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TELECOMMUNICATIONS PROMULGATION 2008
(PROMULGATION NO. 1 OF 2008)

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INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

TELECOMMUNICATIONS PROMULGATION 2008
(PROMULGATION NO. 1 OF 2008)

IN EXERCISE of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgement as President of the Republic of the Fiji Islands as to what is best and good for the people of Fiji, and by the executive authority of the State in accordance with section 85 of the Constitution and such other powers as may appertain, and with the advice of Cabinet, I, Josefa Iloilovatu Uluivuda, make this

PROMULGATION

TO ESTABLISH THE TELECOMMUNICATIONS AUTHORITY OF FIJI AND THE TELECOMMUNICATIONS APPEAL TRIBUNAL, AND THEIR FUNCTIONS, POWERS AND DUTIES, AND TO PROVIDE FOR THE LICENSING OF TELECOMMUNICATIONS SERVICES AND THE MANAGEMENT AND LICENSING OF RADIO SPECTRUM AND FOR RELATED MATTERS

PART 1—PRELIMINARY

Short title and commencement

1.—(1) This Promulgation must be cited as the Telecommunications Promulgation 2008.

(2) This Promulgation comes into force on a date or dates appointed by the Minister, by notice in the *Gazette*.

Interpretation

2. In this Promulgation, unless the context otherwise requires—

“access to facilities” means the making available of any elements or facilities of a telecommunications network or any telecommunications services to another party for the purpose of providing any kind of telecommunications services;

“annual gross revenue” means the annual gross revenue of the previous year from providing any telecommunications services excluding VAT, levies for Universal Service Fund and ADC and any other Government imposed levies passed through charges or, in the case of an entity that as at the relevant date has been providing telecommunications services for less than a year, an estimate of the annual gross revenue as so calculated based on the gross revenue for the part of the year ending with the relevant date;

“Authority” means the Telecommunications Authority of Fiji established by section 5;

“Board” means the Board of the Authority;

“Commerce Commission” means the Commerce Commission established under the Commerce Act;

“desist order” means an order made under section 79;

“determination” means a determination made pursuant to section 18;

“facility” means any element or physical component of a telecommunications network (other than consumer equipment), whether fixed or non-fixed, such as wires, lines, poles, masts, ducts, sites, towers, satellite earth stations, infrastructure, buildings, housing structures, any apparatus using radio spectrum, submarine cables, software systems, number translation systems, virtual network services and other resources used in the provision of a telecommunications service;

“Fund” means the Universal Service Fund established under section 53;

“licence” means a licence issued under Division 1 of Part 3;

“licensee” means the holder of a licence issued under this Promulgation;

- “Ministry” means the ministry responsible for the administration of this Promulgation;
- “number portability” means the ability of consumers to change service provider without having to change their telephone numbers;
- “radio communication” means any telecommunications by means of electromagnetic waves;
- “service provider” means any person or entity providing a telecommunications service;
- “spectrum” means the continuous range of electromagnetic wave frequencies;
- “spectrum licence” means an authorisation to use radio spectrum issued under Division 2 of Part 3;
- “telecommunications” means the conveyance of one or more of the following—
- (a) speech, music or other sounds;
 - (b) visual images;
 - (c) signals serving for the imparting of any matter otherwise than in the form of sounds or visual images;
 - (d) signals serving for the actuation or control of machinery or apparatus,
- from one device to another, through the agency of electric, magnetic, electromagnetic, electrochemical or electro mechanical energy, or by means of fibre optic technology, or any other means or form of conveyance that may be developed in the future;
- “telecommunications apparatus” means apparatus used in transmitting or receiving telecommunications that is conveyed by means of a telecommunications network;
- “telecommunications network” means transmission systems, switching or routing equipment and other resources which permit the conveyance of telecommunications;
- “telecommunications policy” means any existing telecommunications policy approved by the Cabinet and includes the universal service policy;
- “telecommunications service” means any service that enables or facilitates telecommunications;
- “Tribunal” means the Telecommunications Appeal Tribunal established by section 61;
- “universal service” means a universal service scheme devised under Division 4 of Part 3;
- “universal service area” means a universal service area declared under section 49;
- “universal service benefit” means a universal service benefit devised under section 51; and
- “universal service obligation” means an obligation undertaken by or imposed on a licensee to provide services under section 50.

