



Tonga

COMMUNICATIONS ACT 2000

Act 22 of 2000



COMMUNICATIONS ACT 2000

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COMMUNICATIONS ACT 2000

Act 22 of 2000

AN ACT FOR THE ESTABLISHMENT OF THE DEPARTMENT OF COMMUNICATIONS AND THE REGULATION OF COMMUNICATIONS SERVICES

I assent,
TUPOUTO‘A,
17th November, 2000

[17th November, 2000]

PART I - PRELIMINARY

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1 Short title and commencement.

This Act may be cited as the Communications Act 2000 and shall come into force on such date as His Majesty in Council may proclaim, and His Majesty in Council may proclaim different dates for the coming into force of different sections of this Act.

2 Interpretation.

(1) In this Act, unless the context otherwise require: —

“**advertising content**” means content which is used to promote a product or service or the interests of a person whether or not for payment;

“**applications service**” means a service provided by means of, but not solely by means of, one or more network services but does not include such a service provided solely on the customer side of the network boundary;

“**class licence**” means a licence promulgated by the Minister authorising a class of persons to engage in specific activities, and establishing obligations with respect to such activities with which such persons must comply but shall not be issued to a person;

“**communications**” means any communication, whether between persons and persons, things and things or persons and things, in the form of sound, data, text, visual images, signals or any other form or any combination of those forms;

“**consumer standards**” mean consumer standards approved in accordance with section 40;

“**content**” means text, sound, still picture, moving picture or other audio-visual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored retrieved or communicated electronically;

“**content applications service**” means any applications service which supplies content;

“**content standards**” mean content standards approved in accordance with section 71;

“**customer equipment**” means equipment, including cabling, hardware and software, employed on the customer side of the network boundary;

“**Department**” means the Department of Communications established under this Act;

“**individual licence**” means a licence granted by the Minister to a person or a company in a accordance with Part V, Division 1 of this Act, authorising rights and obligations with respect to activities that are deferred in that licence;

“**Internet access service**” means an applications service whereby a person is able to access Internet services and applications in conjunction with either a dial-up connection or a direct connection;

“**Minister**” means the Minister responsible for communications;

“**network boundary**” means, unless otherwise declared by the Minister: —

- (a) the first equipment socket in a private residence;
- (b) the main distribution frame in a building; or
- (c) the point at which a network facility receives communications from or sends communications to a consumer;

“**network facilities**” means any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of network services, but does not include customer equipment;

“**network service**” means a service for the carrying of communications by means of guided and unguided electromagnetic radiation but does not include services provided solely on the customer side of network boundary;

“**numbering and electronic addressing plan**” means a numbering and electronic addressing plan approved by the Minister in accordance with section 54;

“**public fund**” means the public revenues of the Kingdom and any accumulated reserves of those revenues;

“**resale**” means the sale by a person of an applications service which has been firstly acquired from an applications service provider, to another person;

“**Secretary**” means the person appointed under section 8 and includes any person for the time being performing the functions of the Secretary;

“**spectrum**” means the continuous range of electromagnetic wave frequencies up to and including a frequency of 420 terahertz;

“**spectrum plan**” means a spectrum plan approved by the Minister, pursuant to section 64;

“**subscription content**” means content which is made available to a consumer only upon payment of a subscription fee;

“**technical standards**” mean technical standards approved by the Minister, in accordance with section 57; and

- (2) A declaration under this Act and all other relevant Acts shall be published in the Gazette.

3 Territorial application.

- (1) This Act, its subsidiary legislation and its regulations shall apply within the geographical limits of the Kingdom and its territorial waters.

- (2) Notwithstanding sub-section (1), this Act, its subsidiary legislation and its regulations shall apply to any person beyond the geographical limits of the Kingdom or its territorial waters provided that such person: —
- (a) is a licence under this Act or the Radiocommunication Act (*Cap. 98*); or
 - (b) supplies or will supply services and facilities that are subject to licensing under this Act in a place within the Kingdom.
- (3) For the purpose of this section, “a place” means a point of any nature or description whether on land, in the atmosphere, in outer space, underground, underwater, at sea or anywhere else.
- (4) For the purposes of this section, a place that is: —
- (a) in or below the stratosphere; and
 - (b) within the geographical limits of the Kingdom and its territorial waters, is deemed to be a place within the Kingdom.

PART II - OBJECTS

4 Objects.

- (1) The objects of this Act are: —
- (a) to establish a communications licensing and regulation frame work in support of the national development policy objectives;
 - (b) to establish the powers and functions of the Department of Communications;
 - (c) to consolidate the regulation and policy control of the communications sector in a single Government department;
 - (d) to establish the powers and procedures for the administration of this Act, the Tonga Broadcasting Commission Act (*Cap. 100*), the Radiocommunication Act (*Cap. 98*), the Telegraph Act (*Cap. 99*), the Tonga Communications Corporation Act 2000, and other applicable laws;
 - (e) to establish and to promote competition in the supply, installation, maintenance and operation of customer equipment and related services;
 - (f) to promote fair and sustainable competition in the supply and provision of network facilities, network services and applications services;
 - (g) to promote and to protect the interests of consumers of communications services;

- (h) to promote the efficiency of licensed operators;
 - (i) to ensure the safety, quality and international compatibility of services through technical standards; and
 - (j) to pursue and promote the national communications sector policy objectives.
- (2) The national communications sector policy objectives are: —
- (a) to ensure the existence of a sustainable, performing and financially viable communications sector;
 - (b) to maximise the availability of communications infrastructure;
 - (c) to provide a communications infrastructure to support new industry investment; and
 - (d) to maximise strategic and economic benefits from communications assets.

PART III - ESTABLISHMENT AND GENERAL ADMINISTRATION

5 Minister responsible for communications.

There shall be a Minister responsible for communications whose functions shall be: —

- (a) to exercise general supervision and control over all matters relating to the communications sector in the Kingdom;
- (b) to administer this Act, the Tonga Broadcasting Commissions Act (Cap. 100), the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99), the Tonga Communications Corporation Act 2000 and other applicable laws; and
- (c) to exercise such other function as may from time to time be lawfully conferred upon the Minister.

