalf of the Government in dealing with such public emergency or safety;
- (b) prohibit or regulate the use of telecommunications in all cases or in such cases as may be deemed expedient; or
- (c) order that any message or class of messages to or from any person or class of persons or relating to any particular subject matter, brought for transmission by, or transmitted or received by telecommunications shall to the extent technically feasible not be transmitted or shall be interrupted or detained or shall be disclosed to the Prime Minister or to any public officer mentioned in the order:
PROVIDED THAT any order made under this paragraph shall not be construed to apply to the use of telecommunications for the purpose of making or answering signals of distress.

(2) If any doubt arises as to the existence of a public emergency or whether any act under this section is in the interests of public safety a certificate signed by the Prime Minister and delivered to the person-in-charge of the telecommunication network shall be conclusive proof of the fact.

Powers to require
production of
messages

97. Where it appears to the Prime Minister that such a course is expedient in the public interest, he may, by order in writing, direct any person who owns or controls any telecommunications network, to the extent technically feasible, to intercept and produce to him or to any person named in the order the originals and transcripts of all messages or of messages of any special class or description or of messages sent from or addressed to any specified person or place by means of such telecommunications and all other papers relating to such messages.

Recovery of
expenses

98. (1) A reasonable expense incurred by a service provider in order to comply with section 96 or 97 shall be a debt of the Crown payable to the service provider and recoverable in court.

(2) A service provider shall not be in violation of its duties under section 96 or 97 if it fails to comply with such section due, in whole or in part, to the service provider not having the facilities necessary for such compliance.

(3) Upon order of the Prime Minister, a service provider shall acquire and install such facilities as would be required to comply with sections 96 and 97 except that the capital costs for such acquisition and installation shall be for the account of the Government and shall be paid in advance.

PART 17 – DISPUTES AND APPEALS

Appointment of
List of Experts

99. (1) There shall be a List of Experts consisting of a President and other members, appointed by the Evaluation Committee, who shall be available to act as members of a Dispute and Appeal Panel constituted under section 103 to hear a dispute or appeal or to act as mediators under section 101.

(2) The Evaluation Committee may determine the terms and conditions of the President and of the Secretary.

(3) There shall be a Secretary, who shall be responsible for the administration of the List of Experts and each Dispute and Appeal Panel.

(4) The person who is for the time being the secretary of the Trade Disputes Panel under the Trade Disputes Act (Cap. 75), shall be the Secretary.

(5) The President may by written notice to the Telecommunications Commission appoint other persons to the List of Experts.

(6) The Evaluation Committee and the President may consider proposals for members of the List of Experts made by the Telecommunications Commission and service providers, including proposals for new members to be added in order to hear a dispute or appeal proceeding that has been initiated.

(7) A person is not eligible for appointment to the List of Experts if he would be ineligible under section 8.

(8) The President shall—

- (a) have at least ten years' international experience in the regulation of telecommunications markets and dispute resolution; and
- (b) be a lawyer in good standing in the jurisdiction in which he is qualified to practise law.

(9) Each member of the List of Experts shall have substantial international experience in the regulation of telecommunications markets.

(10) Neither the commissioner nor any officer, employee, agent or consultant of the Telecommunications Commission may be a member of the List of Experts.

(11) The President and the Secretary are entitled to reasonable fees and expenses determined by the Telecommunications Commission and payable from the Telecommunications Commission Special Fund.

(12) The Telecommunications Commission shall publish on its website and make available at its premises upon request—

- (a) an updated copy of the List of Experts; and
- (b) the name and contact information for the President and the Secretary.

Initiation of dispute
proceedings
between service
providers

100. (1) Where service providers have failed to agree on the resolution of a matter relating to this Act, including without limitation—

- (a) failures to reach agreement on interconnection and access to facilities; and
- (b) disputes relating to agreements on interconnection and access to facilities that have been entered into,

then following reasonable efforts to reach a negotiated agreement, one or more of the service providers may apply to the Telecommunications Commission for assistance in resolving the dispute.

(2) A party making an application to the Telecommunications Commission under subsection (1) shall—

- (a) identify in the application the parties involved in the dispute and summarise the matter in dispute; and
- (b) deliver a copy of the application to the other party to the dispute on the same day.

(3) The other party may within fifteen days deliver to the Telecommunications Commission any comments on the application submitted under subsection (1).

(4) After receipt of an application under subsection (1) and comments under subsection (3), if any, the Telecommunications Commission shall within fourteen days convene the parties to consult with them regarding their preferred procedure for resolving the dispute.

(5) After consulting with the parties in accordance with subsection (4), the Telecommunications Commission shall within fourteen days determine whether it will—

- (a) conduct or arrange mediation of the dispute in accordance with section 101;
- (b) conduct adjudication of the dispute in accordance with subsections (6) and (7);

- (c) refer the dispute to the Dispute and Appeal Panel in accordance with section 103(a); or
 - (d) deny the application for assistance in resolving the dispute.
- (6) In making its determination under subsection (5), the Telecommunications Commission shall –
- (a) defer to any agreement of the parties regarding referring the dispute to the Dispute and Appeal Panel in accordance with section 103(a) as their preferred procedure for resolving the dispute; and
 - (b) generally defer to any agreement of the parties regarding any other preferred procedure for resolving the dispute except that it shall be under no duty to do so where—
 - (i) the matter at issue concerns a contravention under this Act, or a direction, determination, order, regulations or licence issued under this Act; or
 - (ii) the Telecommunications Commission considers that it is desirable to establish a precedent for the matter at issue.
- (7) The Telecommunications Commission may set its own procedures for adjudication by it under subsection 5(b) of disputes between service providers, provided that it allows each party a reasonable opportunity to be heard.
- (8) If the Telecommunications Commission does not set its own procedures under subsection (7), the practice and procedures of the Dispute and Appeal Panel in sections 106 and 107 apply to any adjudication by the Telecommunications Commission under subsection 5(b) with necessary modifications.
- (9) The Telecommunications Commission may at any time deny an application for assistance in resolving a dispute made under subsection (1) if it determines that—

- (a) there are alternative means available for resolving the dispute consistent with this act that are likely to lead to a prompt and satisfactory resolution of the dispute; or
- (b) the dispute is frivolous or vexatious.

(10) The Telecommunications Commission may refer any part of the dispute to the High Court which does not involve any rights or obligations of service providers arising under this Act or any determination, order, direction, regulations or licence issued under this Act.

(11) Regardless of the dispute procedure followed, the dispute shall be resolved on terms that comply with this Act and any relevant determination, order, direction, regulations or licence under this Act.

Mediation of
disputes between
service providers

101. (1) Upon receipt of an application for mediation in accordance with section 86(2) or if a matter is referred to mediation pursuant to section 100(5), the commissioner may conduct the mediation, or may appoint any one or more members of its officers, employees, expert consultants or a professional mediators or members of the List of Experts to conduct the mediation.

(2) The Telecommunications Commission shall administer financial and organisational matters relating to the mediation.

(3) Subject to subsection (4), the Telecommunications Commission shall offer the parties the opportunity, acting in agreement with one another and with the facilitation of the Telecommunications Commission, to—

- (a) select the mediator or mediators;
- (b) set the terms of engagement of the mediator or mediators;
- (c) set the time and place of any mediation meetings; and
- (d) determine any matters of process for the mediation.

(4) The Telecommunications Commission may for good reason consistent with this Act reject any mediator selected by the parties or the agreed terms of engagement.

(5) If the parties fail to agree on any matter under subsection (3), the Telecommunications Commission shall determine the matter.

(6) Mediation under subsection (1) may include—

- (a) consulting with the parties together or separately to facilitate communication between them;
- (b) assisting the parties to understand their respective objectives and constraints; and
- (c) guiding the negotiation process and seeking a mutually acceptable solution.

(7) The Telecommunications Commission may refer the dispute to the Dispute and Appeal Panel in accordance with section 103(a) if at any time it considers that there is no likely prospect of negotiation of the matter in dispute being concluded on a basis acceptable to the parties or that such negotiations are subject to unacceptable delay in arriving at a satisfactory agreement.

(8) The commissioner and any officer or employee of the Telecommunications Commission shall perform any function or duty, or exercise any power, under this Part, including acting as a mediator, within the scope of his employment and shall not be entitled to any remuneration, benefits or allowances for such activities beyond those applying under his existing terms of engagement.

Initiation of appeal proceedings on determinations and orders

102. (1) A person aggrieved by a determination or order of the Telecommunications Commission that—

- (a) revokes, suspends or amends an individual licence under section 42;
- (b) designates a service provider as a dominant service provider in a telecommunication market;

- (c) determines that a violation pursuant to Part 18 regarding anticompetitive practices under Part 8 in has occurred;
- (d) sets terms and conditions for interconnection or access; or
- (e) regulates prices for a telecommunications service or access under section 70,

has a right to appeal such matter to a Dispute and Appeal Panel by submitting a notice of appeal to the President of the List of Experts and the Secretary.

(2) A person submitting a notice of appeal under subsection (1) shall—

- (a) identify the appealed determination or order and summarise the grounds of appeal; and
- (b) deliver a copy of the notice of appeal to the Telecommunications Commission on the same day.

(3) A notice of appeal under subsection (1) shall be given within thirty days after the date of the appealed determination or order or such further time as the President may allow.

(4) An appeal may not be brought to the Dispute and Appeal Panel in respect of any matter other than those referred to in subsection (1).

Dispute and
Appeal Panel

103. A Dispute and Appeal Panel shall be constituted *ad hoc* in accordance with sections 104 and 105 and has jurisdiction and power to hear and decide—

- (a) any dispute between service providers referred to the Panel in accordance with section 100(5)(c) or 101(7); and
- (b) any appeal from a determination or order of the Telecommunications Commission referred to the Panel under section 102.

Appointment of
Panel members

104. (1) A Dispute and Appeal Panel shall consist of one or three persons selected from the List of Experts.

(2) Subject to subsection (5), the President of the List of Experts shall offer the parties the opportunity, acting in agreement with one another —

- (a) to determine the number of Panel members;
- (b) to select the Panel member or members, or select one member each and request the two selected members to select the third; and
- (c) if the Panel comprises three members, to select the chairperson.

(3) If the parties fail to agree on any matter under subsection (2), the President shall determine the matter with the assistance of the Secretary.

(4) The President shall be satisfied that at least one person appointed to a Panel has suitable expertise and experience of dispute resolution in telecommunications and skills relevant to the matter subject to dispute or appeal.

(5) The President may for good reason justified under this Act reject any Panel member selected by the parties.

(6) The Secretary shall, subject to any direction of the Telecommunications Commission, administer financial matters relating to disputes and appeals brought under section 103 and may open a bank account as part of the Telecommunications Commission Special Fund and receive and disburse funds for such purposes under the supervision of the President and the Accountant-General.

105. (1) Before a Dispute and Appeal Panel is constituted, each proposed member of the Panel shall—

Independence of
Panel members

- (a) sign a statement confirming his independence from the parties to the dispute or appeal in respect of which the Panel is constituted; and
- (b) disclose to the President of the List of Experts and the parties (and the Telecommunications Commission if it is not a party) any facts or circumstances which are of such nature as to call into question his independence.

Procedures for
hearing of disputes
by the Panel

(2) A Panel member shall also immediately disclose to the President and the parties (and the Telecommunications Commission if it is not a party) any facts or circumstances of such nature which may arise during the proceedings.

(3) Sections 8, 11 and 12 apply to Panel members, subject to necessary changes to such sections.

106. (1) Within fourteen days of the appointment of a Dispute and Appeal Panel under section 104 to hear a dispute under section 103(a), the party which initiated the proceeding (the “complainant”) shall submit to the Panel with a copy to the other party (the “respondent”) its complaint, including—

- (a) details of the matter in dispute;
- (b) the facts alleged;
- (c) arguments based on the relevant provisions of this Act and any determination, order, direction, regulation or licence issued under this Act;
- (d) a statement of any remedies it seeks; and
- (e) copies of relevant documents on which it relies.

(2) The respondent may, within thirty days of receipt of the complaint, submit to the Panel its response with a copy to the complainant, addressing the submissions and documents in the complaint, and which may include a counter complaint.

(3) The complainant may, within seven days of receipt of the response, submit a reply addressing only the matters raised in the response and no new claims or allegations shall be made.

Procedures for
hearing of appeals
by the Panel

107. (1) Within fourteen days of the appointment of a Dispute and Appeal Panel under section 104 to hear an appeal under section 103(b), the party which initiated the proceeding (the “appellant”) shall submit to the Panel with a copy to the Telecommunications Commission its appeal, including—

- (a) a copy of the notice of appeal given under section 102(3);

- (b) a copy of the determination or order that is subject to appeal;
- (c) a statement of the grounds of appeal;
- (d) arguments based on the relevant provisions of this Act and any determination, order, direction, regulation or licence issued under this Act;
- (e) a statement of any remedies it seeks; and
- (f) copies of relevant documents on which it relies.

(2) The Telecommunications Commission shall, within thirty days of receipt of the appeal, submit to the Panel its response with a copy to the appellant, including—

- (a) a response addressing the submissions and documents submitted by the appellant; and
- (b) the record of the appealed proceeding.

(3) The appellant may, within seven days of receipt of the response, submit a reply addressing only the matters raised in the response and no new matter.

(4) An appeal shall be made and heard on the record of the proceeding and no new evidence may be introduced except with leave of the Panel which shall be granted only in special circumstances.

(5) In this section, “record of the proceeding” includes notices, representations, draft determinations or orders, reasons and any other documents published under section 25(2) or otherwise taken into account in making the appealed determination or order.

(6) In determining an appeal under section 103(b), the Panel may confirm, vary or annul the determination or order or any part of it.

(7) Notwithstanding anything in subsection (6), the Panel may, in any case, instead of determining any appeal, direct the Telecommunications Commission to reconsider the

whole or any specified part of the matter to which the appeal relates.

(8) In giving any direction under subsection (7), the Panel shall give such direction as it thinks appropriate under law concerning the reconsideration.

(9) In reconsidering the matter so referred back, the Telecommunications Commission shall comply with the Panel's direction under subsection (7) or (8).

(10) Any variation of any determination or order or any part of it by the Panel shall be made only to the extent necessary to ensure the lawfulness of such determination or order.

(11) Where any determination or order of the Telecommunications Commission is subject to an appeal proceeding before the Dispute and Appeal Panel, it shall remain in full force pending the determination of such proceeding unless the Panel orders to the contrary.

General applicable
procedures and
powers of the Panel

108.
section 103.

(1) This section applies to all disputes and appeals under

(2) A Panel comprising three members shall act by majority of its members.

(3) Subject to the provisions of this Part, the procedure for the consideration and resolution of a dispute or appeal is to be the procedure that the Panel considers appropriate, taking into account any agreement of the parties as to procedure.

(4) The Panel shall give special consideration to the expedition of proceedings where appropriate.

(5) Section 29 shall apply to confidential information submitted to the Panel allowing for necessary changes to such provisions, and the Panel may make such further determinations or orders with respect to treatment of confidential information submitted by the parties as it considers appropriate.