Objectives of the Promulgation

3. The objectives of this Promulgation are to provide a regulatory framework for telecommunications that promotes the long term interests of end users of telecommunications services, or of services provided by means of telecommunications services, and the efficiency and international competitiveness of the telecommunications industry in Fiji and, as consistently with that objective as is practicable—

- (a) to provide rapid expansion of reliable and as affordable as possible telecommunications services on an equitable basis, with particular improvement in rural areas;
- (b) to promote efficient investment and innovation in telecommunications networks and services;
- (c) to provide fair competition among service providers and allowing market forces to operate; and
- (d) to provide and promote appropriate consumer protection and other safeguards in relation to telecommunications services where market forces are insufficient.

PART 2—MANAGEMENT OF TELECOMMUNICATIONS

Division 1 – Responsibility of the Minister

Functions of the Minister

4.—(1) For the purpose of carrying into effect the objectives in section 3, the Minister has the following functions—

- (a) to formulate, monitor and review the telecommunications policy, for approval by Cabinet;
- (b) to recommend to Government policies in the area of legislation, fiscal incentives, investment promotion, rural development, education, health and other areas affecting or affected by telecommunications;
- (c) to promote Fiji as a regional telecommunications hub; and
- (d) to ensure that Fiji is represented in regional and international organisations, agreements and obligations.

- (2) The Minister shall review telecommunications policies at least every 3 years and the review shall—
- (a) assess progress in achieving the objectives in section 3 since the previous telecommunications policy, including by comparison to other 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 minimize uncertainty in the investment environment; and
 - (d) recommend legislation, if required, to implement such policies.

(3) In preparing the telecommunications policy, the Minister shall consult with the Authority and the Commerce Commission, and shall hold consultations with users and licensees.

(4) The Minister may not hold any direct or indirect financial interest in, or exercise any management control over, a licensee under this Promulgation, except for—

- (a) Government holding shares in a licensee under this Promulgation so long as the Minister is not responsible for exercising rights under such shares; and
- (b) indirect interests managed through investment and pension funds where the Minister cannot influence, purchase, sale or exercise of voting rights of such an interest.

Division 2 – Telecommunications Authority of Fiji

Establishment of the Authority

5. This section establishes the Telecommunications Authority of Fiji, as a body corporate with perpetual succession and a common seal, and the Authority may—

- (a) sue and be sued;
- (b) enter into contracts and other legal obligations;
- (c) hold or dispose of properties; and
- (d) perform any such acts as bodies corporate may, by law perform.

Board of the Authority

6.—(1) This section establishes the Board of the Authority consisting of the following members to be appointed by the Minister—

- (a) a Chairperson; and
- (b) four other members.

(2) The Board is the governing body of the Authority and performs the functions and the exercise the powers of the Authority, including the management of the Authority.

(3) The members of the Board are to be appointed in a prescribed open and transparent selection process and procedures.

(4) The members shall be independent and impartial in the exercise of their functions, shall represent the public interest and not any particular interest, and shall, at all times, seek to promote the objectives set out in section 3.

(5) The Minister shall cause the appointment of a member to be published in the Gazette.

(6) Neither a member nor the Chief Executive Officer, officer, consultant, employee or agent of the Authority may have a direct or indirect equity or other financial interest in a licensee, except for indirect interests managed through investment and pension funds where the member, Chief Executive Officer, officer, consultant, employee or agent cannot influence the purchase, sale or exercise of voting rights of such an interest.

Terms of appointment and allowances

7.—(1) A member of the Board may be appointed for a term not exceeding 3 years and may be re-appointed to serve a maximum of 2 terms, provided that the Minister shall identify 2 persons from among the original group of appointees whose initial term of office shall be 1 year only.