6 Establishment of the Department.

There shall be established, a Department of Communications within the supervision, responsibility and control of the Minister.

7 Powers and functions of the Department.

The Department shall have the authority to undertake the functions under this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99), other

applicable laws and, without prejudice, shall also have the following functions: —

- (a) to advise the Minister on all matters concerning the national communications sector policy objectives;
- (b) to implement, administer and enforce the provisions of this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99) and other applicable laws;
- (c) to supervise and monitor communications sector activities;
- (d) to oversee and supervise the Government's orbital satellite slot interests;
- (e) to ensure the observation and enforcement of international communications conventions and practices;
- (f) to liaise with foreign governments on communications sector and other related matters;
- (g) to impose, collect and pay into the public fund such licence fees as are applicable under the provisions of this Act, the Radiocommunication Act (Cap. 98) and other applicable laws;
- (h) to make such determinations and directions as are required or considered necessary to perform its functions under this Act;
- (i) to determine such terms and conditions for network access arrangements between licensees pursuant to section 97 for the purposes of section 93(3) of this Act; and
- (j) to carry out any other functions consistent with the objects of this Act, which may be prescribed by the Minister.

8 Secretary of the Department.

- (1) There shall be appointed a Secretary, who shall be the head of the Department.
- (2) The Secretary shall perform the functions and exercise the powers vested in him and the Department under this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99.) and other applicable laws.

9 Staff of the Department.

- (1) All officers and employees of the Department shall be appointed by the Prime Minister with the consent of Cabinet.
- (2) No officer or employee of the Department shall be personally responsible for any acts or omissions in the exercise or performance of his functions,

powers and duties of the Department except in the case of gross negligence or misconduct.

PART IV - MINISTERIAL POWERS

10 Powers to direct the Secretary.

The Minister may issue directions to the Department on the exercise of the Department's power and the performance of the Department functions under this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99) and other applicable laws.

11 Ministerial determination.

The Minister may make determinations on any matter specified as being subject to the Minister's determination under this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99) and other applicable laws.

12 Ministerial declaration.

The Minister may make declarations on any matter specified as being subject to the Minister's declaration under this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99) and other applicable laws.

13 Powers to publish guidelines.

- (1) The Minister may publish guidelines on any matter which the Minister may from time to time consider necessary for giving full effect and for due administration of the provisions of this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99) and other applicable laws.
- (2) The Minister may direct the Department to undertake the Minister's role and duties under sub-section (1).

14 Delegation of powers to the Secretary.

- (1) Subject to the approval of the Cabinet, the Minister may delegate functions, powers, authority and duties to the Secretary for specific purposes under this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99) and other applicable laws.
- (2) All delegations made under sub-section (1), shall be made in writing.

- (3) The Minister may, either generally or in any particular case, appoint any person who is not an officer or employee of the Department to render such assistance as the Minister may specify, in the exercise of his powers, the performance of his functions or the discharge of his duties under this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99) and other applicable laws.

15 Delegation of powers to an advisory committee.

The Minister may, either generally or in any particular case, appoint such number of persons as the Minister may determine, who may or may not be officers or employees of the Department, to form an advisory committee to render such assistance as the Minister may specify in the exercise of his powers, the performance of his functions or discharge of his duties under this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99) and other applicable laws.

PART V - LICENSING

DIVISION 1

INDIVIDUAL LICENCES

16 Individual licences.

Subject to sections 19 and 22, and such other exemptions as may be determined or declared under this Act, no person shall: —

- (a) own network facilities;
- (b) provide any network service;
- (c) provide any applications service; or
- (d) provide any content applications service,

except under and in accordance with the terms and conditions of an individual licence granted under this Act or the Radiocommunication Act (Cap. 98).

17 Supply without individual licence an offence.

Any person who contravenes section 16, commits an offence and shall, on conviction, be liable to a fine not exceeding \$15,000 or to a term of imprisonment not exceeding 6 months or both.

18 Eligibility for individual licence.

- (1) An individual licence shall be issued for the activities specified in section 16 only where the applicant is a company as defined under the Companies Act 1995.
- (2) Notwithstanding sub-section (1), the Minister may, by declaration, exempt a person or a class of persons from complying with the requirement in sub-section (1).

19 Prescribed exemptions.

The prohibitions under section 16 shall not apply to: —

- (a) the ownership of network facilities or the provision of network services or applications services solely on the customer side of the network boundary;
- (b) a content applications service which is confined to a single dwelling;
- (c) a content applications service which is only supplied to the employees and officers of a single company;
- (d) the supply of content that is incidental to the service provided;
- (e) the supply of a limited content applications service;
- (f) the resale of an applications service; or
- (g) the activities specified in section 16 which are provided under a class licence.

20 Grant of individual licence.

Subject to the approval of His Majesty in Council, the Minister may, by declaration, grant an individual licence under this Act.

21 Existing licence.

Any existing and valid licence issued for communications services by His Majesty in Council or under the Broadcasting Act 1989 shall, on the date when this Part comes into force, be deemed to be an individual licence granted under this Act and shall be subject to the provisions of this Act.

22 Declared exemptions.

Subject to the approval of His Majesty in Council, the Minister may, where necessary and expedient to pursue the objects of this Act, by declaration, exempt

a person or a class of persons, from the requirement to hold an individual licence under this Act or the Radiocommunication Act (Cap. 98).

23 Standard individual licence conditions.

All individual licences granted under this Act shall include the standard licence conditions specified in the Schedule.

24 Special conditions.

In addition to section 23, the Minister may with the consent of His Majesty in Council, by declaration, determine and impose special conditions in addition to the standard conditions, including but not limited to, licence fees, on an individual licence granted under this Act.

25 Variation of licence conditions.

The Minister may with the consent of His Majesty in Council, by declaration, vary or amend any or all special conditions of an individual licence.