- (6) The Panel –
- (a) may inform itself of any relevant matter in any way it thinks appropriate;
 - (b) shall give due regard to relevant evidence; and
 - (c) shall not be bound by technicalities, legal forms, or rules of evidence.
- (7) The Panel has the power to make determinations, orders and directions, including interim determinations, orders and directions, in connection with the dispute and any such determinations, orders and directions shall have the force of determinations, orders and directions of the Telecommunications Commission under Part 4.
- (8) Unless it is impracticable to do so, the Panel shall, prior to rendering its determination, order or direction deciding the dispute or appeal, deliver to the parties (and to the Telecommunications Commission if it is not a party) a draft determination, order or direction and allow them at least fourteen days to make submissions on such draft.
- (9) Unless it is impracticable to do so, the Panel shall render its determination, order or direction deciding the dispute or appeal within four months of receipt of the complainant's reply under section 106(3) or the appellant's reply under section 107(3), as applicable.
- (10) If the Panel is unable to render a determination, order or direction within the period in subsection (9), it shall notify the President of the List of Experts and the parties (and the Telecommunications Commission if it is not a party) of—
- (a) the delay;
 - (b) reasons for the delay; and
 - (c) the date on which it intends to render its determination, order or direction.
- (11) Subject to section 110, a determination, order or direction of the Panel shall be binding and conclusive.

(12) Where reasonably practicable, a transcript shall be made of hearings.

Costs

109. (1) The parties to a dispute or appeal shall bear all of the costs of the Appeal and Dispute Panel in accordance with this section.

(2) The Panel –

- (a) may make orders as to costs at any time during the course of a dispute or appeal proceeding with respect to the costs of the parties and the Panel;
- (b) may require the parties to pay sums to cover its reasonable costs incurred as well as advances on account; and
- (c) shall follow the general rule that the unsuccessful party bears the reasonable costs of the successful party and the Panel unless it considers that it is more reasonable and equitable to provide otherwise.

(3) Subject to section 110, any determination or order of the Panel with respect to costs is binding and conclusive.

(4) In this section, “costs” of the Panel, includes without limitation fees charged by members of the Panel and any expert or legal adviser for their services and expenses incurred in connection therewith.

Appeal to the High Court and Court of Appeal

110. (1) A person aggrieved by a determination or order of a Dispute and Appeal Panel made in a dispute proceeding under section 103(a) or an appeal proceeding under section 103(b), has a right of appeal to the High Court on a question of law or jurisdiction.

(2) An appeal under subsection (1) shall be made within thirty days after the date of the determination or order of the Panel or such further time as the Court may allow.

(3) Subject to the right of appeal on question of law or jurisdiction under subsection (1), no appeal may be brought under this section in respect of any matter except with special leave to appeal granted by the High Court, having regard to –

- (a) any matter it thinks relevant;

- (b) whether the determination or order to which the application relates involves a question –
 - (i) that is of public importance, whether because of its general application or otherwise; or
 - (ii) in respect of which a decision of the High Court is required to resolve a matter likely to be important as a matter of precedent; and
 - (c) whether the interests of the administration of justice, either generally or in the particular case, require consideration by the High Court of the determination or order to which the application relates.
- (4) An application for special leave under subsection (3) shall be made within fourteen days after the date of the determination or order of the Panel or such further time as the Court may allow.
- (5) If special leave is granted under subsection (3), the appeal shall be brought within seven days after the day on which leave to appeal is granted or such further time as the Court may allow.
- (6) Any appeal of a determination or order of the Panel shall be made and heard on the record of the appealed proceeding and no new evidence may be introduced except with special leave of the Court.
- (7) In determining an appeal under this section, the High Court may—
- (a) confirm, vary or annul the determination or order of the Panel or any part of it; and
 - (b) direct the Panel to reconsider the whole or any specified part of the matter to which the appeal relates, in each case as necessary to comply with matters of jurisdiction and law.
- (8) In reconsidering the matter so referred back, the Panel shall comply with the Court's directions under subsection (7)(b).

(9) Any variation of any determination or order or any part of it and any direction by the Court shall be made only to the extent necessary to ensure the lawfulness of such determination or order.

(10) The Court will give special consideration to the expedition of proceedings where appropriate.

(11) Where—

- (a) any determination or order of a Panel is subject to an appeal proceeding or judicial review proceeding before the High Court or Court of Appeal; or
- (b) any determination, order or direction of the Telecommunications Commission is subject to judicial review proceeding before the High Court or Court of Appeal,

it shall remain in full force pending the determination of such proceeding unless the High Court or Court of Appeal makes an order to the contrary.

(12) Nothing in this Part shall prohibit the making of an application to the High Court for leave to apply for judicial review of a determination or order of the Telecommunications Commission or a Dispute and Appeal Panel.

(13) A ruling of the High Court may only be appealed to the Court of Appeal with special leave of the Court of Appeal.

Dispute resolution
and other processes
agreed by the
parties

111. (1) Subject to this section, service providers are at liberty to agree upon procedures to resolve disputes and manage other matters in their contractual, operational and other relations other than pursuant to the procedures provided for in this Part.

(2) Procedures referred to in subsection (1) shall not be inconsistent with the provisions of this Act or any order, determination, direction or regulation issued under this Act.

(3) Where service providers have agreed in writing upon a procedure referred to in subsection (1) the Telecommunications Commission shall endeavour to perform any reasonable role assigned to it in accordance with such

procedure consistent with its functions, duties and powers under this Act and other laws of Solomon Islands.

(4) The role of the Telecommunications Commission under subsection (1) may include without limitation—

- (a) facilitating negotiation of a matter between the parties;
- (b) approving a notice provided by one party to another;
- (c) providing a non-binding opinion on a matter;
- (d) making a binding decision resolving a matter;
- (e) making an award of costs relating to the procedure; and
- (f) proposing or appointing one or more suitable persons to carry out the required role,

and in each case, in accordance with the terms of the procedure agreed by the parties.

(5) The Telecommunications Commission may adapt or refuse to carry out a role provided for it in, or require parties to change, a procedure referred to in subsection (1) if it considers that the procedure or the role is not viable.

(6) A procedure or role is not viable for the purposes of subsection (5) if—

- (a) it is inadequate for its purpose or cannot be effectively implemented;
- (b) it places unsustainable demands on the Telecommunications Commission's resources, including the available time of the commissioner; or
- (c) it is inconsistent with the provisions of this Act or any order, determination, direction or regulation issued under this Act, or is unlawful.

(7) If a procedure referred to in subsection (1) cannot be

implemented in accordance with its terms because of any reason listed in subsection (6), a service provider may apply to the Telecommunications Commission under section 100 for assistance in resolving the matter.

(8) Unless the service providers have agreed otherwise in writing, a binding decision made under subsection (4)(d) or award of costs made under subsection (4)(e) shall, for all purposes of this Act, including in relation to enforcement and appeals under this Act—

(a) not constitute a determination or order of the Telecommunications Commission; but

(b) have the status accorded to it in the agreed procedure of the parties.

Arbitration

112. (1) Subject to subsections (2) and (3), nothing in this Act shall prevent service providers which are parties to a dispute from submitting such dispute to arbitration under the Arbitration Act (Cap. 2).

(2) Service providers submitting a dispute to arbitration shall notify the Telecommunications Commission by delivering to it a copy of the submission at such time as it is entered into by the parties.

(3) No submission may exclude the application of this Act and any determinations, orders, directions, regulations or licences issued under this Act.

(4) For the purposes of this section, “submission” has the meaning assigned in section 2 of the Arbitration Act (Cap.2).

PART 18 –VIOLATIONS AND ADMINISTRATIVE AND CIVIL REMEDIES

Violations

113. (1) The purpose of this Part is to promote compliance with this Act and not to punish.

(2) Without limiting any offence provision in this Act, a contravention of or failure to comply with a provision of this Act, or a determination, order, direction, regulation or licence issued under this Act, is a violation for the purposes

of this Part.

(3) If the Telecommunications Commission has reasonable grounds to believe that a person has committed a violation, the Telecommunications Commission may issue, and shall cause to be served on the person, a written notice of the alleged violation.

(4) The notice of violation shall name the person believed to have committed the violation, identify the violation and the potential administrative penalty payable for it, and provide a period during which the person may make representations to the Telecommunications Commission.

(5) The person served with a notice under subsection (3) may make representations to the Telecommunications Commission in response to the notice of violation.

(6) The Telecommunications Commission shall, after considering any representations made to it under subsection (5) and any other information it considers relevant, make a determination on the balance of probabilities regarding whether the person committed any violation.

(7) The Telecommunications Commission may, if it makes a determination that the person committed the violation, simultaneously or later take any of the following actions by order—

- (a) require the person to cease and remedy the violation and comply with the relevant provision at such time and subject to such conditions as the Telecommunications Commission may require;
- (b) require the person and other relevant affected persons to meet to set remedies to cease or prevent such actions and resolve any remaining dispute;
- (c) require the person to publish an acknowledgement and apology for his actions in a suitable public newspaper in such form and at such times as the Telecommunications Commission may require;

- (d) require the person to provide periodic reports to the Telecommunications Commission to assist the Telecommunications Commission in monitoring compliance and assessing the impact on telecommunications markets, competitors and users;
- (e) impose the administrative penalty referred to in the notice, a lesser penalty or no penalty in accordance with sections 114 and 115.

(8) The Telecommunications Commission shall not commence any proceedings for an offence under this Act if it has made a determination under subsection (6) or taken an action under subsection (7).

Penalties for violations

- 114.** (1) The person who commits a violation is liable—
- (a) in the case of a natural person, to an administrative penalty not exceeding 20,000 penalty units for the first violation and 40,000 penalty units for any second or subsequent violation; or
 - (b) in the case of a company or any person other than a natural person, to an administrative penalty not exceeding 200,000 penalty units for the first violation and 1,000,000 penalty units for any second or subsequent violation.
- (2) Administrative penalties payable under subsection (1) shall—
- (a) be evidenced by a certificate signed by the commissioner;
 - (b) constitute a debt due to the Crown; and
 - (c) be paid into the Consolidated Fund.

Amount of penalties

115. The amount of an administrative penalty to be imposed on any person pursuant to section 114 shall be determined taking into account—

- (a) the nature of the violation;

- (b) the frequency and duration of the conduct constituting the violation;
- (c) the history of compliance with this Act by the person who committed the violation;
- (d) the financial position of the person who committed the violation;
- (e) the question of whether any compensation has been made to any affected party;
- (f) the implementation of a compliance programme by the person who committed the violation; and
- (g) any other relevant factor.

116. (1) A person is liable for a violation committed by an officer, employee or consultant of the person acting in the course of that person's employment or consultancy, or by an agent of the person acting within the scope of the agent's authority, whether or not the person or agent who actually committed the violation is identified or proceeded against in accordance with this Act.

Vicarious liability

(2) A person shall not be liable under subsection (1) by virtue only of being a shareholder, director, officer, consultant, employee or external advisor of a company which has (or whose employee or agent has) committed a violation.

117. A person who has sustained loss or damage as a result of any violation may sue in court for and recover an amount equal to the loss or damage from any person who committed or is vicariously liable for the violation.

Civil liability

118. No proceedings in respect of a violation may be commenced by the Telecommunications Commission under section 113 later than three years after the commission of the violation.

Time limit

PART 19 – OFFENCES

119. If a contravention under this Act or a determination, order, direction, regulation or licence issued under this Act can be proceeded with either as a violation under Part 18 or as an offence under this Part,

Violation or offence precludes the other

proceeding in one manner precludes proceeding in the other.

Offences

- 120.** (1) A person commits an offence, if the person —
- (a) fraudulently, maliciously, or with dishonest intent, obtains any telecommunications service without payment of a lawful price for that service;
 - (b) intentionally, without right and with dishonest intent, accesses the whole or any part of any telecommunications facilities by infringing security measures, with the intent of obtaining telecommunications data;
 - (c) intentionally, without right and with dishonest intent, intercepts by technical means a transmission not intended for that person or for public reception except in accordance with section 97;
 - (d) intentionally, without right and with dishonest intent, damages, deletes, deteriorates, alters or suppresses telecommunications data without right, where this results in serious harm;
 - (e) intentionally, without right and with dishonest intent, seriously hinders the functioning of any telecommunications facilities by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing telecommunications data;
 - (f) intentionally, without right and with dishonest intent, possesses, produces, sells, procures for use, imports, distributes or otherwise makes available a device designed or adapted primarily for the purpose of committing any of the offences established in paragraph (a), (b), (c), (d) or (e), or a password, access code, or similar data by which the whole or any part of any telecommunications facilities is capable of being accessed with intent that it be used for the purpose of committing any of the offences established in paragraph (a), (b), (c), (d) or (e);

- (g) intentionally, without right and with dishonest intent, uses, or causes or suffers to be used, any telecommunications facilities for the purpose of harassing any person, including by means of a call with or without speech or other sounds, data or video images;
- (h) wilfully damages any telecommunications facilities;
- (i) knowingly makes any false statement of a material fact (or knowingly omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading) to the Telecommunications Commission or a Dispute and Appeal Panel;
- (j) contravenes section 36(2), 60(1), 70(8), 72(1), 73(2), 79(2) or 86(1);
- (k) fails to comply with a determination, order, direction made under section 28, 60(3), 64(3), 70(14), 72(3), 87, 108(7), 113(6), or 113(7);
or
- (l) is an officer, consultant, employee or agent of a company (or any person other than a natural person) and he intentionally, without right and with dishonest intent, causes the company (or any person other than a natural person) to commit any of the offences listed above.

(2) Prosecution of an offence under this Act shall not prevent prosecution of an offence under any other Act notwithstanding that it relates to the same action.

121. A person who is convicted of an offence under section 120 is liable—

Penalties

- (a) in the case of a natural person, to a fine not exceeding 50,000 penalty units for the first offence and 100,000 penalty units for any second or subsequent offence or seven years imprisonment;
- (b) in the case of a company or other entity, to a fine not exceeding 500,000 penalty units for the first offence

and 2,500,000 penalty units for any second or subsequent offence.

PART 20 – MISCELLANEOUS, REPEALS, AMENDMENTS, TRANSITIONAL AND SAVINGS

Other Acts and authorities

122. In the event of any conflict between the provisions of this Act and provisions of any other legislation regulating telecommunications or services in Solomon Islands, including but without limitation the Consumer Protection Act (Cap. 63), the provisions of this Act shall prevail.

Repeal and consequential amendments

123. (1) The following written laws are repealed –

- (a) Solomon Telekom (Limitation of Liability) Act (Cap 114);
- (b) Telecommunications Act (Cap. 115);
- (c) Telecommunications Regulations.