(2) Members of the Board are entitled allowances fixed by the Higher Salaries Commission.

Vacation of office

8.—(1) The office of any member becomes vacant if the member—

- (a) resigns by giving written notice to the Minister;
- (b) has been absent, without leave of the Authority, from 3 consecutive meetings of the Authority;
- (c) becomes or has been declared bankrupt, whether in Fiji or elsewhere;
- (d) has been convicted, in the Fiji Islands or elsewhere, of an offence involving dishonesty or an offence under this Promulgation;
- (e) has, in the Fiji Islands or elsewhere, been disqualified or suspended from practising a profession by reason of misconduct;
- (f) becomes permanently incapable of performing the duties of member; or
- (g) takes a direct or indirect equity or other financial interest in a licensee, or receives remuneration of any kind from a licensee or otherwise receives a benefit of any nature.

(2) The Minister may, by written notice, advise a member that he or she intends to recommend removal or suspension of the member on the grounds of misconduct, conflict of interest, inefficiency, fraud or dishonesty, or incapacity of a kind that adversely affects the member's ability to perform the duties of a member or brings the Authority into disrepute.

(3) A member who is notified under subsection (2) must, within 10 working days of receipt of notice, reply in writing to the Minister.

(4) Upon receiving any reply from a member served with a notice or the member fails to reply to the notice within the time specified in the notice, the Minister may, after considering the reply and the allegation, remove or suspend a member.

Meetings of the Board

9.—(1) The Board must meet at least once a month, which the Chairperson shall convene.

(2) Three members of the Board constitute the quorum of a meeting of the Board.

(3) The Board shall keep its minutes in a proper form.

(4) Decisions at meetings of the Board must be by a simple majority of the members present and voting, and if there is an equality of votes, the member presiding has a casting vote, as well as a deliberative vote.

(5) The Board has the power to invite any person to attend a meeting of the Board for the purpose of advising it on any matter under discussion, but the person has no right to vote on the matter.

(6) Subject to this Promulgation, the Board may regulate other procedures for its meetings.

Disclosure of interest at meetings

10.—(1) A member of the Board who has any direct or indirect interest in a matter under discussion by the Board must disclose to the Board the fact and nature of the interest.

(2) A disclosure under subsection (1) must be recorded in the minutes.

(3) After a disclosure under subsection (1) the member in question must not take part in or be present during any discussion and deliberation on the matter.

(4) If a member fails to disclose an interest as required by subsection (1) and the Minister is satisfied that the member intentionally withhold the disclosure of such interest, the Minister may remove the member from the Board.

Chief Executive Officer of the Authority

11.—(1) The Board has the power to appoint a Chief Executive Officer of the Authority on such terms and conditions as the Board may determine and approved by the Higher Salaries Commission.

(2) The Chief Executive Officer of the Authority shall—

- (a) be responsible to the Board for the proper administration and management of the functions and affairs of the Authority in accordance with the policy laid down by the Board and this Promulgation; and
- (b) perform any other functions or duties the Board determines.

Appointment of officers, employees, etc

12.—(1) The Board has the power to appoint other officers, consultants, employees and agents of the Authority for the purposes of carrying out its functions and powers under this Promulgation.

(2) The Board may delegate its power under subsection (1) to the Chief Executive Officer.

(3) The Board must take measures to ensure that no conflict of interests exist between its employees, agents or consultants and licensees.

Application of the Penal Code

13. Chapters 11 and 40 of the Penal Code (Cap. 17) apply to any member of the Board, the Tribunal or a committee or body established under this Promulgation, the Chief Executive Officer, any officer, employee, consultant or agent of the Authority and such person is deemed to be a public officer for the purposes of those Chapters.

Oath of office

14. A member of Board and the Chief Executive Officer and officers of the Authority must take and sign an oath of Office before the Minister in the form approved by the Minister.