26 Compliance with licence conditions.

- (1) An individual licensee shall comply with: —
 - (a) the standard licence conditions as specified in the Schedule; and
 - (b) the special licence conditions as declared by the Minister pursuant to section 24 and included in the relevant individual licence.
- (2) Any person who contravenes section 26(1), commits an offence and shall, on conviction, be liable to a fine not exceeding \$15,000 or to a term of imprisonment not exceeding 6 months or both.

27 Term of licence.

Unless otherwise approved by His Majesty in Council, an individual licence granted under this Act shall be for a period of not less than 5 years but not more than 10 years.

28 Transfer of licence.

An individual licence may not be assigned, sub-licensed or transferred to any other person unless the prior approval of His Majesty in Council has been obtained.

29 Suspension or revocation of licence.

- (1) Subject to sub-section (2), the Minister may with the consent of His Majesty in Council, by declaration, suspend or revoke an individual licence in the event : —
 - (a) the licensee has failed to pay an amount required by this Act;
 - (b) the licensee has failed to comply with the provisions of this Act or the terms and conditions of an applicable licence deemed to be granted under this Act; or
 - (c) the suspension or revocation is deemed by His Majesty in Council to be in the public interest.
- (2) The Minister shall not suspend or revoke an individual licence under sub-section (1) unless: —
 - (a) he has first given to the licensee, at least 3 days written notice of his intention to suspend or revoke the licence, including the grounds for the suspension or revocation; and
 - (b) he has taken into consideration any representation made or any action taken by the licensee to remedy any fault or prevent the occurrence of a similar fault.

30 Register of individual licences.

The Department shall maintain a register of all persons who have been granted an individual licence under this Act and a copy of the licences issued.

DIVISION 2

CLASS LICENCES

31 Class licence.

- (1) Subject to the approval of Cabinet, the Minister may promulgate a class licence.
- (2) Subject to section 34 and such other exemptions as may be determined or declared under this Act, no person shall: —
 - (a) provide any customer equipment;
 - (b) install and connect to a network facility or network service, any customer equipment;
 - (c) engage in any resale activities;
 - (d) provide Internet access services; or

- (e) engage in or provide any other activity or service that has been determined by the Minister to be subject to a class licence in accordance with sub-section (1),
- except in accordance with the terms and conditions of a class licence promulgated by the Minister.

32 Registration.

No person shall operate any activity requiring a class licence under this Act until he has registered with the Department.

33 Supplying without a class licence an offence.

Any person who contravenes section 31 or section 32, commits an offence and shall, on conviction, be liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 months or both.

34 Declared exemptions.

The Minister may subject to the approval of Cabinet, where necessary and expedient to pursue the objects of this Act, by declaration, exempt a person or class of person from the requirement to register with the Department for a class licence under section 32.

35 Standard class licence conditions.

All class licences promulgated under this Act shall include the standard licence conditions specified in the Schedule.

36 Special conditions.

Notwithstanding section 35, the Minister may with the consent of Cabinet, by declaration, determine and impose special conditions in addition to the standard conditions, including but not limited to, fees for registration under section 32 in a class licence promulgated under this Act.

37 Variation of licence conditions.

The Minister may with the consent of Cabinet, by declaration, vary or amend any or all special conditions in addition to the standard conditions of a class licence.

38 De-registration.

- (1) The Minister may, by declaration, de-register a person subject to a class licence in the event: —
 - (a) that the person has failed to pay an amount required by this Act;
 - (b) that the person has failed to comply with the provisions of this Act or the terms and conditions of the class licence; or
 - (c) de-registration is deemed by the Cabinet to be in the public interest.
- (2) The Minister shall not de-register a person under sub-section (1) unless: —
 - (a) he has first given to the person at least 3 days written notice of his intention to de-register the person including the grounds for the registration; and
 - (b) he has taken into consideration any representation made or any action taken by the person to remedy any fault or prevent the occurrence of any similar fault.

39 Register of persons under a class licence.

The Department shall maintain a register of all person registered under a class licence promulgated under this Act.

PART VI - CONSUMER PROTECTION

DIVISION 1

CONSUMER STANDARDS

40 Consumer standards.

- (1) The Minister may direct the Department to determine relevant and appropriate consumer standards which shall apply to all licences issued under this Act.
- (2) The consumer standards determined by the Department shall be subject to the approval by declaration of the Minister.

41 Matters for consumer standards.

Consumer standards determined by the Department under section 40 may include, but shall not be limited to: —

- (a) the provision of information to consumers regarding services, tariffs and performance;
- (b) the handling of consumer complaints;
- (c) the protection of individual consumer information;
- (d) the provisioning of and maintenance (including fault repair) of services;
- (e) the advertising or representation of services;
- (f) consumer charging, billing, collection and credit practices; and
- (g) any other matter of concern to consumers or as may be required by the Minister.

DIVISION 2

TARIFFS FOR SERVICES

42 Application of Division 2.

For the purposes of this Division, “licensee” means a person or a company granted an individual licence under section 20.

43 Tariffs for services.

- (1) A licensee must: —
 - (a) upon request in writing from the Department, give to the Department a written tariff of the licensee's charges for its existing services; and
 - (b) prior to providing any new service, give to the Department a written tariff of the licensee's charges for the proposed new service.
- (2) The tariff must be in a form approved by the Department.
- (3) In relation to each service that the licensee offers or proposes to offer, the tariff must set out: —
 - (a) a description of the service; and
 - (b) the details of the nature and amounts of the charges payable for the service.
- (4) The tariff may set out, or may be accompanied by a document setting out other terms and conditions on which the licensee supplies or proposes to supply the services described in the tariff.
- (5) If the tariff is accompanied by a document of a kind referred to in subsection (4), the document is taken to be part of the tariff.

44 Licensee to provide services in accordance with tariffs.

A licensee must provide all its services in accordance with the written tariffs which are filed and approved by the Department pursuant to section 45(2).