(2) The Sales Tax Act (Cap. 125) is amended –

- (a) in section 2, by replacing definition of "vendor" with the following new definition –

""vendor" means a person who, in the ordinary course of business, sells prescribed goods or services, and includes, subject to section 3A, a wholesaler;"

- (b) by adding after section 3 the following new section –

<p>“Tax on purchase of local and overseas telecommunications”</p>	<p>“3A. There shall be no sales tax imposed by this Act on the purchase of local and overseas Telecommunications, as a prescribed service, where those services are offered by any vendor who is a service provider (as that term is defined in the Telecommunications Act 2009), to another service provider on a wholesale basis, including charges relating to interconnection services, or any</p>
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other wholesale telecommunications service, except where those services are provided as a retail end user service to another service provider.”; and

- (c) in the Schedule, by repealing the definition of "local and overseas Telecommunications" and substituting following new definition –

“local and overseas Telecommunications” includes all forms of telecommunications, and “telecommunications” has the meaning given in the Telecommunications Act 2009;”.

124. (1) Every document made and any act done under the Telecommunications Act (Cap. 115) so far as they are subsisting or in force at the time of the repeal of the written laws set out section 123, shall, except to the extent provided in this Act, continue and have effect under the corresponding provisions of this Act until such time as they are altered, amended or cancelled, as the case may require, under the provisions of this Act.

Savings and
transitional

(2) Notwithstanding the provisions of this Act, all applications and other matters arising out of or under the provisions of any written law set out in section 123 which are not determined or otherwise dealt with under such provisions at the commencement date shall be determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations and alterations as the Minister may determine in writing from time to time.

(3) Every advisory body existing at the time on the commencement date relating to any written law set out in section 123 shall be deemed to be an advisory body established by the Minister under this Act.

(4) Notwithstanding the provisions of this Act, where this Act does not provide or provides insufficient or inadequate provision for the transition from the written law set out in section 123, the Minister may by notice published in the *Gazette* make such provisions as the Minister deems necessary in order for all matters under or concerning any written law set out in section 123 to be properly and effectively determined or otherwise dealt with.

Prior licences and pending applications

125. (1) The Telecommunications Commission shall by the second anniversary of the commencement date—

- (a) identify all prior licences for the use of radio frequencies in existence (other than Solomon Telekom's prior licence); and
- (b) by determination establish a plan for the amendment or the revocation and replacement of such prior licences (other than Solomon Telekom's prior licence) for the use of radio frequencies in order to ensure that the radio spectrum is managed and used in accordance with Part 7.

(2) The Ministry has no power to issue any licences from the commencement date and immediately after the commencement date shall deliver to the Telecommunications Commission any application for any licence and all related materials previously submitted to it.

(3) The Ministry shall provide all reasonable assistance to the Telecommunications Commission to facilitate the transition of responsibilities to and assumption of responsibilities by the Telecommunications Commission.

Initial licensing authority

126. (1) The Telecommunications Commission shall issue a licence—

- (a) to Solomon Telekom in accordance with section 127; and
- (b) to the new entrant in accordance with section 128.

(2) Until the first commissioner or interim commissioner is appointed, the Evaluation Committee has the power to, and shall, receive an application and issue the licences under subsection (1) instead of the Telecommunications Commission.

Issuance of a new licence to Solomon Telekom

127. (1) Solomon Telekom may, and if required to do so under any agreement between Solomon Telekom and the Government shall, apply to the Telecommunications Commission (or if no commissioner or interim commissioner has been appointed by that date, to the Evaluation Committee) for a new licence in exchange for the surrender of Solomon Telekom's prior licence.

(2) Within fourteen days of receipt of Solomon Telekom's application in accordance with subsection (1), the Telecommunications Commission (or if no commissioner or interim commissioner has been appointed by that date, the Evaluation Committee) shall issue the Solomon Telekom's new licence in accordance with subsection (3).

(3) The issuance of Solomon Telekom's new licence under subsection (2) shall be effected by the signing of the licence by the commissioner or interim commissioner, as applicable (or if no commissioner or interim commissioner has been appointed on the date of issuance, by the chairperson of the Evaluation Committee), and its prompt delivery to Solomon Telekom, whereupon such licence shall enter into force from the date of signing and Solomon Telekom's prior licence shall be deemed to have been surrendered.

(4) Unless Solomon Telekom otherwise agrees in writing, Solomon Telekom's new licence shall be substantially in the Form set out in Schedule 1.

(5) The issuance of Solomon Telekom's new licence shall be carried out pursuant to this section and not section 39(1) or 39(2).

128. (1) The Telecommunications Commission (or, if no commissioner or interim commissioner has been appointed the Evaluation Committee) shall—

- (a) continue and complete any process for the evaluation and selection of a new entrant commenced by the Government prior to the commencement date; or
- (b) if no such process was commenced prior to the commencement date, initiate and carry out such a process.

(2) The Telecommunications Commission (or, if no commissioner or interim commissioner has been appointed the Evaluation Committee) shall make its selection, if any, of the new entrant in accordance with the evaluation and selection process referred to in subsection (1).

(3) Upon selection of the new entrant, if any, the Telecommunications Commission (or if no commissioner or

interim commissioner has been appointed the Evaluation Committee) shall meet and shall issue the new mobile licence in the manner set out in subsection (4):

PROVIDED THAT the new mobile licence to be issued under this section —

- (a) shall be substantially in the Form set out in Schedule 2; and
 - (b) shall not be issued prior to the issuance of Solomon Telekom's new licence under section 127.
- (4) The issuance of the new mobile licence under subsection (3) shall be effected by the signing of the licence by the commissioner or interim commissioner, as applicable (or if no commissioner or interim commissioner has been appointed on the date of issuance, by the chairperson of the Evaluation Committee), and its prompt delivery to the new entrant, whereupon such licence shall enter into force.
- (5) The new entrant shall not commence providing telecommunications services under the new mobile licence to the public generally prior to the first day of April 2010, other than on a testing or trial basis which involves not more than 200 persons within Solomon Islands selected otherwise than as members of the public.
- (6) The officers, consultants, employees or agents of the new entrant or any of its suppliers shall not be considered members of the public for the purposes of subsection (5).
- (7) The new entrant may, at any time after the issuance of the new mobile licence (including prior to the first day of April 2010) import telecommunications equipment, build a telecommunications network, market their services and take any other steps in anticipation of a public launch.
- (8) The Government shall initially bear any costs incurred by members of the Evaluation Committee, any interim commissioner, the commissioner or any unit established prior to the commencement date by the Government (referred to in this Part as "the Transitional Telecommunications Unit") in connection with the evaluation and selection process and issuance of the new mobile licence in accordance with this section regardless of whether such costs were incurred prior to or after the

commencement date.

(9) The Telecommunications Commission (or, if no commissioner or interim commissioner has been appointed, the Evaluation Committee) must carry out the process for the evaluation and selection of a new entrant under this section in accordance with section 39.

129. (1) Notwithstanding any other provision of this Act, no person may provide any telecommunications service before the first day of April 2011 except Solomon Telekom pursuant to its existing or new licence and the new entrant pursuant to the new mobile licence.

Licensing grace
period

(2) The Telecommunications Commission may not until the first day of April 2011 amend the new mobile licence to permit the provision of telecommunications services other than the telecommunications services already permitted therein.

(3) Subsections (1) and (2) do not prevent the Telecommunications Commission at any time from granting a service licence or exemption entitling a person, prior to the first day of April 2011 –

- (a) to conduct tests or trials which involve not more than 200 persons in Solomon Islands selected otherwise than as members of the public; and
- (b) to import telecommunications equipment, build a telecommunications network, market their services and take any other steps in anticipation of a public launch; or
- (c) to be a distributor, agent or reseller of Solomon Telekom's or the new entrant's telecommunications services, including for these purposes accommodation providers.

(4) The officers, consultants, employees or agents of the new entrant or any of its suppliers shall not be considered as members of the public for the purposes of subsection (3).

130. A change of control of an individual licensee shall not require the approval of the Telecommunications Commission under section 43(3) if such change of control is—

Prior approvals for
transfer of control

- (a) carried out on the terms and conditions that were agreed by the parties and approved in writing by the Minister prior to the commencement date; and
- (b) completed within six months of the commencement date.

Initial funding of
the Commission

131. (1) If within three months after the commencement date a commissioner or interim commissioner has not been appointed, the Telecommunication Commission or the Minister responsible for Finance upon proposal of the Minister shall cause to be laid before Parliament the initial budget of the Telecommunications Commission, including funding for the expenses of the Evaluation Committee for its first year of operation, which shall be funded from any of the sources provided for in section 16.

(2) For the purposes of administering the Telecommunications Commission Special Fund prior to appointment of the first commissioner or interim commissioner, the Minister responsible for Finance shall within one month of the commencement date open one or more bank accounts in the name of the Telecommunications Commission with a commercial bank licensed under the Financial Institution Act 1998.

(3) Notwithstanding section 17(6), until the first commissioner or interim commissioner assumes his position, withdrawals of funds in the Telecommunications Commission Special Fund administered through the bank account referred to in subsection (2) may be made to cover the reasonable expenses of the Evaluation Committee upon the joint signatures of the Minister responsible for Finance and the Minister.

(4) Within one week of the first commissioner or interim commissioner assuming his duties, the Minister responsible for Finance shall notify the commissioner of all necessary information relating to the bank account opened under subsection (2) and the Minister responsible for Finance and the Minister shall sign such documents and provide such notifications as may be necessary to transfer signing authority over the bank account to the commissioner or interim commissioner.

(5) The reasonable expenses incurred prior to the commencement date by members of the Evaluation Committee in connection with the recruitment of a commissioner or interim commissioner in anticipation of the

commencement of this Act shall be reimbursed to the Government from the initial budget of the Telecommunications Commission.

132. (1) Subject to subsection (4), the director of the Transitional Telecommunications Unit on the commencement date shall become the first interim commissioner immediately and automatically upon delivery to the Minister by him of—

First interim
commissioner

- (a) a signed acceptance of the office; and
- (b) a signed confirmation that he is not ineligible for the office under section 8.

(2) The terms and conditions on which the first interim commissioner shall take office under subsection (1) shall be generally equivalent to those previously applying to him as director of the Transitional Telecommunications Unit subject to such modifications as are strictly necessary to reflect the change in his position.

(3) The Minister, the Minister responsible for Finance and any other relevant officials shall sign all documents necessary to give effect to subsections (1) and (2).

(4) If—

- (a) there is no director of the Transitional Telecommunications Unit on the commencement date; or
- (b) for any reason no person takes office as the first interim commissioner under subsection (1) within seven days of the commencement date,

the Evaluation Committee shall use its best endeavours to select and recommend to the Minister an interim commissioner under section 10 within twenty-eight days of the commencement date.

(5) In any event, the Evaluation Committee shall endeavour to select the first commissioner within six months of the commencement date.

133. (1) Within one month of the commencement date, the Minister responsible for Finance shall establish a special fund in accordance

Transitional
licence fee and
funding
arrangement

with section 100(2) of the Constitution called the Compensation Special Fund, which shall be managed under section 17, subject to necessary modifications of section 17.

- (2) No money shall be issued or schedule of payments authorised from the Compensation Special Fund except as duly signed by the Accountant-General.
- (3) During the transitional funding period—
 - (a) section 17(2)(a) does not apply to any licence fee payable under section 20 and all such licence fees shall instead be paid –
 - (i) in the case of Solomon Telekom, in respect of licence fees accruing prior to the new entrant launch date, to the escrow holder, and on other terms, agreed between Solomon Telekom and the Government; and
 - (ii) in all other cases, into the Compensation Special Fund,
 - (b) any payment of licence fees by Solomon Telekom to the escrow holder pursuant to subparagraph (a)(i) shall be a full discharge of Solomon Telekom’s obligations to pay those licence fees under its prior licence and under Solomon Telekom’s new licence that accrued prior to the new entrant launch date;
 - (c) section 17(2)(a) does not apply to any amount received from a competitive selection process, if any, carried out under section 39(2) or 128 for the issuance of an individual licence and such amount received shall instead be paid into the Compensation Special Fund;
 - (d) subsections 20(2), (3) and (4) do not apply and the annual licence fee shall be –
 - (i) in the case of Solomon Telekom, in respect of the period prior to the new entrant launch date, seven percent of Solomon Telekom’s annual gross

- revenues in its most recent financial reporting year; and
- (ii) in all other cases, two percent of a service provider's annual gross revenue in its most recent financial reporting year;
- (e) section 20(5)(b) does not apply and –
- (i) in the case of any instalments payable by Solomon Telekom under section 20(5) from the commencement date up to and including the new entrant launch date, Solomon Telekom may retain the amount of such instalments in accordance with the contractual arrangements entered into between the Government and Solomon Telekom prior to the commencement date; and
 - (ii) the instalments payable under section 20(5) shall each be in an amount equal to –
 - (A) in the case of Solomon Telekom, in respect of the period prior to the new entrant launch date, seven percent of Solomon Telekom's gross revenues in the previous financial quarter; and
 - (B) in all other cases, two percent of the licensee's gross revenue in the previous financial quarter;
- (f) subject to subsection (4), all moneys in the Compensation Special Fund shall be paid to Solomon Telekom until its rights under subsection (10) are discharged.

(4) Subject to subsection (7), if at any time the Telecommunications Commission notifies the Accountant-

General that it has or reasonably expects to have a funding deficit, then before any payment is made from the Compensation Special Fund to Solomon Telekom under subsection (3)(d), the Accountant-General shall cause to be transferred to the Telecommunications Commission Special Fund any amounts in the Compensation Special Fund up to such amount as is required to make up such deficit.

(5) When providing the notice to the Accountant-General under subsection (4), the Telecommunications Commission shall also provide a copy of such notice to the Minister, the Minister responsible for Finance, Solomon Telekom and all other licensees, and promptly thereafter publish it on its website.

(6) Where a transfer has been made from the Compensation Special Fund to the Telecommunications Commission Special Fund under subsection (4), the Telecommunications Commission shall repay such amount to the Compensation Special Fund from such surplus cash, if any, in the Telecommunications Commission Special Fund at the end of any financial year as is not required to meet the anticipated future expenses of the Telecommunications Commission (including reserves for provisions or other anticipated expenses), taking into account its reasonably anticipated future revenues.

(7) Subsection (4) shall not apply to make up a funding deficit if a supplementary fee could be levied under section 21 to make up such funding deficit.

(8) The purpose of subsections (4), (5), (6) and (7) is to ensure that payment of funds to the Compensation Special Fund instead of the Telecommunications Commission Special Fund during the transitional funding period does not prevent the Telecommunications Commission from being able to meet its expenses as they fall due without drawing upon cash reserved for provisions or other anticipated expenses.

(9) At the end of the transitional funding period, the Accountant-General shall transfer any amount remaining in the Compensation Special Fund to the Telecommunications Commission Special Fund and the Minister responsible for Finance shall wind-up the Compensation Special Fund.

(10) Solomon Telekom shall have the right to receive

compensation in connection with the surrender and replacement of its prior licence in accordance with any specific commitment of the Government to pay such compensation.

(11) Upon expiration of the transitional funding period and winding up of the Compensation Special Fund in accordance with this section—

- (a) the Accountant-General shall notify the Minister, the Minister responsible for Finance and the Telecommunications Commission of such expiration; and
- (b) this section shall have no further effect and section 17(2)(a) and subsections 20(2), (3), (4) and (5)(a) shall have full effect.