Division 3 – Functions and Powers of the Authority

Functions of Authority

15.—(1) For the purpose of carrying into effect the objectives in section 3, the Authority has the following functions—

- (a) to implement the telecommunications policy in accordance with its powers under this Promulgation;
- (b) to assist through mediation the resolution of disputes between licensees or between licensees and consumers;
- (c) to manage State assets through allocating, assigning and supervising the use of radio spectrum and frequencies;
- (d) to manage State assets through allocating, assigning and supervising the use of numbering;
- (e) to promote investor confidence relating to telecommunications;
- (f) to protect consumer interests and promote consumer awareness relating to telecommunications;
- (g) to represent the Government in regional and international organisations and obligations, when the Minister has officially delegated such tasks to the Authority; and
- (h) to perform any other functions assigned to it by this Promulgation or any other written law.

(2) In this section, “State assets” means any radio frequency spectrum or the national telephone numbering system and includes any other prescribed telecommunications assets which by international convention or practice would qualify as a State-owned asset.

Alternative dispute resolution (ADR) schemes

16.—(1) The Authority must establish one or more alternative dispute resolution (“**ADR**”) schemes for disputes between licensees and between service providers and consumers.

(2) In establishing ADR schemes, the Authority shall request and take into account proposals from licensees.

(3) ADR schemes may be comprised of—

- (a) mediation, whether conducted by the Authority, persons appointed by the Authority or persons appointed by the parties or a third party;
- (b) adjudication of specific identified matters having limited scope by an expert appointed by the Authority or the parties or a third party; or
- (c) such other method as the Authority may determine.

(4) The Authority must approve an ADR scheme proposed by licensees if it is—

- (a) fair, transparent and non-discriminatory;
- (b) administered by persons who are for practical purposes independent of the licensees to whom they apply;
- (c) designed to ensure that individuals to be employed under the scheme as mediators, adjudicators, arbitrators or such other roles as may be contemplated have qualifications and experience to carry out such powers and functions; and
- (d) designed to further the objectives of section 3.

(5) The Authority may require those responsible for an approved ADR scheme to report to the Authority regarding its functioning, and the Authority must withdraw its approval if the ADR scheme ceases to meet any condition in subsection (4).

(6) An ADR scheme established under this section may provide for binding decisions, including interim and conservatory measures.

(7) Any ADR scheme established under this section or any ADR decision, shall not prejudice any rights under section 18 of this Promulgation or under Part 4 of the Commerce Act.

Powers of the Authority

17. For the purpose of carrying into effect the objectives in section 3, the Authority has the following powers—

- (a) to make determinations in accordance with this Promulgation;
- (b) to issue technical rules and standards;
- (c) to grant, suspend, vary or revoke licences with respect to telecommunications and spectrum licences for using radio spectrum;
- (d) for the purposes of enforcing compliance with this Promulgation, licences, and determinations, to direct a licensee to produce relevant information relating to the conduct of investigations, and to imposing conditions and penalties;
- (e) to monitor and enforce compliance with this Promulgation, licences, regulations and determinations, including by requiring information from licensees, conducting investigations, and imposing conditions and penalties;
- (f) to perform any other powers assigned to it by this Promulgation or any other written law.

Power to make determinations

18.—(1) The Authority may, upon written application by any person having an interest in the subject-matter of the determination, or upon its own motion if the Authority has reason to believe a determination is necessary, make determinations relating to—

- (a) any obligation of a licensee relating to the terms or conditions of a licence or a spectrum licence, including obligations in regulations, standards or technical rules; or
 - (b) any activity set out in section 79(1),
- in accordance with subsection (3) or any other prescribed procedures.

(2) The Authority must not make a determination in respect of a matter that is the subject of arbitration before the Commerce Commission.

(3) In making any determination, the Authority must—

- (a) provide reasonable notice to any person who may be affected by the determination;
- (b) allow any affected person an opportunity to be heard; and
- (c) provide reasons in writing for its determination.