45 Disallowance of non-complying tariffs.

- (1) Where: —
 - (a) a licensee gives to the Department a document that purports to be a tariff of the licensee's charges for its services or proposed new services, and
 - (b) the Department makes a decision that the tariff does not comply with section 43 or is not in the interest of the public,
the Department may, within 60 days after receipt of the tariff give the licensee a written notice stating that the Department is disallowing the tariff and setting out the reasons for its disallowance.
- (2) The Department shall be deemed to approve the tariff unless the licensee receives a written notice disallowing the tariff in accordance with sub-section (1).

46 Variation or revocation of tariffs.

- (1) A licensee may propose to vary or revoke a tariff for its existing services by written notice given to the Department.
- (2) The proposed variation or revocation must be accompanied by: —
 - (a) a description of the services to which variation or revocation of tariffs is being sought; and
 - (b) details of the nature and amounts of charges to be varied or revoked.

47 Disallowance of variation or revocation.

- (1) Where: —
 - (a) a licensee gives to the Department a document that purports to be a variation or revocation of a tariff of the licensee's charges for its existing services, and
 - (b) in the Department makes a decision that the proposed variation or revocation is not in the interest of the public,

the Department may, within 60 days after receipt of the document give the licensee a written notice stating that the Department is disallowing the variation or revocation and setting out the reasons for its disallowance.

- (2) The Department shall be deemed to approve the variation or revocation unless the licensee receives a written notice disallowing the tariff in accordance with sub-section (1).

48 Register of tariffs.

The Department shall maintain and make available to the public a register of tariffs for services.

DIVISION 3

REGULATION REGARDING TARIFFS

49 Regulations of tariffs.

- (1) Regulations may be made pertaining to tariffs for any service provided under the licenses issued under this Act.
- (2) Regulations may include but shall not be limited to: —
 - (a) tariffs and variation of tariffs for certain services or classes of services;
 - (b) publication or disclosure of tariffs for certain services or classes of services;
 - (c) penalties for contravening the regulations pertaining to this Division; and
 - (d) any other matter as may be required by the Minister.
- (3) Any licensee who contravenes such Regulations, commits an offence and shall on conviction be liable to a fine not exceeding \$15,000 or to a term of imprisonment not exceeding 6 months or both.

DIVISION 4
UNIVERSAL SERVICE SYSTEM

50 Universal service system.

- (1) The Minister may direct the Department to determine a system, to be known as the universal service system, to promote the widespread availability of services provided under licences issued under this Act.
- (2) The universal service system determined by the Department shall be subject to the approval by declaration of the Minister.

51 Matters to be considered in a universal service system.

The matters which may be addressed in a universal service system determined by the Department, under section 50, may include but shall not be limited to: —

- (a) needs of underserved areas within the Kingdom;
- (b) needs of underserved groups within the community;
- (c) measures to encourage the installation of network facilities and the provision of network services or applications services to serve such underserved areas and underserved groups;
- (d) affordability of such services;
- (e) costs of providing such services;
- (f) equitable sharing of the costs of such service throughout the community; and
- (g) any other matter as may be required by the Minister.

52 Direction by Department to comply.

Subject to the approval of the Minister, the Department may direct a licensee or a class of licensees to comply with any or all matters determined and approved under this Part.

PART VII - TECHNICAL REGULATION

DIVISION 1

NUMBERING AND ELECTRONIC ADDRESSING

53 Responsibility of the Department.

The Department shall be responsible for the control, planning, administration, management and assignment of the numbering and electronic addressing of network services and applications services.

54 Numbering and electronic addressing plan.

- (1) The Minister may direct the Department to determine a national numbering and electronic addressing plan for the numbering and electronic addressing of network services and applications services which shall apply to licences issued under this Act and the Radiocommunication Act (Cap. 98).
- (2) The numbering and electronic addressing plan determined by the Department shall be subject to the approval by declaration of the Minister.

55 Availability to the public.

- (1) The numbering and electronic addressing plan shall be made available to the public.
- (2) The Department may determine and impose, by declaration, a fee to access and inspect the numbering and electronic addressing plan.

56 Direction by Department to comply.

Subject to the approval of the Minister, the Department may direct a licensee or a class of licensees to comply with an approved numbering and electronic addressing plan.

DIVISION 2
TECHNICAL STANDARDS

57 Technical standards.

- (1) The Minister may direct the Department to determine technical standards which shall apply to licences issued under this Act and the Radio-communication Act (Cap. 98).
- (2) The technical standards determined by the Department shall be subject to the approval by declaration of the Minister.

58 Matters for technical standards.

Technical standards determined by the Department under section 57, may include, but shall not be limited to: —

- (a) the provision of network facilities;
- (b) the provision of network services;
- (c) the provision of customer equipment services;
- (d) the approval of customer equipment;
- (e) the qualifications of providers and installers of network facilities and customer equipment services;
- (f) the adoption of technical standards promulgated by international standard setting bodies;
- (g) the promotion of electromagnetic immunity and compatibility;
- (h) the promotion of safety; or
- (i) any other matter as may be required by the Minister.

59 Direction by Department to comply.

Subject to the approval of the Minister, the Department may direct a licensee or a class of licensees to comply with an approved technical standard.

60 Disconnection of customer equipment.

An individual licensee may refuse to supply or cease supplying a network service or applications service in the event that the licensee considers the customer equipment which is connected to the licensee's network, for the utilisation of the said services, is a threat or poses a threat to the safety or functioning of the service or the safety of any person.

61 Request for the Department to direct licensee.

Where an individual licensee refuses to provide or ceases to provide a service to a person under section 60, that person may apply to the Department for a direction under section 62.

62 Department may direct the provision of services.

Where the Department is satisfied that the connection of customer equipment disconnected under section 60 is not a threat or does not pose a threat to the safety or functioning of the service or to the safety of any person, it shall direct the individual licensee to supply the requested service.

DIVISION 3**SPECTRUM MANAGEMENT****63 Department to manage spectrum.**

- (1) The Department shall be responsible for the overall management of the radio frequency spectrum in the Kingdom.
- (2) The Department shall administer the relevant provisions of the Radiocommunication Act (Cap. 98).