(12) Any amount of compensation payable to Solomon Telekom under subsection (10) remaining unpaid by the end of the transitional funding period shall be a debt owing by the Government to Solomon Telekom, due on the first anniversary of the end of the transitional funding period.

(13) Solomon Telekom shall be entitled to set-off any amount of the debt under subsection (12) remaining unpaid more than thirty days after such debt becomes due against any amounts of sales tax Solomon Telekom owes to the Government.

(14) Solomon Telekom shall also be entitled to set-off any amount paid under any agreement between Solomon Telekom and the Government by—

- (a) the escrow holder to the Government; or
- (b) Solomon Telekom to the Government instead of to the escrow holder,

which is not subsequently paid to Solomon Telekom by the date that it is due in accordance with that agreement against any amounts of sales tax Solomon Telekom owes to the Government.

(15) The “transitional funding period” is the period—

- (a) commencing on the date of issuance of a new licence to Solomon Telekom in accordance with section 127; and
- (b) expiring on the earlier of –
 - (i) fifteen days after the expiry of the calendar quarter in which fifth anniversary of the new entrant launch date occurs; and
 - (ii) the date on which the rights of Solomon Telekom to receive any payment under subsection (10) are satisfied or otherwise cease.

(16) Any dispute as to amounts transferable to or from the Compensation Special Fund or Telecommunication Commission Special Fund or as to any payments payable to Solomon Telekom under this section or the satisfaction or ceasing of Solomon Telekom’s right to receive payments shall be referred to the High Court.

(17) In this section, “escrow holder” means the person appointed as escrow holder by Solomon Telekom and the Government to hold the licence fees on escrow in accordance with this section.

Rural Fixed Lines
Special Fund

134. (1) Within one month of the commencement date, the Minister responsible for Finance must establish a special fund under section 100(2) of the Constitution called the “Rural Fixed Lines Special Fund”, which shall be managed under section 17, subject to necessary modifications of section 17.

(2) Until the fifth anniversary of the new entrant launch date, the Telecommunications Commission must disburse moneys from the Rural Fixed Lines Special Fund to fund any contractual obligation of the Government to Solomon Telekom established on the commencement date to compensate Solomon Telekom for any defined losses (losses defined in any agreement between Solomon Telekom and Government) incurred in providing telecommunications services to Solomon Telekom’s fixed line users outside of Honiara.

(3) Any contractual obligation of the Government to Solomon Telekom established on the commencement date to

compensate Solomon Telekom for any defined losses incurred in providing telecommunications services to Solomon Telekom's fixed line users outside of Honiara shall be funded from—

- (a) grants and donations, if any, made to or for the benefit of the Rural Fixed Lines Special Fund; and
 - (b) appropriations, if any, by Parliament from the Consolidated Fund.
- (4) The Telecommunications Commission shall not levy licensees to fund the contractual obligations referred to in subsection (3).
- (5) Any amount of compensation payable to Solomon Telekom under subsection (2) remaining unpaid by the end of the calendar quarter in which the expiry of the fifth anniversary of the new entrant launch date occurs shall be a debt owing by the Government to Solomon Telekom, due thirty days after the fifth anniversary of the new entrant launch date.
- (6) Solomon Telekom shall be entitled to set-off any amount of the debt under subsection (5) remaining unpaid more than thirty days after such debt becomes due against any amounts of sales tax Solomon Telekom owes to the Government.

135. (1) Upon appointment of the first commissioner or interim commissioner in accordance with this Act, Solomon Telekom shall co-operate with the Telecommunications Commission to transfer within twelve months of the new entrant launch date the registry and registration and allocation processes for domains to the Telecommunications Commission or its nominee in accordance with section 84.

(2) Until the transfer of the registry and registration and allocation processes for domains to the Telecommunications Commission under subsection (1), Solomon Telekom shall be responsible for such matters.

(3) Solomon Telekom's co-operation under subsection (1) shall include taking all reasonable steps to procure the consent of any relevant contracting parties including without limitation the Internet Assigned Numbers Authority

Transition of
domain registry
services

Encumbrances by
Solomon Telekom

136. Subsections 43(5), (7) and (8) do not apply to any financing arrangements that Solomon Telekom entered into with a financier prior to the commencement date, provided that upon exercise by a financier of its rights under the encumbrance, including where such encumbrance has been varied or amended after the commencement date—

- (a) none of the rights and obligations under the prior or new Solomon Telekom licence will be transferred to another licensee; and
- (b) the Telecommunications Commission shall approve the transfer of the rights and obligations under the licence to a person that —
 - (i) has at the time of the transfer of the licence relevant experience, capability and qualifications in the operation of telecommunications networks and provision of telecommunications services of at least the level that Solomon Telekom had at the time the licence was issued to it;
 - (ii) is ready and able to commence operation of a telecommunications network and provision of telecommunications services in accordance with the licence; and
 - (iii) is not disqualified under any law or determination, order, direction or regulation from being a licensee in Solomon Islands.

Tax status of
compensation

137. Solomon Telekom shall be exempt from the payment of income or other taxes on any compensation it receives under section 133(10), or on any monies it receives under section 134, and the provisions of the Income Tax Act (Cap. 123) do not apply to that compensation or such monies.

Existing licence

138. Until the issuance of the new licence to Solomon Telekom in accordance with section 127, Solomon Telekom's prior licence shall continue in full force and effect.

Customs duty
exemption

139. For the period from the ninth day of June 2009 to the ninth day of June 2010, the Comptroller of Customs and Excise shall —

- (a) grant an exemption from import duty on all telecommunications apparatus, materials, equipment, associated replacement and spare parts, tools, mechanical or electrical aids and consumable store items imported into Solomon Islands by Solomon Telekom which are to be installed or used in Solomon Islands by Solomon Telekom as part of or in the running of Solomon Telekom's telecommunications system, provided that this exemption may, by order of the Minister responsible for Finance cease to apply to items of telecommunications terminal apparatus to be connected to Solomon Telekom's telecommunications system for the purpose of transmission or reception of messages by subscribers to Solomon Telekom's telecommunications services; and
- (b) consider, on a case by case basis, applications from Solomon Telekom for exemption from import duty on specialised telecommunications vehicles and grant an exemption from import duty where such vehicles are required for specific development projects.

140. (1) Solomon Telekom is entitled to any and all tax, duty and other fiscal exemptions in whole or in part that are granted by or on behalf of the Government to the new entrant during the term of the new mobile licence, except that this entitlement shall only apply during the original term of Solomon Telekom's new licence.

Equivalent treatment for exemptions

- (2) The Government shall notify Solomon Telekom within thirty days of the granting of any such exemptions to the new entrant.

141. (1) Notwithstanding sections 18(2)(m) and 36 of the Income Tax Act (Cap. 123), any dividends paid by Solomon Telekom to shareholders, who are exempt from income tax on and not subject to the deduction of withholding tax from dividends paid by Solomon Telekom, shall be an allowable deduction to Solomon Telekom for the year of income in which such dividends are paid.

Tax dividends

- (2) In subsection (1) "paid" has the same meaning as in section 36(6) of the Income Tax Act (Cap. 123).

142. Without limiting the provisions of this Act relating to self-regulation, the Telecommunications Commission may make regulations in relation to matters required to be prescribed under this Act.

Regulations

SCHEDULE 1

(section 127(4))

GOVERNMENT OF SOLOMON ISLANDS

TELECOMMUNICATIONS LICENCE

SOLOMON TELEKOM COMPANY LIMITED

IN exercise of the powers conferred under section 127 of the Telecommunications Act ("the **Act**"), [] hereby grants to Solomon Telekom Company Limited (**STL**), for the period specified in clause 2 of this licence, an individual licence in respect of the provision of the telecommunications services referred to in clause 1 of this licence and subject to the other terms and conditions specified in this licence.

Made at Honiara this [] day of [] 2009.

[]

1.SCOPE OF THE LICENCE

1.1 TERMS USED IN THIS LICENCE

The following terms are defined in the Act:

control;

funding deficit;

dominant service provider;

gross revenues;

new entrant launch date;

new mobile licence;

Telecommunications Commission;

telecommunications equipment;

telecommunications market;

telecommunications service;

telecommunication network; and

transitional funding period,

and any other terms used in this licence shall have the meaning given to them in the Act and references to sections or Parts are references to sections or Parts of the Act.

1.2 LICENCE TO PROVIDE TELECOMMUNICATIONS SERVICES

This licence authorises STL to:

- (a) provide telecommunications services of any kind to end users in Solomon Islands; and

- (b) provide international telecommunications services of any kind to end users in Solomon Islands, and to persons outside Solomon Islands; and
- (c) provide any other telecommunications services (including value added services) that are supplementary to those telecommunications services.

1.3 APPROVAL TO OPERATE TELECOMMUNICATIONS NETWORKS OR TELECOMMUNICATIONS EQUIPMENT

- (a) This licence authorises STL to construct and operate all telecommunications networks or telecommunications equipment that are used to provide the telecommunications services referred to in sub-clause 1.2 in accordance with this licence.
- (b) STL shall continue to own and operate any existing telecommunications networks or telecommunications equipment it was using prior to the date of this licence, and notwithstanding section 79 of the Act, shall not require approval to use any telecommunications equipment that it was duly authorised to use on the date of this licence.
- (c) Where additional radio spectrum is required to construct and operate these telecommunications networks or telecommunications equipment, then the Telecommunications Commission may grant the right to use that additional radio spectrum under the Act.

1.4 NON-EXCLUSIVE LICENCE

This licence is granted to STL on a non-exclusive basis.

1.5 EMERGENCY SERVICES

Subject to any order, determination, direction or regulation made by the Telecommunications Commission under the Act, and subject to any Universal Access Plan adopted by the Telecommunications Commission under section 47 of the Act, STL shall provide emergency services for its subscribers, being dedicated emergency telephone line for each of the police, ambulance, fire brigade, marine search master, or other emergency service as the Telecommunications Commission may reasonably require, where a subscriber may dial directly to the police, ambulance, fire brigade, marine search master or other emergency services as the Telecommunications Commission may from time to time reasonably require:

PROVIDED THAT nothing in this sub-clause obliges STL to ensure that the relevant emergency department answers the telephone call connected by STL.

1.6 PUBLIC TELEPHONES

Subject to any order, determination, direction or regulation made by the Telecommunications Commission under the Telecommunications Act, and subject to any Universal Access Plan adopted by the Telecommunications Commission under section 47 of the Act, STL shall provide public telephones, which provide pre-paid, post-paid and emergency services in locations that the Telecommunications Commission may reasonably require and STL may reasonably provide.

1.7 COMPLIANCE WITH THE TELECOMMUNICATIONS ACT

STL shall comply at all times with the Telecommunications Act, any determinations, orders, directions and regulations made under the Telecommunications Act and any other applicable laws of Solomon Islands.

2. TERM

The term of this licence shall expire on the fifteenth anniversary of the date of this licence. This licence comes into effect on the date of delivery of this licence to STL.

3. LICENCE FEES

3.1 LICENCE FEES DURING THE TRANSITIONAL FUNDING PERIOD

During the transitional funding period, STL shall, in accordance with section 133 of the Act, pay a licence fee of:

- (a) until the new entrant launch date, 7% of STL's gross revenues for the relevant period, provided that the first payment due under this licence shall be adjusted to reflect the extent to which the last payment made by STL under STL's prior telecommunications licence is in respect to the same period of time; and
- (b) after the new entrant launch date, 2% of STL's gross revenues for the relevant period.

3.2 LICENCE FEES AFTER THE TRANSITIONAL FUNDING PERIOD

- (a) After the transitional funding period, STL shall pay a licence fee as a percentage of STL's gross revenues, not exceeding 2%, for the relevant period, in accordance with section 20 of the Act.
- (b) The percentage of STL's gross revenues shall be set at a level intended to cover the Telecommunications Commission's budgeted costs (including without limitation provision for legal and other costs as contemplated in section 15 of the Act) of all of its activities other than those set forth in section 19 of the Act.

3.4 SUPPLEMENTARY LICENCE FEE

- (a) The Telecommunications Commission may set a supplementary licence fee payable by STL as a percentage of STL's gross revenues in their most recent financial reporting year, in accordance with section 21 of the Act.
- (b) A supplementary licence fee may be set only to make up a funding deficit resulting, or which the Telecommunications Commission reasonably expects will result, from any judicial review, appeal or any other legal proceedings.

3.5 OTHER FEES AND LEVIES

- (a) This clause 3 shall not limit STL's liability to pay any other fees and levies payable under the Telecommunications Act.
- (b) Fees and levies levied under the Telecommunications Act must, in accordance with section 18(3) of the Act, be set in an open, transparent, non-discriminatory, objective and competitively neutral manner, except that fees may be adjusted to encourage and accommodate the needs of small businesses in Solomon Islands.

4. RADIO SPECTRUM

4.1 USE OF RADIO SPECTRUM

Subject to Part 7 of the Act, and subject to any order, directions or regulation of the Telecommunications Commission under Part 4 of the Act:

- (a) STL may use the radio spectrum assigned and set out in Appendix A; and
- (b) no annual or other fee set under section 57(3) of the Act shall be payable by STL in respect of the right to use the radio spectrum assigned and set out in Appendix A.

4.2 TRANSITIONAL USE OF RADIO SPECTRUM

Subject to Part 7 of the Act, and subject to any order or regulation of the Telecommunications Commission under section 57 of the Act, STL may use all radio spectrum that it is using at the date of this licence, provided that STL shall not be entitled to use any radio spectrum (not being radio spectrum set out in Appendix A):

- (a) set out in the new mobile licence, from 1 November 2009; and
- (b) as agreed between STL and the Government, from 1 March 2010.

5. UNIVERSAL ACCESS

Any universal access levy that STL is required to pay under section 51 of the Act shall not exceed 2% of STL's gross revenues in the relevant period. STL will not be obliged to pay a universal access levy for a period of at least five years following the new entrant launch date.

6. QUALITY OF SERVICE

6.1 KEY PERFORMANCE INDICATORS

STL shall, if it is declared a dominant service provider in the telecommunications market in which mobile telecommunications services are provided, comply with the following key performance indicators for its mobile telecommunications network during each calendar quarter (the measurement period):

Parameter	Measurement	Obligation during 1 st year	Obligation during 2 nd year	Obligation during 3 rd year and after
1. Network call set-up success rate	The 10% of cells which have the highest levels of carried traffic during their busy hour during the measurement period are identified. The call set-up success rate is calculated for each cell during the identified busy hour. The network call set-up success rate is the average across the individual success rates for each cell.	>95%	>97%	>98%
2. Network dropped call rate (Urban Areas)	The network dropped call rate (Urban Areas) is calculated during the busy hour for each of the 10% of busiest cells (as for the call success rate) in Urban Areas. The network dropped call rate (Urban Areas) is the average over the dropped call rates for each such cell.	<3.5%	<2.0%	<1.5%
3. Network dropped call rate (Non-	The network dropped call rate (Non-Urban Areas) is calculated during the busy hour for each of the 10%	<5.0%	<5.0%	<5.0%

Urban Areas)	of busiest cells (as for the call success rate) in Non-Urban Areas. The network dropped call rate (Non-Urban Areas) is the average over the dropped call rates for each such cell.			
4. Network quality	The busy hour with the highest level of carried traffic during the measurement period is identified for each cell. The call set-up success rate and dropped call rates are then calculated for each cell over this busy hour. The proportion of cells satisfying the criterion (see definition in subclause 6.2) is the performance measure.	>90%	>93%	>95%

6.2 EXPLANATION OF PARAMETERS

- (a) The Network Call Set-up Success Rate parameter measures the call set-up success rate over the busiest part of the network. The call set-up success rate is defined as successful seizures for TCH/seizure attempts for TCH.
- (b) The Network Dropped Call Rate parameter measures the dropped call rate over the busiest part of the network in each of: (i) Urban Areas, and (ii) Non-Urban Areas. The network dropped call rate is defined as the proportion of calls successfully set up which terminate for any reason other than termination by either the calling or called parties. For the purpose of this clause 6:
- (i) “Urban Areas” means those main provincial centres in each province in which STL provides mobile telecommunications services; and
 - (ii) “Non-Urban Areas” means those parts of Solomon Islands, except for the Urban Areas, in which STL provides mobile telecommunications services.