(4) The Authority shall not consider applications for a determination that are vexatious or frivolous or where the applicant lacks standing.

Procedures for determinations

19.—(1) Subject to section 18(4), if a person applies to the Authority for a determination, the Authority must—

- (a) acknowledge the application within 5 working days of receipt;
- (b) expeditiously request from the applicant or other parties such additional information as it reasonably requires to make a determination;
- (c) make a determination within one month after receiving all information required to make a determination; and
- (d) use all reasonable efforts to make a determination no later than 4 months after receiving the application.

(2) The Authority must take into account the urgency of the application and may issue interim determinations if the application appears likely to prevail and irreparable harm would result if no interim determination were made.

Enforcement of determinations

20.—(1) A determination shall be legally binding on the parties to the determination.

(2) A party to the determination may enforce it in accordance with the prescribed procedures.

Consideration of the burden of regulation

21. The Authority shall, when performing its functions and exercising its powers under this Promulgation take into account the effect on users and licensees and shall only increase the burden of regulation where the benefits reasonably anticipated to users outweigh the burden reasonably anticipated to be placed on licensees.

Procedural fairness

22. In performing its functions and exercising its powers under this Promulgation, the Authority must observe the following—

- (a) act transparently and fairly;
- (b) consult in good faith any person who is or is likely to be affected by any action or decision including any Ministry, department, other government entity or any commercial, industrial, consumer and standards body;
- (c) give all such persons the opportunity to make submissions and be heard;
- (d) consider evidence adduced at any such hearing and to the matters contained in any such submissions;

- (e) give reasons in writing for any determination or decision and substantiate such determination or decision with reference to the objectives in section 3, its functions and powers, and the factors in section 21.

Division 4 – Finance of the Authority

Funds of the Authority

23. The funds of the Authority consist of moneys appropriated by Parliament to the Authority, and such funds are to be expended for the purposes of any functions or powers under this Promulgation.

Charges and fees

24.—(1) The Authority may determine the following charges or fees—

- (a) charges for services rendered by it in the performance of its functions or the exercise of its powers under this Promulgation;
- (b) fees for any application required under this Promulgation or for the supply or making copies of documents;
- (c) annual charges for licence fees to be calculated based on a percentage of audited annual gross revenue calculated net of settlements with other licensees in Fiji provided that such variable fees must not exceed a prescribed percentage of annual gross revenue and must not be below a prescribed minimum levy based on the type of service to be provided by the licensee; and
- (d) other fees and charges for the administration of State assets such as numbering and radio spectrum.

(2) Any charges and fees determined and levied under this section shall—

- (a) be assigned on a non-discriminatory and proportionate basis;
- (b) be published by the Authority in its website or other form as it thinks fit; and
- (c) be set to cover the Authority's and the Tribunal's budgeted costs of performing their functions and exercising their powers in the following year.

(3) The Authority must levy and collect such charges and fees within 3 months of such determination and pay them to the Consolidated Fund.

(4) Any such charges and fees are payable by licensees and if remain unpaid constitute a debt which may be recovered in court.

Power to borrow

25.—(1) The Authority must not borrow fund except for an overdraft facility for the purpose of working capital.

(2) The Authority must first seek the approval of the Minister responsible for Finance before seeking an overdraft facility under subsection (1).

Annual report and accounts

26.—(1) The Authority must, in accordance with the prescribed procedures, cause to be prepared an annual report of its activities during the previous financial year containing the following—

- (a) an outline of its performance of its functions and exercise of its powers, including an assessment of its progress in achieving the objectives in section 3;
- (b) a review of licences issued, modified, suspended or revoked;
- (c) a review of matters referred to the Commerce Commission;
- (d) a review of frequency spectrum usage, including spectrum licences issued;
- (e) a review of numbers allocated and assigned;
- (f) a review of its activities and progress in respect of universal services;
- (g) a review of material determinations made under section 18;
- (h) a review of investigation and enforcement action taken;
- (i) a review of major agreements entered into with the Authority;
- (j) other relevant matters.