64 Determination of spectrum plan.

- (1) The Minister may direct the Department to determine a spectrum plan in respect of any part or all of the spectrum which shall apply to licences issued under this Act and the Radiocommunication Act (Cap. 98).
- (2) The spectrum plan determined by the Department shall be subject to the approval by declaration of the Minister.

65 Contents of a spectrum plan.

A spectrum plan determined by the Department under section 64 may include but shall not be limited to: —

- (a) the existing and planned frequency allocations;
- (b) the existing and planned frequency reservations;
- (c) the process for allocation and re-allocation of spectrum; and
- (d) any other matter as may be required by the Minister.

66 Factors in developing the spectrum plan.

In determining a spectrum plan, the Department shall have regard to: —

- (a) the objects of this Act;
- (b) the efficient use of spectrum;
- (c) the impact on existing users and uses of spectrum; and
- (d) the applicable international conventions, standards and agreements concerning radio frequency spectrum.

67 Availability to the public.

- (1) The spectrum plan shall be made available to the public.
- (2) The Department may determine and impose, by declaration, a fee to access and inspect the spectrum plan.

68 Assignment of rights to spectrum.

- (1) Regulations may be made pertaining to the assignment of the rights to the use of radio frequency spectrum to certain persons.
- (2) Such regulations may include but shall not be limited to: —
 - (a) the procedures for the assignment of spectrum by way of auction, tender or fixed price;
 - (b) the eligibility criteria of persons who may be assigned rights to use spectrum;
 - (c) the terms and conditions by which spectrum may be assigned; and
 - (d) any other matter as may be required by the Minister.

PART VIII - SOCIAL REGULATION

69 Application of Part VIII.

For the purposes of this Part, “licensee” means a person or a company granted an individual licence under section 20 which authorises the provision of any content applications service.

70 Hours of service.

A licensee shall not provide content applications services except during such hours specified in its licence or otherwise determined by the Minister, subject to the approval of Cabinet.

71 Content standards.

- (1) The Minister may direct the Department to determine standards for content applications services supplied in the Kingdom which shall apply to all licensees.
- (2) The standards for content applications services determined by the Department shall be subject to the approval by declaration of the Minister.

72 Matters for content standards.

Content standards determined by the Department under section 71 may include but shall not be limited to: —

- (a) the restrictions or prohibitions relating to the supply of unsuitable content or particular types of content;
- (b) the methods of classifying content;
- (c) the restrictions or prohibitions relating to advertising content;
- (d) the representation of Tongan culture and national identity; and
- (e) any other matter as may be required by the Minister.

73 Contents standards to be specified in licence.

- (1) The content standards approved by the Minister, under section 71, may be specified in the licences granted under this Act or in such other manner as the Minister may determine.
- (2) The content standards approved by the Minister, under section 71, may be altered by the Department, subject to the approval of the Minister.

74 Department may direct a licensee to comply.

Subject to the approval of the Minister, the Department may direct a licensee or a class of licensees to: —

- (a) comply with an approved content standard; or
- (b) vary a content applications service provided in order that such a service shall be in compliance with the content standards.

75 Minister may prohibit a content application service.

The Minister may prohibit a licensee, by written notice, from providing any content applications service or class of content applications service specified in the notice.

76 Licensee may not provide subscription content.

- (1) A licensee is prohibited from providing subscription content through a content applications service unless otherwise permitted by the conditions of its licence.
- (2) A licensee permitted by the conditions of its licence to provide subscription content pursuant to sub-section (1) shall publicise particulars of its charges for provision of such subscription content.

77 Licensee may provide advertising content.

- (1) A licensee may, unless otherwise prohibited by the conditions of its licence, provide advertising content through a content applications service.
- (2) A licensee intending to provide advertising content pursuant to sub-section (1) shall publicise particulars of its advertising charges.

78 Censorship.

A licensee shall not supply any content which: —

- (a) is indecent or obscene;
- (b) displays excessive violence;
- (c) is blasphemous;
- (d) is treasonous or seditious;
- (e) is defamatory; or
- (f) will contravene the Laws of the Kingdom.

79 Defamation Act.

For the purposes of the Defamation Act (Cap. 33), any content supplied by a licensee, in the case of: —

- (a) audio content, shall be deemed to be in the form of sound or speech; and
- (b) audio visual content, shall be deemed to be in the form of visual, speech and sound.

80 Religion.

Subject to the approval of Cabinet, the Minister or any person delegated by him, may by declaration require in writing a licensee, to supply, without charge, divine worship content or other content of a religious nature during such periods as the Minister, or such person delegated by him, may determine.

81 National interest.

Subject to the approval of Cabinet, the Minister or any person delegated by him, may by declaration require in writing a licensee, to supply, without charge, such content relating to national interest matters as the Minister, or such person delegated by him, may determine.

82 Education.

Subject to the approval of the Cabinet, the Minister or any person delegated by him, may by declaration require in writing a licensee, to supply, either subject to a reasonable fee or without charge, such educational content as the Minister, or such person delegated by him, may determine.

83 National emergency.

During any period of national emergency, a licensee shall place its facilities that are used to provide content applications services, free of charge, at the service of the Government, and shall also supply competent persons to operate such facilities and provide content applications services.

84 Political and controversial content.

Subject to the approval of His Majesty in Council, the Minister may determine the extent and manner in which a licensee may provide political or controversial content.

85 Offence.

A licensee who supplies content applications services contrary to the provisions of this Act or its subsidiary legislation, or its licence, commits an offence and shall, on conviction, be liable to a fine not exceeding \$15,000 or to a term of imprisonment not exceeding 6 months or both.

PART IX - ECONOMIC REGULATION

DIVISION 1

General Competition Practice

86 Prohibition on anti-competitive behaviour.

A licensee shall not engage in any conduct which has the purpose or effect of substantially lessening competition in a communications market.