- (c) The Network Quality parameter measures the proportion of the network over which performance is deemed to be adequate during busy periods. It is defined as the “number of cells with x% or lower dropped call rate and a call set up success rate of y% or higher divided by the total number of operational cells” where x and y are the respective obligations in the relevant measurement period.

7. AMENDMENT, SUSPENSION AND REVOCATION OF THIS LICENCE

7.1 AMENDMENT, SUSPENSION AND REVOCATION OF THIS LICENCE

The Telecommunications Commission may, by order or regulation, amend the conditions of, suspend or revoke this licence without compensation if:

- (a) STL agrees to the amendment, suspension or revocation;
- (b) STL has failed to comply with a licence condition, the Telecommunications Act, or a determination, order, direction or regulation under the Telecommunications Act and has failed to cure the failure within a reasonable time after service by the Telecommunications Commission of written notice to STL specifying the failure and requiring it to be cured;
- (c) STL made in the licence application or any documents submitted for registration any false statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
- (d) STL has entered into liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order by a court or tribunal for its compulsory winding-up or dissolution; or
- (e) STL has entered into receivership, except if it is, and the Telecommunications Commission is satisfied that it is likely to remain, in full compliance with the terms and conditions of this licence despite entering into receivership.

7.2 APPEAL TO THE HIGH COURT

Where the Telecommunications Commission suspends or revokes this licence under sub-clause 7.1, and if such suspension or revocation constitutes a deprivation or acquisition of property within Part II of the Constitution, then STL may appeal under section 42(2) or Part 17 of the Act to the High Court for the determination of its interest or right, the legality of the suspension or revocation, and if compensation is payable contrary to sub-clause 7.1, the amount of any compensation payable and the period of time within which it shall be paid.

7.3 REQUIREMENTS OF INTERNATIONAL TREATIES, ETC.

The Telecommunications Commission may by determination, order, direction or regulation amend this licence if such amendment is required as a result of applicable international treaties, commitments, recommendations or standards legally binding on Solomon Islands, except that such amendment shall:

- (a) be made only to the extent reasonably required as a result of such treaty, commitment, recommendation or standard as applicable; and
- (b) make the minimal change necessary to the original clause of this licence.

7.4 PAYMENT OF COMPENSATION

The Telecommunications Commission must pay reasonable compensation (the valuable consideration of which may take the form of cash or some other form and may be payable by way of lump sum or by instalments) within a reasonable period of time after an amendment under sub-clause 7.3 having due regard to all the relevant circumstances.

7.5 NOTIFICATION FROM THE TELECOMMUNICATIONS COMMISSION

The Telecommunications Commission must provide prior written notice to STL that it intends to amend its licence under sub-clause 7.3 and STL may within thirty (30) days appeal under section 102 of the Act to the Dispute and Appeal Panel for the determination of its interest or right, the legality of the amendment and the reasonableness of the compensation and the period of time within which it shall be paid.

7.6 ACCOUNT OF CONTINUITY OF SERVICE

In amending, suspending or revoking this licence, the Telecommunications Commission must take into account continuity of service to users and any hardship that may result to STL.

8. TRANSFERS OF LICENCES AND CONTROL OF LICENSEES

8.1 TRANSFERS OF LICENCES AND CONTROL OF LICENSEES

Except pursuant to this clause, no approvals are required for the transfer of this licence or control of STL.

8.2 APPROVAL OF TRANSFER OF CONTROL

Subject to section 130 of the Act, no transfer of control of STL shall have any legal force without the approval by determination or order of the Telecommunications Commission, such consent not to be unreasonably withheld.

8.3 APPROVAL OF TRANSFER OF THIS LICENCE

Subject to section 130 of the Act, no transfer of an individual licence shall have any legal force without the approval in writing by determination or order of the Telecommunications Commission.

8.4 APPLICATION FOR A TRANSFER

An application for a transfer requiring approval of the Telecommunications Commission under sub-clause 8.3 must include information about the proposed transaction, including without limitation:

- (a) a description of the terms of the transaction material to a determination of approval under this section 43(4) of the Act, which shall not include any statement of monetary consideration for the transaction;
- (b) information about any person who will take a transfer of this licence, or who will have control over STL, as a result of the transaction, including:

- (i) a description, and the identities, addresses and jurisdictions of incorporation or residence, of such persons and any persons having more than a five per cent (5%) direct or indirect ownership interest in them, and any affiliated persons;
 - (ii) a description of any markets in which they provide telecommunications services;
 - (iii) their annual revenues from telecommunications services;
 - (iv) the declared approximate value of their assets devoted to telecommunications business; and
 - (v) copies of their most recent annual and quarterly reports and financial statements;
- (c) any changes in support and assistance to be provided to STL by its affiliates; and
- (d) such other information as the Telecommunications Commission may reasonably require to enable it to make a determination under sub-clause 8.3, including but not limited to information relevant to the matters specified in sub-clause 8.7.

8.5 CORPORATE REORGANISATION

Sub-clauses 8.2 and 8.3 shall not apply to any transfer of a licence or control of STL to a person where such transfer is part of a corporate reorganisation or similar transaction and does not result in a change of control of the ultimate parent entity or person.

8.6 ENCUMBRANCES

Notwithstanding any other provision in this clause 8, in the case of an encumbrance by STL of this licence in favour of a reputable financial institution where:

- (a) the encumbrance is granted in security for a loan or other financial accommodation made in the ordinary course of such financial institution's business to STL or its affiliate for the purpose of STL's telecommunications business in Solomon Islands;
- (b) the security is necessary for the making of such loan or other financial accommodation; and

- (c) the terms and conditions of the encumbrance provide that upon its exercise all of the rights and obligations under this licence will be transferred to a person to be approved by the Telecommunications Commission who shall become a substitute licensee,

but such approval of the Telecommunications Commission for a person to become a substitute licensee under paragraph (c) will not be unreasonably withheld.

8.7 SUBSTITUTE LICENSEE

The Telecommunications Commission shall not withhold its approval of a transfer of an individual licence or control of an individual licensee under sub-clause 8.3 or of a person to become a substitute licensee under clause sub-8.6(c) if such person:

- (a) has, at the time of the transfer of this licence, relevant experience, capability and qualifications in the operation of telecommunications networks and provision of telecommunications services of at least the level that STL had at the time this licence was issued to it;
- (b) is ready and able to commence operation of a telecommunications network and provision of telecommunications services in accordance with this licence; and
- (c) is not disqualified under any law or determination, order or direction from being a licensee in Solomon Islands,

unless there are some special circumstances as to why approval should be withheld.

8.8 EXERCISE OF AN ENCUMBRANCE

- (a) No exercise of any encumbrance over this licence shall have legal effect unless this licence is transferred to a person approved by the Telecommunications Commission.
- (b) The exercise by a financial institution of any of its rights under any encumbrance over this licence, short of the transfer of any rights and obligations under the licence, will not contravene this clause 8.

8.9 OBLIGATIONS OF THE ORIGINAL LICENSEE

No approval by the Telecommunications Commission under sub-clause 8.2, 8.3 or 8.6 shall relieve STL from any obligation under this licence

unless the Telecommunications Commission consents to STL being relieved from such obligation.

8.10 ENCUMBRANCES PRIOR TO THE COMMENCEMENT DATE

This clause 8 shall be subject to section 136 of the Act.

9. PRICE REGULATION

9.1 PRICE REGULATION

The Telecommunications Commission may, on application or on its own motion, regulate the prices of services provided by a dominant service provider in a telecommunications market with reference to relevant benchmarks in accordance with section 71 of the Act.

9.2 REASONABLE RETURN

The Telecommunications Commission must seek to ensure that a price cap, glide path or any other method of price regulation applied to STL does not:

- (a) prevent STL from achieving a reasonable return on investment; or
- (b) violate section 60(2) of the Act.

10. NOTICES

Any notice required to be served upon STL or given to STL shall be in writing and shall be deemed to have been served or given:

- (a) as soon as the same is personally delivered to the address set out below (or such other address as STL may notify to the Telecommunications Commission by notice);
- (b) immediately if transmission by facsimile is effected to the facsimile number set out below (or such other facsimile number as STL may notify to the Telecommunications Commission by notice), provided receipt of transmission has been confirmed by STL; or

- (c) immediately if transmission is effected by such other electronic medium as the parties may from time to time agree to such place, number or code as STL may notify to the Telecommunications Commission by notice:

PROVIDED THAT, if personal delivery or transmission by facsimile or other electronic means is effected after 4.00 pm on a Working Day or any time on a day other than a Working Day, then such notice shall be deemed to be given the next Working Day following the delivery, facsimile or electronic transmission.

Solomon Telekom Company Limited

Telekom Haus
Mendana Avenue
Honiara
Solomon Islands

Attention: Chief Executive

Telephone: 23358

Facsimile: 23642

11. GOVERNING LAW

This licence shall be governed in all respects by and construed in accordance with the laws of Solomon Islands.

Appendix A

List of radio spectrum

Sites/ Station Names	Band (MHz)	Tx/Rx frequencies (MHz)
1. Taroniara	159 - 174	163.500 / 168.650
2. Aviavi	403 - 423	411.600 / 421.050
3. Kohimarama (BPTC)	403 - 423	400.800 / 411.425
4. Maravagi Resort	403 - 423	400.425 / 411.450
5. Tenaru	403 - 423	400.225 / 411.650
6. Waimapuru	148 - 162	148.500 / 154.700
7. Kakara	159 - 174	163.700 / 168.750
8. Foloji	159 - 174	164.100 / 169.300
9. Anoabu	159 - 174	165.850 / 172.900
10. Iclarm	380 - 403	380.150 / 386.275
11. Vonunu	159 - 174	162.200 / 168.750
12. Loga	403 - 423	400.025 / 411.225
13. Kukundu	159 - 174	155.950 / 161.250
14. Lola Resort	380 - 403	380.250 / 386.300
15. Kenelo	380 - 403	385.250 / 400.050
17. Goldie College	159 - 174	162.300 / 167.550
18. Selwyn College	148 - 162	148.100 / 156.300
19. Selwyn College	159 - 174	163.800 / 170.100
20. Kukundu School	159 - 174	162.100 / 169.300
21. Radio Workshop	159 - 174	162.300 / 167.550
22. Radio Workshop	159 - 174	162.700 / 168.350
23. Radio Workshop	148 - 162	148.100 / 156.300
24. Radio Workshop	148 - 162	148.550 / 154.800
25. Radio Workshop	148 - 162	148.500 / 154.700
26. Radio Workshop	380 - 403	386.550 / 380.750
27. Radio Workshop		
28. RWS / Planning		167.750 / 167.850
29. TV BBC - Vavaya		182
30. TV ABC - Vavaya		203
31. TV One News - Vavaya		217.25
32. TV UHF - Vavaya		639.25
33. Kaimbia		479.0125 / 483.1125

High Frequency (KHz)	Description / Services
2025.0000	Maritime/Barrett
2040.0000	Maritime/Barrett
2925.0000	Maritime/Barrett
4548.0000	E/Station HF
4588.0000	Maritime/Barrett
5113.0000	Maritime/Barrett
5129.0000	E/Station HF
5335.0000	Isabel
5400.0000	Choiseul
5745.0000	Guadalcanal
5805.0000	Malaita
5811.0000	Temotu
5826.0000	National
5846.0000	Western
5875.0000	Makira/Ulawa
5898.0000	Central
6815.0000	RenBel
6918.0000	Maritime/Barrett
6966.0000	Maritime/Barrett
8140.0000	Maritime/Barrett
8165.0000	E/Station HF
11600.0000	Maritime/Barrett
11645.0000	Maritime/Barrett

Very High Frequency (MHz)	Description / Services
148.1000	All radio telephone systems
148.5000	All radio telephone systems
148.5500	All radio telephone systems
154.7000	All radio telephone systems
154.8000	All radio telephone systems
155.0500	All radio telephone systems
155.9500	All radio telephone systems
156.3000	All radio telephone systems
161.1500	All radio telephone systems
161.2500	All radio telephone systems
162.1000	All radio telephone systems
162.2000	All radio telephone systems
162.3000	All radio telephone systems
162.3000	All radio telephone systems
162.4000	All radio telephone systems
162.5000	All radio telephone systems
162.5500	All radio telephone systems
162.7000	All radio telephone systems
162.8000	All radio telephone systems
163.3300	All radio telephone systems
163.5000	All radio telephone systems

163.6000	All radio telephone systems
163.7000	All radio telephone systems
163.8000	All radio telephone systems
164.1000	All radio telephone systems
164.3000	UNDP repeater Kaimbria
165.0250	UNDP repeater Kaimbria
165.6000	ANZ repeater (new)
165.8500	ANZ repeater (new)
165.9500	ANZ repeater (new)
167.3000	ANZ repeater (new)
167.4000	ANZ repeater (new)
167.4500	ANZ repeater (new)
167.5500	ANZ repeater (new)
167.7500	Telekom Vehicle fleet
167.8500	Telekom Vehicle fleet
168.0000	All radio telephone systems
168.3500	All radio telephone systems
168.5500	All radio telephone systems
168.6500	All radio telephone systems
168.7500	All radio telephone systems
169.3000	UNDP repeater Kaimbria
169.5000	All radio telephone systems
170.1000	All radio telephone systems
170.2250	All radio telephone systems
172.9000	All radio telephone systems
173.0000	All radio telephone systems
182.2500	BBC TV
203.2500	ABC TV
217.2500	ABC TV and ONE TV

Ultra High Frequency (MHz)	Description / Services
380 - 420	Wireless Local Loop
380.0250	All radio telephone systems
380.0500	All radio telephone systems
380.1000	All radio telephone systems
380.2000	All radio telephone systems
380.3000	All radio telephone systems
386.1000	All radio telephone systems
386.1500	All radio telephone systems
386.2000	All radio telephone systems
386.3000	All radio telephone systems
386.4000	All radio telephone systems
400.0250	All radio telephone systems
400.0500	All radio telephone systems
400.1000	All radio telephone systems
400.1250	All radio telephone systems
400.2250	All radio telephone systems
400.2500	All radio telephone systems