(2) The Authority must forward a copy of its annual report to the Minister who must table it in both Houses of Parliament as soon as practicable after receiving the report.

(3) The annual report of the Authority must incorporate its audited accounts and the annual report of the Tribunal.

(4) Part 6 (Off-Budget State Entities) of the Financial Management Act 2004 applies to the Authority.

Corporate plan and quarterly reports

27.—(1) The Authority must prepare corporate plan covering a minimum period of one year setting out the following—

- (a) its budget, policy and strategy;
- (b) the plan for the following year's activities of the Authority in order to pursue its objectives in section 3 and functions under this Promulgation;
- (c) the budget and business strategies and policies to be followed by the Authority to achieve those objectives;
- (d) the steps the Authority is taking so as to operate in a cost effective manner; and
- (e) the level of charges and fees the Authority intends to levy on licensees, including confirmation that such charges and fees are reasonable as compared to the reasonable costs of the Authority and the Tribunal; and
- (f) in respect of universal service—
 - (i) universal service goals;
 - (ii) its implementation strategies;
 - (iii) performance indicators against which to assess the effectiveness of the provision of universal service;
 - (iv) the criteria for prioritizing competing applications for universal service funding where funding applications exceed the value of the Fund; and
 - (v) a plan for using any available funding for universal service areas.

(2) The Authority must provide quarterly reports, including any new assignment of radio spectrum for that period, relating to the implementation of its corporate plan to the Minister.

Division 5 – Other Matters

Arrangements with other entities

28.—(1) The Authority may enter into arrangements with any Ministry, department or other government entity or any other person, body or agency, whether in Fiji or elsewhere, to assist the Authority in performing its functions.

(2) The Authority and the Commerce Commission may enter into a binding memorandum of understanding or other arrangement setting out the division of responsibilities between the two bodies and specifying procedures for cooperating and for resolving any inconsistency in relation to their respective functions and powers under this Promulgation and any other written laws affecting telecommunications matters.

Publication of information

29. The Authority must maintain and regularly update a website for telecommunications on which shall be published and updated—

- (a) this Promulgation and its regulations or any other written law relevant to telecommunications;
- (b) the telecommunications policy;
- (c) its determinations, standards and technical rules;
- (d) any information about licences, frequency spectrum allocation and numbering;
- (e) its annual reports and corporate plan; and
- (f) any other information approved by the Authority.

Limits on disclosure of information

30.—(1) Subject to subsection (3), no confidential information may be disclosed by the Authority without the written consent of the party who provided such information to the Authority.

(2) For the purpose of this section, information is confidential information if the provider of the information has requested in writing to the Authority that information be kept confidential and where the Authority is satisfied that the request is reasonable.

(3) The Authority shall determine the reasonableness of a request under subsection (2) taking into consideration:

- (a) the likelihood and seriousness of harm to the party making the request resulting from disclosure;
- (b) the fairness to another party or parties of not having access to the information; and
- (c) the effect on transparency of the Authority's decision-making.

(4) Subsection (1) does not apply to disclosure of information—

- (a) to the Commerce Commission;
- (b) in respect of any investigation of any criminal offence;
- (c) for the purpose of any civil or criminal proceedings; or
- (d) in respect of information which is in the public domain.

Power to require information

31.—(1) The Authority may, by written notice, require a person or licensee to provide the Authority with any information and documents (including information relating to financial matters) as the Authority reasonably requires to perform its functions or exercise its powers as provided for in this Promulgation.

(2) In exercising its powers under this section, the Authority must—

- (a) specify the reasons it requires the information and document specified in subsection (1);
- (b) specify the relevant section of this Promulgation on which the Authority relies to make such request;
- (c) specify the time, the manner and the form in which any such information is to be provided; and
- (d) ensure that requirements are reasonable and practicable.

(3) A person or licensee who refuses or, without reasonable excuse, fails to comply with subsection (1) commits an offence and is liable on conviction—

- (b) for an individual, to a fine not exceeding \$1,000 or to imprisonment not exceeding 12 months;
- (c) for other legal entity, to a fine not exceeding 5 percent of the gross annual revenue of that legal entity.