87 Prohibition on entering into collusive agreements.

A licensee shall not enter into any understanding, agreement or arrangement with any person, whether legally enforceable or not, which provides for: —

- (a) rate fixing;
- (b) market sharing;
- (c) boycott of a supplier of customer equipment; or
- (d) boycott of another competitor.

88 Prohibition on tying and linking arrangements.

A licensee shall not, at any time or in any circumstances, make it a condition for the provision or supply of a product or service in a communications market, that the person acquiring such product or service in that communications market is also required to acquire or not acquire any other product or service either from the licensee or from another person.

89 Department may direct a licensee on conduct.

The Department may, subject to the approval of the Minister, direct a licensee in a communications market to cease conduct in that communications market which has, or may have, the effect of substantially lessening competition in any communications market.

90 Prohibition on discrimination.

Subject to such exemptions as may be prescribed under section 91, a licensee shall not discriminate between persons who acquire communications services of a particular kind in relation to: —

- (a) the charges for the services;

- (b) the terms and conditions on which the services are supplied; or
- (c) the performance characteristics of the service.

91 Department may grant an exemption.

The Department may by declaration, subject to the approval of the Minister, grant an exemption to any licensee from any prohibition under section 90.

DIVISION 2

ACCESS TO NETWORK FACILITIES AND SERVICES

92 Application of Division 2.

For the purposes of this Division, “licensee” means a person or a company granted an individual licence under section 20.

93 Access to facilities and services.

- (1) Subject to sub-sections (2) and (3), and such exemptions as may be determined by the Minister, a licensee (“providing licensee”) shall, if requested in writing to do so by another licensee (“requesting licensee”), give the requesting licensee access to its: —
 - (a) network facilities;
 - (b) network services; or
 - (c) such other facilities or services which facilitate the provision of network services or applications services, including content applications services.
- (2) The providing licensee is not required to comply with sub-section (1) unless: —
 - (a) where the request is for access to: —
 - (i) network facilities, the access is for the sole purpose of enabling the requesting licensee to: —
 - (aa) provide competitive network facilities and network services; or
 - (bb) establish its own network facilities; or
 - (ii) network services, the access is for the sole purpose of enabling the requesting licensee to supply network services or applications services; and

- (b) the requesting licensee gives the providing licensee reasonable notice that the requesting licensee requires the access.
- (3) The providing licensee and the requesting licensee, in complying with sub-section (1), shall observe such terms and conditions as are: —
 - (a) agreed between the providing licensee and the requesting licensee; or
 - (b) failing agreement, determined by the Department in accordance with section 97.
- (4) The access provided by the providing licensee to the requesting licensee under sub-section (1), shall be: —
 - (a) of at least the same or more favourable technical standard and quality as the technical standard and quality provided in the providing licensee's network facilities or network services; and
 - (b) on an equitable and non-discriminatory basis.

94 Register of access agreements.

- (1) Any access agreement between the licensees for the provision of network facilities or network services shall be in writing and shall be registered with the Department who shall maintain a register of access agreements.
- (2) The register may consist of a public part and a confidential part as agreed between the parties.
- (3) Subject to sub-section (4), the public part shall be open to public inspection.
- (4) The Department may determine and impose, by declaration, a fee to inspect the public part of the register.

95 Department may publish guidelines.

The Department may publish guidelines on matters relating to access and interconnection including but not limited to: —

- (a) technical standards for access and interconnection;
- (b) points of interconnection;
- (c) access to network facilities for the purposes and in connection with provision of competitive network facilities and network services or establishment of new network facilities;
- (d) access to network services for the purposes and in connection with supply of network services or applications services;

- (e) access to other facilities or services for purposes of facilitating the provision of network services or applications services, including content applications services;
- (f) supply by the providing licensee of: —
 - (i) information about traffic carried on the network of the providing licensee; or
 - (ii) any other information necessary to ensure the efficient supply of network services or applications services by means of the network facilities concerned;
- (g) charges payable for access to the network facilities, network services and to other facilities or services which facilitate the provision of network services or applications services, including content applications services; and
- (h) such other matters that are relevant and necessary for the purposes of access and interconnection.

DIVISION 3 ARBITRATION

96 Application of Division 3.

For the purposes of this Division, “licensee” means a person or a company granted an individual licence under section 20.

97 Arbitration by the Department on terms of access.

- (1) Where the providing licensee and the requesting licensee cannot agree on terms and conditions pursuant to sections 93(3)(a) and 94(2), either licensee may submit the matter in writing to the Department for arbitration under this Division.
- (2) The Department shall only conduct arbitration under this Division where it is satisfied that the licensees have had reasonable opportunity to negotiate on the terms and conditions for access, and such commercial negotiation between the licensees have failed.
- (3) Within 30 days after the end of an arbitration, the Department shall provide in writing to the parties its decision about the terms and conditions of the access agreement between the licensees.
- (4) The Department, in deciding the terms and conditions for access pursuant to this section for the purposes of section 93, shall observe any guideline published by the Department pursuant to section 95 and shall have regard

to such matters relating to access and interconnection as listed in section 95.

- (5) In deciding terms and conditions for access pursuant to this section for the purposes of section 93, the Department shall have regard to: —
- (a) submissions and comments made by the parties to the arbitration; and
 - (b) the Department's own analysis of the issues involved in the arbitration, including where relevant an analysis of the costs likely to be incurred by each party to the arbitration.

DIVISION 4

COMMUNICATIONS SECTOR PERFORMANCE MONITORING

98 Department to monitor licensees.

The Department shall be responsible for monitoring the financial and operational performance of licensees operating under individual licences granted under this Act and the Radiocommunication Act (Cap. 98).

99 Reporting to Minister.

The Minister may direct the Department by written notice to prepare and submit a report to him on the performance of licensee operating under individual licences granted under this Act and the Radiocommunication Act (Cap. 98).

100 Contents of report.

A report prepared under section 99 may include but shall not be limited to: —

- (a) industry development matters in general;
- (b) the activities undertaken by individual licensees;
- (c) service quality standards; and
- (d) any other matter as may be required by the Minister.