400.2500	All radio telephone systems
400.2750	All radio telephone systems
400.4250	All radio telephone systems
400.4750	All radio telephone systems
400.4750	All radio telephone systems
400.8000	All radio telephone systems
411.2250	All radio telephone systems
411.2500	All radio telephone systems
411.3250	All radio telephone systems
411.4250	All radio telephone systems
411.4500	All radio telephone systems
411.5000	All radio telephone systems
411.5500	All radio telephone systems
411.6000	All radio telephone systems
411.6500	All radio telephone systems
411.6750	All radio telephone systems
411.6750	All radio telephone systems
411.7250	All radio telephone systems
411.8500	All radio telephone systems
421.0000	All radio telephone systems
421.0500	All radio telephone systems
421.3000	All radio telephone systems
479.0125	UHF Repeater (Vehicle mobile)
483.1125	UHF Repeater (Vehicle mobile)
639.2500	ABC TV and ONE TV
900.0000	DXR200
945.0000	DXR200
827 – 880	(AMPS)

Band	STL spectrum allocation
900 MHz	890.0 MHz to 898.2 MHz and 935.0 MHz to 943.2 MHz
1400 MHz (ITU-R F.1242, 3.5 MHz channelling, 7 channel option)	Channels 1 to 3 (inclusive)
1800 MHz	1710.0 MHz to 1734.8 MHz and 1805.0 MHz to 1829.8 MHz
2.1 GHz	1920 MHz to 1935 MHz and

	2110 MHz to 2125 MHz
2.5 GHz	2500 MHz to 2540 MHz
3.5 GHz	3650 MHz to 3690 MHz and 3750 MHz to 3790 MHz
5 GHz (ITU-R F.1099-4, Annex 3, 28 MHz channelling)	Channels 6 to 10 (inclusive)
Lower 6 GHz (ITU-R F.383-8, Main, 29.65 MHz channelling)	Channels 1 to 4 (inclusive)
7 GHz (ITU-R F.385-9, Annex 1, 28 MHz channelling)	Channel 5
8 GHz (ITU-R F.386-8, Annex 3, 28 MHz channelling)	Channels 1 to 4 (inclusive)
11 GHz (ITU-R F.387-10, Main 1.1, 40 MHz channelling)	Channels 9 to 12 (inclusive)
13 GHz (ITU-R F.497-7, Main, 28 MHz channelling)	Channels 1 and 2
15 GHz (ITU-R F.636-3, Main, 28 MHz channelling)	Channels 11 to 15 (inclusive)

C band	STL spectrum allocation																																										
C band (domestic)	SATELLITE BANDWIDTH ALLOCATION – Lease 12 MHz on 183 (WHL 01/WHR 01)																																										
	Lease Bandwidth: 5880 – 5892 MHz (60 – 72 MHz)																																										
	Transponder Centre Frequency: 5890 MHz (70 MHz)																																										
	Transponder Bandwidth: 72 MHz (5854 – 5926 MHz)																																										
	<table border="0"> <thead> <tr> <th data-bbox="586 737 657 758">Details</th> <th data-bbox="678 758 781 779">Bandwidth</th> <th data-bbox="1019 737 1179 758">Centre Frequency</th> </tr> </thead> <tbody> <tr> <td data-bbox="586 863 613 884">1.</td> <td data-bbox="678 863 987 915">Honiara – Taro (ANZ ATM – 9.6 k) 0.0135 MHz</td> <td data-bbox="1019 863 1146 884">60.00675 MHz</td> </tr> <tr> <td data-bbox="586 936 613 957">2.</td> <td data-bbox="678 936 987 989">Taro – Honiara (ANZ ATM – 9.6 k) 0.0135 MHz</td> <td data-bbox="1019 936 1146 957">60.02025 MHz</td> </tr> <tr> <td data-bbox="586 1010 613 1031">3.</td> <td data-bbox="678 1010 987 1062">Honiara – Buala (ANZ ATM – 9.6 k) 0.0135 MHz</td> <td data-bbox="1019 1010 1146 1031">60.03375 MHz</td> </tr> <tr> <td data-bbox="586 1083 613 1104">4.</td> <td data-bbox="678 1083 987 1136">Buala – Honiara (ANZ ATM – 9.6 k) 0.0135 MHz</td> <td data-bbox="1019 1083 1146 1104">60.04725 MHz</td> </tr> <tr> <td data-bbox="586 1157 613 1178">5.</td> <td data-bbox="678 1157 987 1209">Honiara – Kira Kira (ANZ ATM – 9.6 k) 0.0135 MHz</td> <td data-bbox="1019 1157 1146 1178">60.06075 MHz</td> </tr> <tr> <td data-bbox="586 1230 613 1251">6.</td> <td data-bbox="678 1230 987 1283">Kira Kira – Honiara (ANZ ATM – 9.6 k) 0.0135 MHz</td> <td data-bbox="1019 1230 1146 1251">60.07425 MHz</td> </tr> <tr> <td data-bbox="586 1304 613 1325">7.</td> <td data-bbox="678 1304 987 1356">Honiara – Lata (ANZ ATM – 9.6 k) 0.0135 MHz</td> <td data-bbox="1019 1304 1146 1325">60.08775 MHz</td> </tr> <tr> <td data-bbox="586 1377 613 1398">8.</td> <td data-bbox="678 1377 987 1430">Lata – Honiara (ANZ ATM – 9.6 k) 0.0135 MHz</td> <td data-bbox="1019 1377 1146 1398">60.10125 MHz</td> </tr> <tr> <td data-bbox="586 1451 613 1472">9.</td> <td data-bbox="678 1451 889 1514">SPARE (Viasat Segment) 0.117 MHz</td> <td data-bbox="1019 1451 1198 1472">60.108 – 60.225 MHz</td> </tr> <tr> <td></td> <td data-bbox="678 1535 954 1556" style="padding-left: 20px;">- approx. 4 channels (@ 25 KHz)</td> <td></td> </tr> <tr> <td data-bbox="586 1577 613 1598">10.</td> <td data-bbox="678 1577 813 1629">Outlink (Viasat) 0.045 MHz</td> <td data-bbox="1019 1577 1122 1598">60.265 MHz</td> </tr> <tr> <td data-bbox="586 1650 613 1671">11.</td> <td data-bbox="678 1650 776 1703">Aloha 1 0.045 MHz</td> <td data-bbox="1019 1650 1122 1671">60.330 MHz</td> </tr> <tr> <td data-bbox="586 1724 613 1745">12.</td> <td data-bbox="678 1724 776 1745">Aloha 2</td> <td data-bbox="1019 1724 1122 1745">60.395 MHz</td> </tr> </tbody> </table>	Details	Bandwidth	Centre Frequency	1.	Honiara – Taro (ANZ ATM – 9.6 k) 0.0135 MHz	60.00675 MHz	2.	Taro – Honiara (ANZ ATM – 9.6 k) 0.0135 MHz	60.02025 MHz	3.	Honiara – Buala (ANZ ATM – 9.6 k) 0.0135 MHz	60.03375 MHz	4.	Buala – Honiara (ANZ ATM – 9.6 k) 0.0135 MHz	60.04725 MHz	5.	Honiara – Kira Kira (ANZ ATM – 9.6 k) 0.0135 MHz	60.06075 MHz	6.	Kira Kira – Honiara (ANZ ATM – 9.6 k) 0.0135 MHz	60.07425 MHz	7.	Honiara – Lata (ANZ ATM – 9.6 k) 0.0135 MHz	60.08775 MHz	8.	Lata – Honiara (ANZ ATM – 9.6 k) 0.0135 MHz	60.10125 MHz	9.	SPARE (Viasat Segment) 0.117 MHz	60.108 – 60.225 MHz		- approx. 4 channels (@ 25 KHz)		10.	Outlink (Viasat) 0.045 MHz	60.265 MHz	11.	Aloha 1 0.045 MHz	60.330 MHz	12.	Aloha 2	60.395 MHz
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	0.045 MHz	
13.	M & C 0.045 MHz	60.460 MHz
14.	Digital DAMA Pool (Seg. 1) 0.400 MHz - 16 channels (@ 25 KHz)	60.525 – 60.925 MHz
15.	Pilot (Tracking) 0.036 MHz	61.000 MHz
16.	Digital DAMA Pool (Seg. 2) 2.100 MHz – 84 channels (@ 25 KHz)	61.015 – 63.115 MHz
17.	Bank of South Pacific Links:	
	a) Munda – Port Moresby (64k)	63.1250 MHz 0.049 MHz
	b) Port Moresby – Munda (64k)	63.1750 MHz 0.049 MHz
	c) Gizo – Port Moresby (64k)	63.2250 MHz 0.049 MHz
	d) Port Moresby – Gizo (64k)	63.2750 MHz 0.049 MHz
	e) Honiara – Port Moresby (256k)	63.4000 MHz 0.132 MHz
	f) Port Moresby – Honiara (256k)	63.6000 MHz 0.132 MHz
18.	Honiara – Buala (Data – 64k) 0.090 MHz	63.840 MHz
19.	Buala – Honiara (Data – 64k) 0.090 MHz	63.930 MHz
20.	Honiara – Munda (Data – 64k) 0.090 MHz	64.020 MHz
21.	Munda – Honiara (Data – 64k) 0.090 MHz	64.110 MHz
22.	Honiara – Auki (Data – 256k) 0.360 MHz	64.355 MHz
23.	Auki – Honiara (Data – 256k) 0.360 MHz	64.715 MHz
24.	Honiara – Atoifi (Data – 64k) 0.090 MHz	64.960 MHz

	1. Telstra Reach (1536 Kbps)		
	Transmit Frequency:	6277.0975 MHz	
	1544.000 kHz		
	Receive Frequency:	4050.5450 MHz	
	1544.000 kHz		
	2. Telecom New Zealand (1024 Kbps)		
	Transmit Frequency:	6273.5875 MHz	1057.500 kHz
	Receive Frequency:	4140.8045 MHz	1057.500 kHz
	3. Optus Australia (2048 Kbps)		
	Transmit Frequency:	6281.9125 MHz	2002.000 kHz
	Receive Frequency:	4054.9100 MHz	2002.000 kHz

SCHEDULE 2
(section 128(3))

GOVERNMENT OF SOLOMON ISLANDS

TELECOMMUNICATIONS LICENCE

[NEW ENTRANT] LIMITED

IN exercise of the powers conferred under section 128 of the Telecommunications Act 2009 (“the Act”), [] hereby grants to [New Entrant] Limited (**NME**), for the period specified in clause 2 of this licence, an individual licence in respect of the provision of the telecommunications services referred to in clause 1 of this licence and subject to the other terms and conditions specified in this licence.

Made at Honiara this [] day of [] 2009.

[]

1. SCOPE OF THE LICENCE

1.1 TERMS USED IN THIS LICENCE

The following terms are defined in the Act:

- (a) control;
- (b) dominant service provider;
- (c) funding deficit;
- (d) gross revenues;
- (e) new entrant launch date;
- (f) Telecommunications Commission;
- (g) telecommunications equipment;
- (h) telecommunications market;
- (i) telecommunications service;
- (j) telecommunication network; and
- (k) transitional funding period,

and any other terms used in this licence shall have the meaning given to them in the Act and references to sections or Parts are references to sections or Parts of the Act.

1.2 LICENCE TO PROVIDE TELECOMMUNICATIONS SERVICES

This licence authorises NME to:

- (a) provide mobile telecommunications services of any kind to end users in Solomon Islands; and

- (b) provide international telecommunications services of any kind to end users in Solomon Islands, and to persons outside Solomon Islands; and
- (c) provide any other telecommunications services (including value added services) that are supplementary to those telecommunications services. NME is the new entrant for the purposes of the Telecommunications Act.

1.3 **MEANING OF MOBILE TELECOMMUNICATIONS SERVICES**

(1) For the purposes of this licence, “mobile telecommunications services” means voice and data telecommunications services that are provided using a mobile radio system:

- (a) in which assigned radio spectrum can be re-used simultaneously in nearby geographic areas without interference between users; and
- (b) that is capable of supporting hand-off, of sessions or calls, between wireless transmitters as users move between places at a speed that is suitable for continuity of voice calls throughout that hand-over.

(2) Telecommunications that use the following standards would *prima facie* be mobile telecommunications services:

- (c) GSM, UMTS (3GSM)/HSPA and variants, LTE, cdmaOne, cdma2000, EV-DO and variants; and
- (d) Mobile WiMax (IEEE 802.16e-2005 or 802.16e), including WiBro.

(3) Telecommunications services that use the following standards would *prima facie* not be mobile telecommunications services:

- (a) Fixed WiMAX (IEEE 802.16-2004 or 802.16d); and
- (b) Wi-Fi (IEEE 802.11, 802.11a, 802.11b, 802.11g, 802.11n and others, except 802.11r).

1.4 **APPROVAL TO OPERATE TELECOMMUNICATIONS NETWORKS OR TELECOMMUNICATIONS EQUIPMENT**

- (a) This licence authorises NME to construct and operate all telecommunications networks or telecommunications equipment that are used to provide the telecommunications services referred to in sub-clause 1.2 in accordance with this licence.
- (b) Where additional radio spectrum is required to construct and operate these telecommunications networks or telecommunications equipment, then the Telecommunications Commission may grant the right to use that additional radio spectrum under the Telecommunications Act.

1.5 **NON-EXCLUSIVE LICENCE**

This licence is granted to NME on a non-exclusive basis.

1.6 **EMERGENCY SERVICES**

Subject to any order, determination, direction or regulation made by the Telecommunications Commission under the Telecommunications Act, and subject to any Universal Access Plan adopted by the Telecommunications Commission under section 47 of the Act, NME shall provide emergency services for its subscribers, being dedicated emergency telephone line for each of the police, ambulance, fire brigade, marine search master, or other emergency service as the Telecommunications Commission may reasonably require, where a subscriber may dial directly to the police, ambulance, fire brigade, marine search master or other emergency services as the Telecommunications Commission may from time to time reasonably require: PROVIDED THAT nothing in this sub-clause obliges NME to ensure that the relevant emergency department answers the telephone call connected by NME.

1.7 **COMPLIANCE WITH THE TELECOMMUNICATIONS ACT**

NME shall comply at all times with the Telecommunications Act, any determinations, orders, directions and regulations made under the Telecommunications Act and any other applicable laws of Solomon Islands.

2. TERM

2.1 TERM OF LICENCE

The term of this licence shall expire on the fifteenth anniversary of the date of this licence. This licence comes into effect on the date of delivery of this licence to NME.

2.2 COMMENCEMENT OF PROVISION OF TELECOMMUNICATIONS SERVICES

Notwithstanding sub-clause 2.1, NME shall comply with section 128(5) of the Act.

3. LICENCE FEES

3.1 LICENCE FEES DURING THE TRANSITIONAL FUNDING PERIOD

During the transitional funding period, NME shall pay a licence fee of 2% of NME's gross revenues for the relevant period, in accordance with section 133 of the Act.