101 Department has power to gather information

The Department may direct a person, by written notice, whom the Department has reason to believe has information which is relevant to the performance of the Department's functions under this Division, to provide such information within the period, and in the manner and form specified in the notice.

DIVISION 5
INQUIRIES AND INVESTIGATIONS

102 Minister may direct Department to hold inquiry.

The Minister may direct the Department, by written notice, to hold an inquiry on matters of a general nature which relate to the administration of this Act or which will serve the objectives of this Act.

103 Department may initiate an inquiry.

The Department may only initiate an inquiry if it is satisfied that the matter is of significant interest to either the public or to current or prospective licensees.

104 Minister may determine rules of inquiry.

The Minister may determine rules for the conduct an inquiry under section 102 and section 103.

105 Minister may direct the Department to hold an investigation.

The Minister may direct the Department, by written notice, to hold an investigation into any civil or criminal offence which may have been or may be committed under this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99) or any other law.

106 Department may initiate an investigation.

The Department may initiate an investigation into any civil or criminal offence in the Kingdom which may have been or may be committed under this Act, the Radiocommunication Act (Cap 98), the Telegraph Act (Cap. 99) or any other law provided that: —

- (a) a complaint has been made to the Department in writing; and
- (b) the Department has the power to investigate the matter.

107 Minister may determine rules of investigation.

The Minister may determine rules for the conduct of an investigation under section 105 and section 106.

PART X - MISCELLANEOUS

DIVISION 1

INSTALLATION OF NETWORK FACILITIES, ACCESS TO LAND, ETC.

108 Application of Division 1.

For the purposes of this Division, “licensee” means a person granted an individual licence under section 20 which authorises the installation, ownership, operation and maintenance of network facilities.

109 Power of entry upon lands.

A licensee or its agents may enter upon lands for the purpose of erecting, removing, fixing, altering or examining any network facility and may remain thereon for such reasonable time and do all such works and things as may be expedient for the purposes of this Act; and

- (a) may survey and take levels of any such land or any part thereof and also excavate and remove any earth, stone, soil, sand and gravel whatsoever and any trees suitable either for the construction, alteration or repair of any such network facility or any part thereof or for any other works in connection with any such network facility;
- (b) may cut and remove for a space not exceeding in any case 20 metres on each side of any proposed or existing network facility all such trees and underwood as would be likely to interfere with the construction and proper working of any such network facility;
- (c) for the purpose of obtaining access to any network facility may enter into an agreement with the owner or occupier of any land traversed by or adjoining any network facility for the erection of any gate on such land and when any agreement shall be so made may by itself or its agent erect, maintain and use any such gate for the purpose of obtaining access to any such network facility;
- (d) may erect, construct and maintain network facilities along, across, over or under any road, street or highway and for any such purposes may open up any road and alter the position thereunder of any pipe (other than a main for the supply of water or gas).

110 Public traffic not to be interrupted.

- (1) Where a licensee erects or constructs any network facility: —

- (a) across or over any road, the licensee shall place such network facility at such a height as not to hinder or interfere with the passage of any person or vehicle along the road;
 - (b) over or under any navigable waters, the licensee shall place such network facility in such a manner as not to interfere with the navigation of such waters.
- (2) Where a licensee alters, repairs or removes any network facility which has been placed across or over any road or over or under any navigable water he shall not cause any obstruction to the traffic upon or the use of such road or navigable water.

111 Entry by day and notice to be given.

Subject to sections 112 and 113, a licensee or its agents shall not enter upon any lands other than Government lands: —

- (a) for the purpose of constructing or removing any network facility except by day; and
- (b) until after giving 7 days notice to such owner, occupier or agent of the intention to construct such network facilities upon such land.

112 Notice of entry when owner cannot be found.

If the owner or occupier of the land proposed to be entered upon for the purposes of establishing or maintaining a network facility cannot after reasonable inquiry be found it shall be sufficient if a licensee causes to be posted in a conspicuous place on such land a notice in writing stating his intention to enter on such land at the expiration of 7 days from the date of the notice. Upon expiry of the time mentioned in the said notice the licensee or its agents may exercise all the powers conferred under this Act as if notice had been served on the owner or occupier of such land or its agent.

113 Entry without notice for inspection and repair.

Notwithstanding section 111 a licensee or its agent may, without giving any notice, enter at reasonable times upon lands for the purposes of inspecting, altering or repairing any network facility.

114 Compensation.

- (1) In establishing or maintaining a network facility, a licensee or its agents shall do as little damage as is reasonable.
- (2) Where any person; —

- (a) having any rights or interest in the lands acquired for the purposes of establishing or maintaining a network facility; or
- (b) is injuriously affected or suffers any property damage as a result of the licensee or its agent establishing or maintaining a network facility,

that person shall be entitled to compensation. Such compensation shall be ascertained by two arbitrators one of whom shall be appointed by the person claiming compensation and the other by the licensee.

- (3) The two arbitrators shall appoint a third arbitrator who shall act as an umpire. If the arbitrators fail to agree on the amount of compensation if any to be awarded, the umpire shall consider the evidence and decide on the matter.
- (4) The decision of the arbitrators or the umpire, as the case may be, shall be final and binding.
- (5) Where an act or thing has been done with the consent of the person claiming compensation, no compensation shall be awarded or payable save and except in the case of gross negligence, wilful default or where compensation has been agreed to in a written agreement.

115 Removal of trees etc. damage to network facilities.

If a licensee is of the opinion that any network facility is or is likely to be in any manner damaged or obstructed by any tree or shrub whether ornamental or otherwise growing or being on any land adjoining such network facility or over which such network facility passes or is carried, the licensee or its agent may remove such tree or shrub or part thereof and no action at law shall be maintainable on account of such removal provided such acts have been effected in such a manner as to cause no unnecessary damage.