3.2 LICENCE FEES AFTER THE TRANSITIONAL FUNDING PERIOD

- (a) After the transitional funding period, NME shall pay a licence fee as a percentage of NME's gross revenues, not exceeding 2% of NME's gross revenues, for the relevant period, in accordance with section 20 of the Act.
- (b) The percentage of NME's gross revenues shall be set at a level intended to cover the Telecommunications Commission's budgeted costs (including without limitation provision for legal and other costs as contemplated in section 15 of the Act) of all of its activities other than those set forth in section 19 of the Act.

3.3 SUPPLEMENTARY LICENCE FEE

- (a) The Telecommunications Commission may set a supplementary licence fee payable by NME as a percentage of NME's gross revenues in their most recent financial reporting year, in accordance with section 21 of the Act.
- (b) A supplementary licence fee may be set only to make up a funding deficit resulting, or which the Telecommunications Commission reasonably expects will result, from any appeal or legal proceedings.

3.4 OTHER FEES AND LEVIES

- (a) This clause 3 shall not limit NME's liability to pay any other fees and levies payable under the Telecommunications Act.
- (b) Fees and levies levied under the Telecommunications Act must, in accordance with section 18(3) of Act, be set in an open, transparent, non-discriminatory, objective and competitively neutral manner, except that fees may be adjusted to encourage and accommodate the needs of small businesses in Solomon Islands.

4. RADIO SPECTRUM, NETWORK NUMBERING AND NETWORK CODES

4.1 RADIO SPECTRUM

Subject to Part 7 of the Act, and subject to any order, direction or regulation of the Telecommunications Commission under Part 4 of the Act:

- (a) not earlier than 1 November 2009, NME may use the radio spectrum assigned and set out in Appendix A, subject to section 128(5); and
- (b) no annual or other fee set under section 57(3) of the Act shall be payable by NME in respect of the right to use the radio spectrum assigned and set out in Appendix A.

4.2 NETWORK NUMBERING AND NETWORK CODES

Subject to Part 13 of the Act and subject to any determination, order, direction and regulation of the Telecommunications Commission establishing or revising a national numbering plan under section 81 of the Act:

- (a) not earlier than [*date to be specified*], NME may use the number ranges and network codes assigned and set out in Appendix B; and
- (b) no annual or other fee set under the Telecommunications Act shall be payable by NME in respect of the right to use the number ranges and network codes assigned and set out in Appendix B.

5. UNIVERSAL ACCESS

Any universal access levy that NME is required to pay under section 51 of the Act shall not exceed 2% of NME's gross revenues in the relevant period. NME will not be obliged to pay a universal access levy for a period of at least five years following the new entrant launch date.

6. QUALITY OF SERVICE

6.1 KEY PERFORMANCE INDICATORS

NME shall, if it is declared a dominant service provider in the telecommunications market in which mobile telecommunications services are provided, comply with the following key performance indicators for its mobile telecommunications network during each calendar quarter (the measurement period):

Parameter	Measurement	Obligation during 1 st year	Obligation during 2 nd year	Obligation during 3 rd year and after
1. Network call set-up success rate	The 10% of cells which have the highest levels of carried traffic during their busy hour during the measurement period are identified. The call set-up success rate is calculated for each cell during the identified busy hour. The network call set-up	>95%	>97%	>98%

	success rate is the average across the individual success rates for each cell.			
2. Network dropped call rate (Urban Areas)	The network dropped call rate (Urban Areas) is calculated during the busy hour for each of the 10% of busiest cells (as for the call success rate) in Urban Areas. The network dropped call rate (Urban Areas) is the average over the dropped call rates for each such cell.	<3.5%	<2.0%	<1.5%
3. Network dropped call rate (Non-Urban Areas)	The network dropped call rate (Non-Urban Areas) is calculated during the busy hour for each of the 10% of busiest cells (as for the call success rate) in Non-Urban Areas. The network dropped call rate (Non-Urban Areas) is the average over the dropped call rates for each such cell.	<5.0%	<5.0%	<5.0%
4. Network quality	The busy hour with the highest level of carried traffic during the measurement period is identified for each cell. The call set-up success rate and dropped call rates are then calculated for each cell over this busy hour. The proportion of cells satisfying the criterion (see definition in subclause 6.2) is the performance measure.	>90%	>93%	>95%

6.2 EXPLANATION OF PARAMETERS

- (a) The Network Call Set-up Success Rate parameter measures the call set-up success rate over the busiest part of the network. The call set-up success rate is defined as successful seizures for TCH/seizure attempts for TCH.
- (b) The Network Dropped Call Rate parameter measures the dropped call rate over the busiest part of the network in each of: (i) Urban Areas, and (ii) Non-Urban Areas. The network dropped call rate is defined as the proportion of calls successfully set up which terminate for any reason other than termination by either the calling or called parties. For the purpose of this clause 6:
 - (i) “Urban Areas” means those main provincial centres in each province in which STL provides mobile telecommunications services; and
 - (ii) “Non-Urban Areas” means those parts of Solomon Islands, except for the Urban Areas, in which STL provides mobile telecommunications services,

as set out in set out in Appendix D (Population estimates for 2008 based on 1999 Census).
- (c) The Network Quality parameter measures the proportion of the network over which performance is deemed to be adequate during busy periods. It is defined as the “number of cells with x% or lower dropped call rate and a call set up success rate of y% or higher divided by the total number of operational cells” where x and y are the respective obligations in the relevant measurement period.

7. AMENDMENT, SUSPENSION AND REVOCATION OF THIS LICENCE

7.1 AMENDMENT, SUSPENSION AND REVOCATION OF THIS LICENCE

The Telecommunications Commission may, by order or regulation, amend the conditions of, suspend or revoke, this licence without compensation if:

- (a) NME agrees to the amendment, suspension or revocation;
- (b) NME has failed to comply with a licence condition, the Telecommunications Act, or a determination, order, direction or regulation under the Telecommunications Act and has failed to cure the failure within a reasonable time after service by the Telecommunications Commission of written notice to NME specifying the failure and requiring it to be cured;
- (c) NME made in the licence application or any documents submitted for registration any false statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
- (d) NME has entered into liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order by a court or tribunal for its compulsory winding-up or dissolution; or
- (e) NME has entered into receivership, except if it is, and the Telecommunications Commission is satisfied that it is likely to remain, in full compliance with the terms and conditions of this licence despite entering into receivership.

7.2 **APPEAL TO THE HIGH COURT**

Where the Telecommunications Commission suspends or revokes this licence under sub-clause 7.1, and if such suspension or revocation constitutes a deprivation or acquisition of property within Part II of the Constitution, then NME may appeal to the High Court under section 42(2) or Part 17 of the Act for the determination of its interest or right, the legality of the suspension or revocation, and if compensation is payable contrary to sub-clause 7.1, the amount of any compensation payable and the period of time within which it shall be paid.

7.3 **REQUIREMENTS OF INTERNATIONAL TREATIES, ETC.**

The Telecommunications Commission may by determination, order or direction amend this licence if such amendment is required as a result of applicable international treaties, commitments, recommendations or standards legally binding on Solomon Islands: PROVIDED THAT such amendment shall:

- (a) be made only to the extent reasonably required as a result of such treaty, commitment, recommendation or standard as applicable; and
- (b) make the minimal change necessary to the original clause of this licence.

7.4 PAYMENT OF COMPENSATION

The Telecommunications Commission must pay reasonable compensation (the valuable consideration of which may take the form of cash or some other form and may be payable by way of lump sum or by instalments) within a reasonable period of time after an amendment under sub-clause 7.3 having due regard to all the relevant circumstances.

7.5 NOTIFICATION FROM THE TELECOMMUNICATIONS COMMISSION

The Telecommunications Commission must provide prior written notice to NME that it intends to amend its licence under sub-clause 7.3 and NME may within thirty (30) days appeal under section 102 of the Act to the Dispute and Appeal Panel for the determination of its interest or right, the legality of the amendment and the reasonableness of the compensation and the period of time within which it shall be paid.

7.6 ACCOUNT OF CONTINUITY OF SERVICE

In amending, suspending or revoking this licence, the Telecommunications Commission must take into account continuity of service to users and any hardship that may result to NME.

8. TRANSFERS OF LICENCES AND CONTROL OF LICENSEES

8.1 TRANSFERS OF LICENCES AND CONTROL OF LICENSEES

Except pursuant to this clause, no approvals are required for the transfer of this licence or control of NME.

8.2 APPROVAL OF TELECOMMUNICATIONS COMMISSION

Subject to section 130 of the Act, no transfer of control of NME shall have any legal force without the approval by determination or order of the Telecommunications Commission, such consent not to be unreasonably withheld.

8.3 APPROVAL OF TRANSFER OF THIS LICENCE

Subject to section 130 of the Act, no transfer of an individual licence shall have any legal force without the approval in writing by determination or order of the Telecommunications Commission.

8.4 APPLICATION FOR A TRANSFER

An application for a transfer requiring approval of the Telecommunications Commission under sub-clause 8.3 must include information about the proposed transaction, including without limitation:

- (a) a description of the terms of the transaction material to a determination of approval under section 43(4) of the Act, which shall not include any statement of monetary consideration for the transaction;
- (b) information about any person who will take a transfer of this licence, or who will have control over NME, as a result of the transaction, including:
 - (i) a description, and the identities, addresses and jurisdictions of incorporation or residence, of such persons and any persons having more than a five per cent (5%) direct or indirect ownership interest in them, and any affiliated persons;
 - (ii) a description of any markets in which they provide telecommunications services;
 - (iii) their annual revenues from telecommunications services;

- (iv) the declared approximate value of their assets devoted to telecommunications business; and
 - (v) copies of their most recent annual and quarterly reports and financial statements;
- (c) any changes in support and assistance to be provided to NME by its affiliates; and
- (d) such other information as the Telecommunications Commission may reasonably require to enable it to make a determination under sub-clause 8.3, including but not limited to information relevant to the matters specified in sub-clause 8.7.

8.5 **CORPORATE REORGANISATION**

Sub-clauses 8.2 and 8.3 shall not apply to any transfer of a licence or control of NME to a person where such transfer is part of a corporate reorganisation or similar transaction and does not result in a change of control of the ultimate parent entity or person.

8.6 **ENCUMBRANCES**

Notwithstanding any other provision in this clause 8, in the case of an encumbrance by NME of this licence in favour of a reputable financial institution where:

- (a) the encumbrance is granted in security for a loan or other financial accommodation made in the ordinary course of such financial institution's business to NME or its affiliate for the purpose of NME's telecommunications business in Solomon Islands;
- (b) the security is necessary for the making of such loan or other financial accommodation; and
- (c) the terms and conditions of the encumbrance provide that upon its exercise all of the rights and obligations under this licence will be transferred to a person to be approved by the Telecommunications Commission who shall become a substitute licensee,

but such approval of the Telecommunications Commission for a person to become a substitute licensee under paragraph (c) will not be unreasonably withheld.

8.7 SUBSTITUTE LICENSEE

The Telecommunications Commission shall not withhold its approval of a transfer of an individual licence or control of an individual licensee under clause 8.3 or of a person to become a substitute licensee under clause 8.6(c) if such person:

- (a) has, at the time of the transfer of this licence, relevant experience, capability and qualifications in the operation of telecommunications networks and provision of telecommunications services of at least the level that NME had at the time this licence was issued to it;
- (b) is ready and able to commence operation of a telecommunications network and provision of telecommunications services in accordance with this licence; and
- (c) is not disqualified under any law or determination, order or direction from being a licensee in Solomon Islands,

unless there are some special circumstances as to why approval should be withheld.

8.8 EXERCISE OF AN ENCUMBRANCE

- (a) No exercise of any encumbrance over this licence shall have legal effect unless this licence is transferred to a person approved by the Telecommunications Commission.
- (b) The exercise by a financial institution of any of its rights under any encumbrance over this licence, short of the transfer of any rights and obligations under the licence, will not contravene this clause 8.

8.9 OBLIGATIONS OF THE ORIGINAL LICENSEE

No approval by the Telecommunications Commission under Sub-clause 8.2, 8.3 or 8.6 shall relieve NME from any obligation under

this licence unless the Telecommunications Commission consents to NME being relieved from such obligation.

9. PRICE REGULATION

9.1 PRICE REGULATION

The Telecommunications Commission may, on application or on its own motion, regulate the prices of services provided by a dominant service provider in a telecommunications market with reference to relevant benchmarks in accordance with section 71 of the Act.

9.2 REASONABLE RETURN

The Telecommunications Commission must seek to ensure that a price cap, glide path or any other method of price regulation applied to NME does not:

- (a) prevent NME from achieving a reasonable return on investment; or
- (b) violate section 60(2) of the Act.

10. COVERAGE OBLIGATION AND PERFORMANCE BOND

10.1 SERVICE COVERAGE

NME shall provide mobile telecommunications services (the coverage of those mobile telecommunications services being **service coverage**) as follows:

- (a) during the period:
 - (i) from [date] 2010;
 - (ii) until the date that is eighteen months following the new entrant launch date,

NME shall provide service coverage to at least []% of the population of Solomon Islands, based on the population estimates set out at Appendix D of this Licence; and

- (b) during the period:
 - (i) from the date that is eighteen months following the new entrant launch date;
 - (ii) until the end of the term of this licence,

NME shall provide service coverage to at least []% of the population of Solomon Islands, based on the population estimates set out at Appendix D of this Licence.

10.2 TESTING

Testing of the extent of service coverage under sub-clause 10.1 shall be by such methods as the Telecommunications Commission may determine, following consultation with NME.

10.3 PERFORMANCE BOND

- (a) On the date of this licence, NME shall provide to the Telecommunications Commission a performance bond from a banking institution (licensed to carry on banking business in Solomon Islands pursuant to the Financial Institutions Act 1998) or other person acceptable to the Government, to guarantee compliance with its obligations in sub-clause 10.1 in substantially the form set out in the Appendix C (the **Performance Bond**).
- (b) Without limiting any other remedy available to the Telecommunications Commission, if NME fails to comply with sub-clause 10.1, the Telecommunications Commission may notify NME that it intends to exercise the Performance Bond or take any other enforcement action against NME, by a specified date unless NME complies with sub-clause 10.1 by that date.
- (c) If, by the date notified by the Telecommunications Commission under paragraph (b), NME has failed to comply with sub-clause 10.1 to the Telecommunications Commission's reasonable satisfaction, the Telecommunications Commission may exercise the Performance Bond.
- (d) The Telecommunications Commission may exercise any amount of the Performance Bond under paragraph (c), on any number of

occasions where the conditions in paragraph (b) are met, until such time as the total amount guaranteed by the Performance Bond has been paid to the Telecommunications Commission.

- (e) If, at any time during the term of this licence, the total amount guaranteed by the Performance Bond has been paid to the Telecommunications Commission, the Telecommunications Commission may notify NME requiring NME to provide a new Performance Bond to guarantee compliance with its obligations under sub-clause 10.1 for the remaining period of the term. NME shall comply with any such requirement within 20 Working Days of receipt of such notice, provided that the total guaranteed amount of any new Performance Bond given under this paragraph shall not exceed the total amount guaranteed in the previous Performance Bond.

11. NOTICES

Any notice required to be served upon NME or given to NME shall be in writing and shall be deemed to have been served or given:

- (a) as soon as the same is personally delivered to the address set out below (or such other address as NME may notify to the Telecommunications Commission by notice);
- (b) immediately if transmission by facsimile is effected to the facsimile number set out below (or such other facsimile number as NME may notify to the Telecommunications Commission by notice), provided receipt of transmission has been confirmed by NME; or
- (c) immediately if transmission is effected by such other electronic medium as the parties may from time to time agree to such place, number or code as NME may notify to the Telecommunications Commission by notice,

provided that, if personal delivery or transmission by facsimile or other electronic means is effected after 4.00 pm on a Working Day or any time on a day other than a Working Day, then such notice shall be deemed to be given the next Working Day following the delivery, facsimile or electronic transmission.

[NME] Limited

[address]
Honiara

Solomon Islands

Attention: []

Telephone: []

Facsimile: []

12. GOVERNING LAW

This licence shall be governed in all respects by and construed in accordance with the laws of Solomon Islands.

Appendix A

List of radio spectrum

Appendix B

List of number ranges and network codes

Appendix C

Form of Performance Bond

To: The Telecommunications Commission (“the **Commission**”)

By: *[Name of Bank or other person; acceptable to the Government]* (the **Guarantor**)

BACKGROUND:

- A. [] (NME) has been granted a telecommunications licence on or about the date of this guarantee pursuant to the Telecommunications Act 2009 (“the **Licence**”), granting NME the right to provide certain telecommunications services in Solomon Islands.
- B. The Licence requires that NME provide to the Commission a guarantee for the sum specified in the Licence as security for compliance with NME’s obligations in sub-clause 10.1 of the Licence.
- C. The Guarantor is a [banking institution licensed to carry on banking business in Solomon Islands pursuant to the Financial Institutions Act 1998]/*[insert other description if applicable]*, and has agreed with NME to provide a guarantee to the Commission, on the terms of this guarantee.

THEREFORE:

1. The Guarantor:
 - (a) affirms that it is guarantor and responsible to the Commission, on behalf of NME, for a total of:
 - (i) until the date that the Commission has confirmed to the Guarantor that NME has provided service coverage to at least []% of the population of Solomon Islands, based on the population estimates set out at Appendix D of the Licence (“the **initial confirmation date**”): US\$[]; and
 - (ii) from the initial confirmation date until the date that the Commission has confirmed to the Guarantor that NME has provided service coverage to at least []% of the population of Solomon Islands, based on the population estimates set out at Appendix D of the Licence (“the **subsequent confirmation date**”): US\$[],

each such amount, in respect of the relevant period, being the **Guaranteed Amount**;
 - (b) affirms that the Guaranteed Amount, or any part thereof, may be demanded by the Commission at any time on or before the expiry of the Licence; and
 - (c) undertakes irrevocably and unconditionally to pay to the Commission immediately, upon its first written demand declaring NME to be in default of its obligations in sub-clause 10.1 of the Licence, any sum or sums to a maximum amount of the Guaranteed Amount, without the Commission needing to prove or to show any grounds or provide any reasons for its demand, (the **Guarantee**).
2. The Guarantee is valid until the earlier of:
 - (a) the date on which all of the Guaranteed Amount has been paid by the Guarantor to the Commission pursuant to one or more demands made under this Guarantee;
 - (b) the date of expiry of the Licence; or
 - (c) the date this Guarantee is revoked by written agreement between the Commission and the Guarantor,

(the **Expiry Date**).

EXECUTED as a deed

Signature and seal of the Guarantor:

[name of bank or other person]

[address]

[date]

Appendix D

Population estimates for 2008 based on 1999 Census

Provided by Ministry of Statistics for 2008, based on the most recent official population census, in 1999:

Province		Ward No		Population
Solomon Islands Total				515,134
01	Choiseul			25,113
		01	Wagina	1,819
		02	Katupika	1,580
		03	Vasiduki	1,521
		04	Viviru	1,601
		05	Babatana	1,945
		06	Tepazaka	1,678
		07	Batava	4,489
		08	Tavula	2,440
		09	Polo	1,690
		10	Bangara	1,145
		11	Susuka	1,197
		12	Senga	1,912
		13	Kerepangara	1,081
		14	Kirugela	1,015
02	Western			78,837
		01	Outer Shortlands	1,487

		02	Inner Shortlands	2,938
		03	Simbo	2,098
		04	North Ranongga	518
		05	Central Ranongga	2,580
		06	South Ranongga	3,268
		07	Vonunu	3,225
		08	Mbilua	3,501
		09	Ndovele	1,931
		10	Irringgila	2,866
		11	Gizo	6,688
		12	South Kolombangara	4,534
		13	Vona Vona	5,653
		14	Kusaghe	2,195
		15	Munda	3,050
		16	Nusa Roviana	2,149
		17	Roviana Lagoon	4,523
		18	South Rendova	2,774
		19	North Rendova	1,886
		20	Kolombaghea	1,936
		21	Mbuini Tusu	2,927
		22	Nono	3,386
		23	Nggatokae	2,989
		24	North Vangunu	2,829
		25	Noro	4,376

		26	North Kolombangara	2,529
03	Isabel			25,539
		01	Kia	1,952
		02	Baolo	933
		03	Kokota	1,099
		04	Hovikoilo	1,919
		05	Buala	3,048
		06	Tirotonga	700
		07	Koviloko	1,389
		08	Kmaga	1,745
		09	Kaloka	1,289
		10	Tatamba	1,495
		11	Sigana	2,211
		12	Japuana	2,075
		13	Kolomola	937
		14	Kolotubi	1,803
		15	Susubona	1,631
		16	Samasodu	1,312
04	Central			27,111
		01	Sandfly/Buena Vista	3,075
		02	West Gela	2,181
		03	East Gela	1,805
		04	Tulagi	1,560
		05	South West Gela	2,418

		06	South East Gela	3,352
		07	North East Gela	1,835
		08	North West Gela	1,610
		09	Banika	2,328
		10	Pavuvu	1,858
		11	Lovukal	2,102
		12	North Savo	1,341
		13	South Savo	1,645
05	RenBel			2,936
		01	East Tenggano	345
		02	West Tenggano	373
		03	Lughu	308
		04	Kanava	272
		05	Te Tau Gangota	536
		06	Mugi Henua	168
		07	Matangi	121
		08	East Gaongau	279
		09	West Gaongau	308
		10	Sa'aiho	227
06	Guadalcanal			75,999
		01	Tandai	7,528
		02	Sahalu	4,260
		03	Savulei	2,774
		04	Tangarare	3,672

		05	Wanderer Bay	3,634
		06	Duidui	3,988
		07	Vatukulau	2,662
		08	Talise	2,539
		09	Avu Avu	2,485
		10	Moli	4,455
		11	Tetekanji	1,230
		12	Birao	2,862
		13	Valasi	1,384
		14	Kolokarako	1,553
		15	Longgu	3,620
		16	Aola	4,451
		17	Paripao	3,258
		18	East Tasimboko	6,088
		19	Vulolo	3,428
		20	Malango	5,157
		21	West Ghaobata	3,284
		22	East Ghaobata	1,687
07	Malaita			155,240
		01	Auki/Langa Langa	5,092
		02	Aimela	8,543
		03	Buma	6,823
		04	Faubu	10,447
		05	West Baegu/Fataleka	3,219

		06	Mandalua/Folot	3,053
		07	Foondo/Gwaiau	5,244
		08	Malu'u	6,110
		09	Matakwalao	3,172
		10	Takwa	12,171
		11	East Baegu	4,965
		12	Fouenda	3,110
		13	Sulufou/Kwarande	2,029
		14	Sububenu/Burianiiasi	6,237
		15	Nafinua	4,636
		16	Faumamanu/Kwai	3,924
		17	Gulalfou	5,918
		18	Waneagu/Taelanasina	4,551
		19	Aiaisi	3,701
		20	Areare	3,564
		21	Rarosu'u	5,167
		22	Aba/Asimeuru	5,503
		23	Asimae	3,539
		24	Mareho	2,856
		25	Tai	4,778
		26	Kwarekwareo	2,053
		27	Siesie	3,660
		28	Waneagu Silana sina	5,183
		29	Keaimela/Radefasu	10,715

		30	Langalanga	2,654
		31	Luaniua	1,654
		32	Pelau	618
		33	Sikaiana	354
08	Makira/Ullawa			39,204
		01	North Ulawa	1,213
		02	South Ulawa	1,337
		03	West Ulawa	1,006
		04	Ugi ni Masi	1,547
		05	Arosi South	2,855
		06	Arosi West	1,770
		07	Arosi North	2,524
		08	Arosi East	1,728
		09	Bauro West	3,408
		10	Bauro Central	4,266
		11	Bauro East	1,470
		12	Wainoni West	1,770
		13	Wainoni East	2,639
		14	Star Harbour North	3,214
		15	Santa Ana	2,116
		16	Santa Catalina	919
		17	Star Harbour South	910
		18	Rawo	824
		19	Weather Coast	1,544

		20	Haununu	2,142
09	Temotu			23,697
		01	Fenualoa	1,669
		02	Polynesian Outer Islands	372
		03	Nipua/Nopoli	737
		04	Lipe/Temua	1,350
		05	Manuopo	1,336
		06	Nenumpo	1,405
		07	Venga/Nemba	1,250
		08	Luva Station	2,085
		09	Graciosa Bay	1,364
		10	Nea/Noole	1,854
		11	North East Santa Cruz	2,085
		12	Nanggu/Lord Howe	2,183
		13	Duff Islands	549
		14	Utupua	1,063
		15	Vanikoro	1,109
		16	Tikopia	1,689
		17	Neo	1,595
10	Honiara			61,459
		01	Nggossi Ward	7,740
		02	Mbumburu Ward	2,991
		03	Rove/Lengakiki Ward	2,724

		04	Cruz Ward	336
		05	Vavaea Ward	8,363
		06	Vuhokesa Ward	1,343
		07	Mataniko Ward	3,628
		08	Kola'a Ward	9,121
		09	Kukum Ward	2,465
		10	Naha Ward	1,098
		11	Vura Ward	10,044
		12	Panatina Ward	11,605

TELECOMMUNICATIONS BILL 2009**OBJECTS AND REASONS**

The objects of the Bill are –

- (a) to open up the telecommunication market and remove exclusivity of providing telecommunications systems and services under the current laws;
- (b) to provide for the functions, duties and powers of the Minister and to establish the Telecommunications Commission and provide for its functions and powers;
- (c) to provide for the administrative and financial provisions in relation to the work of the Commission and fees payable by service providers;
- (d) to regulate licensing of service providers;
- (e) to provide for universal access regime;
- (f) to manage radio spectrum;
- (g) to regulate competition, interconnection and access, pricing, equipments and technologies and protection of consumers;
- (h) to provide for national numbering plan and domain name;
- (i) to provide dispute and appeals mechanisms; and
- (j) to provide civil penalties and offence provisions.

EXPLANATORY MEMORANDUM

Part 1 deals with the short title, commencement, definitions, objectives and application on the Crown. The main objective is to provide telecommunications service in Solomon Islands that is affordable and of quality.

Part 2 provides for the functions and powers of the Minister to formulate, monitor and review policies and coordinate such policies with other

government agencies. The Minister is empowered to appoint the commissioner of the Commission.

The Commission is established as a statutory body with its functions, duties and powers. The commissioner will perform the functions, duties and powers of the Commission. The commissioner will be subject to the leadership code.

Part 3 deals with the financial matters for the purposes of this Act. It provides for the funds of the Commission. The funds of the Commission consist of fees and levies prescribed by regulations of the Commission. These include administrative fees and charges and annual licensing fees.

Part 4 provides for the powers of the Commission to make determinations, orders, directions and regulations for the purposes of clarifying, interpreting, enforcing, etc its functions, duties and powers. It also sets out the procedures for making such determination, orders, directions and regulations. The determination and orders of the Commission may be made an order of the High Court for the purposes of enforcing a determination or order. This Part also provides for self-regulation where competition in the market is sufficient to achieve the purpose of any determination, order, direction or regulation the Commission may propose to make. The right to seek judicial review in the High Court is provided. Other clauses deal with exemption of liability, records, website, service providers association.

Part 5 provides for the licensing of service providers and exemption orders on certain service providers from the requirement of a licence to undertake a telecommunication service.

Licence can be issued as an individual or class licence. It sets out the procedures for issuing of individual or class licence. Other clauses cover licence conditions, amendments, transfers, reporting requirements, etc.

Part 6 regulates universal access obligations of service providers to provide universal access telecommunications services throughout Solomon Islands. The universal access will be set out in the Universal Access Plan, which includes the objectives of the universal access, the services to be provided and the selection of service providers to provide the universal access obligations. The areas to be subject to universal access will be determined by the Commission. The universal access will be funded through a levy to be paid by all service providers.

Part 7 provides for the allocation and assignment of radio spectrum, which the Commission will manage. It also provides for the rules of managing radio spectrum by the Commission. Other clauses deal with planning, allocation, assignment, fees and vacation with or without compensation. The

Commission has a duty to allocate and manage radio spectrum fairly, if reasonable, reliance on industry self regulation, taking into account international treaties, etc., investment, etc.

Part 8 regulates competition in the telecommunication market, including price fixing, preventing or restricting supply, unfair inducements or restrictions, unfair competition, bundling, etc.

Part 9 regulates agreements for interconnection and access. It provides for a right and a duty for service providers to negotiate interconnection agreement. It also provides for reference offers setting out conditions for interconnection.

Part 10 regulates retail prices for telecommunication service provided by a service provider. The Commission is empowered to regulate process for fixing prices for telecommunication services, and the different methods that may be used.

Part 11 provides for consumers rights when using telecommunication services, including complaint procedures, confidentiality, directory assistance, quality of service, etc.

Part 12 empowers the Commission to regulate and protect telecommunication networks, equipments and technology.

Part 13 provides for national numbering plan, number portability and domain registry services.

Parts 14 and 15 provides for the procedures for negotiation relating to acquiring public and non-public land for telecommunication services.

Part 16 deals with provision of telecommunication services during a public emergency.

Part 17 regulates dispute proceedings and provisions for appeals to the courts. It establishes a panel of experts to deal with telecommunication disputes. The experts will be persons who have substantial international experience in telecommunication markets.

Part 18 provides for civil penalties for violation of obligations designed to encourage compliance with the provisions of the proposed Act. It covers the procedures for issuing notice of violation and the matters to be taken into account in determining whether or not a violation has been committed. In light of the objective of encouraging compliance, a range of penalties is provided from warning to imposition of penalty. The penalty is in form of an

order of the Commission, thus will be subject to appeal by a person who is dissatisfied with the order of the Commission.

Part 19 deals with offences. The main offences deal with unlawful use of telecommunication services or facilities and those relating to interception, damaging or altering data, hindering or interfering with facilities, etc.

Part 20 covers miscellaneous provisions, repeals, consequential amendments and transitional and saving provisions.