116 Accidental damage to network facilities.

Any person who by misconduct or negligence causes any damage or destroys any network facility or any part thereof or the material or property relating thereto shall on conviction, be liable to a fine not exceeding \$5000 or in default of payment, to imprisonment for any term not exceeding 3 months.

117 Damage by careless driving.

If any damage is caused to any network facility by any motor vehicle or by any vehicle drawn by a horse or other animal (“animal vehicle”), or by anything loaded on any motor vehicle or animal vehicle, the driver or person in charge of any such motor vehicle or animal vehicle shall prima facie be deemed to be

guilty of an offence under section 116 without any proof of negligence or misconduct, but such person shall be entitled to rebut such presumption.

118 In addition to penalty any damage to be made good.

Every person causing damage to any network facility shall be liable to make good the damage to the amount to be determined by a Court of competent jurisdiction even though he may have been fined or imprisoned under this Act for the said damage.

DIVISION 2 PENALTY AND OFFENCES

119 General Penalty.

- (1) Every omission or failure to comply with, and every act done or attempted to be done contrary to this Act or the regulations, a declaration made under this Act by the Minister or the Department, or a direction made under this Act by the Minister or the Department, or a determination made under this Act by the Minister or the Department, or in breach of the terms and conditions subject to which any licence has been issued, shall be deemed to be an offence against this Act.
- (2) For every such offence, where not otherwise specifically provided for, the offender shall be liable upon conviction to a fine not exceeding \$15,000 or to a term of imprisonment not exceeding 6 months or both and in addition a Court of competent jurisdiction may order anything seized to be forfeited.

120 Offence by body corporate.

If a body corporate commits an offence under this Act or its subsidiary legislation, a person who at the time of the commission of the offence was a director, chief executive officer, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management —

- (a) may be charged jointly or severally in the same proceedings with the body corporate; and
- (b) if the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his function in that capacity and to all circumstances, he proves —

- (i) that the offence was committed without his knowledge, consent or connivance; and
- (ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

121 Liability for acts of employees and agents.

If any person would be liable under this Act to any punishment or penalty for his act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his, or of the employee of the agent, if the act, omission, neglect or default was committed: —

- (a) by that person's employee in the course of his employment;
- (b) by the agent when acting on behalf of that person; or
- (c) by the employee of the agent in the course of his employment by the agent or otherwise on behalf of the agent acting on behalf of that person,

unless, having regard to the nature of his function in that capacity and to all circumstances, he proves: —

- (i) that the offence was committed without his knowledge, consent or connivance; and
- (ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

122 Right of entry for inspection.

An authorised officer of the Department may, under a warrant issued by a Magistrate, enter any premises and may: —

- (a) search the premises;
- (b) inspect and take photographs or make sketches;
- (c) inspect any book, record, document, database, or electronic file kept at the premises; or
- (d) remove or make copies of any book, database, or electronic file,

to the extent that it is reasonably necessary to ascertain whether there has been compliance with the provisions of this Act, the Radiocommunication Act, the Telegraph Act or other applicable laws.

123 Offence related to searches and seizures.

Where an authorised officer of the Department has reasonable grounds for suspecting that there may be on or in any premises a particular thing that may provide evidence regarding an offence under this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99), the Tonga Communications Corporation Act 2000 or any other law, the authorised officer may, under a warrant issued by a Magistrate, search the premises and seize the thing.

124 Department may authorise release of things seized.

The Department may authorise any thing seized under section 123 to be released to the owner, or to the person from whom the thing was seized, either unconditionally or on such conditions as the Department thinks fit.

DIVISION 3

REGULATIONS AND TRANSITIONAL PROVISIONS

125 Regulations.

The Minister may, subject to the approval of the Cabinet, make regulations, which are not inconsistent with this Act and other laws, prescribing any or all matters which by this Act are required or permitted to be prescribed for carrying out or giving effect to this Act, or for the conduct of the business of the Department or the licensees.

126 Review Provisions.

- (1) Any person who is dissatisfied by a decision, direction, award or order made by the Department relating to any matter under this Act, the Radiocommunication Act (Cap. 98), the Telegraph Act (Cap. 99) and other applicable laws, may, within 14 days apply to the Minister to have the decision, direction, award or order reviewed.
- (2) The Minister may where an application is made pursuant to subsection (1), confirm, modify or reverse the decision, direction, award or order under review or any part of such decision, direction, award or order.

127 Repealed Acts.

- (1) The following Acts shall be repealed (“Repealed Acts”): —
 - (a) The Telephones Act (Cap. 97); and
 - (b) The Broadcasting Act 1989.

- (2) Any registration, act, order, direction, approval or decision done, made or given before the coming into operation of this Act, including those done, made or given under the Repealed Acts, shall be deemed to have done, made or given under this Act and shall continue to be in full force and effect in relation to whom they apply until amended or revoked under this Act or new rules, regulations or other subsidiary legislation made under this Act or until the date of its expiry.

Passed in the Legislative Assembly this 14 day of September, 2000.

SCHEDULE

STANDARD LICENCE CONDITIONS

Standard licence conditions, pursuant to Sections 23 and 35 Part V.		
1.	Licence replaces any other licence.	This licence replaces any other licence held by the licensee in respect of the: (a) licensed facilities; (b) licensed services; and (c) licensed activities; as the relevant licence requires.
2.	Licensee shall comply with the provision of the Communications Act 2000.	The licensee shall comply with the provisions of the Communications Act 2000 and other law and with any subordinate legislation and Regulations thereunder.
3.	Licensee shall comply with technical standards.	The licensee shall comply with any technical standard approved by the Minister under section 57 of the Communications Act 2000, where such technical standard relates to the: (a) licensed facilities; (b) licensed services; and (c) licensed activities; under the relevant licence.
4.	Licensee shall comply with a spectrum plan.	The licensee shall comply with a spectrum plan, approved by the Minister under section 64 of the Communications Act 2000.
5.	Licensee shall indemnify the Government.	The licensee shall indemnify the Government against any actions, suits, claims or proceedings arising out of or in relation to any breaches or failings on the part of the licensee.