(4) A person or licensee who—

- (a) intentionally, alters, suppresses or destroys any information or document which the person has been required by a notice under subsection (1) to produce; or
- (b) provide any estimate, return or other information or document required under any such notice, makes any statement which the person knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

commits an offence and is liable on conviction to a fine not exceeding \$2000 or to imprisonment for a term not exceeding 2 years.

(5) Without prejudice to subsection (3), if a person or licensee defaults in complying with a notice under subsection (1), a Judge may, on application by the Authority, make an order requiring the default to be made good, including order for costs or expenses of and incidental to the application.

Confidentiality

32.—(1) An existing or former member of the Board or employee of the Authority must not disclose any confidential information relating to the activities of the Authority or of any other person obtained by virtue of this

Promulgation except—

- (a) in the performance the functions or powers under this Promulgation; or
- (b) if the disclosure is authorised under this Promulgation or any other written law.

(2) In this section, “employee” includes the Chief Executive Officer, an officer, consultant, agent or any other person who is authorised to perform a function or power under this Promulgation.

(3) A person who receives any information relating to the affairs of the Authority must not use the information to his or for any other person’s financial benefit.

(4) A person who contravenes subsection (1) or (3) commits an offence and is liable on conviction to a fine not exceeding \$5000 or to imprisonment for a term not exceeding 3 years.

PART 3—REGULATION OF TELECOMMUNICATIONS

Division 1 – Telecommunications Licensing

Licence for telecommunications services

33.—(1) No person may provide a telecommunications service except—

- (a) under the authority of a licence granted under this Part; or
- (b) any telecommunications service declared by virtue of subsection (2).

(2) The Minister may, by order in the Gazette, declare a telecommunications service that is not subject to a licence.

(3) Subject to the other provisions of this Promulgation and any other written law, a licensee may own, lease or use any telecommunications network, including technology, facility, infrastructure for the purposes of providing the telecommunications service authorised under the licence.

(4) No licence issued under this Part, other than a spectrum licence, including the terms and conditions of such licence, shall grant or purport to grant any exclusive right or benefit to a particular person or to confer a right that is discriminatory, and such licence or such terms and conditions are void.

Power to issue licences

34.—(1) The Authority has the power to issue licence for telecommunications services in accordance with the prescribed procedures authorising the licensee—

- (a) to provide one or more telecommunications services, as specified in the licence;
- (b) to provide telecommunications services using radio spectrum or where a specific reason requires the licensee to be subject to specific rights and obligations that are not applicable to other licensees of the licensed telecommunications service; or
- (c) to provide telecommunications services where the Authority considers it appropriate that the licensee have certain minimum qualifications or provide undertakings in the licence.

(2) The Minister shall, pursuant to section 82, prescribe different types of licences that may issued under this Part.

Duration and renewal of licences

35.—(1) A licence may be issued for a duration not exceeding 15 years.

(2) Subject to subsection (3), the Authority must, upon application by a licensee, renew a licence (the “original licence”) on substantially similar conditions if the Authority is reasonably satisfied that—

- (a) the applicant has operated within the terms of its original licence; and
- (b) during the continuance in force of the original licence, the applicant has not engaged in any conduct amounting to a material breach or any regulations made under it.

(3) The Authority may renew a licence on new conditions or deny an application to renew a licence under subsection (1) if it determines that the new conditions or denial are required to give effect to the objectives in section 3.

(4) Section 19(1) applies to a determination under subsection (3) to deny an application to renew a licence as it applies to an application under section 18(1) for a determination.

Modification of licence conditions

36.—(1) Subject to this section, the Authority may modify the conditions of a licence granted under this Promulgation if—

- (a) new or amended international treaties, commitments, recommendations, standards or the laws of Fiji require such modification; or
- (b) the modification is necessary for the purposes of the objectives in section 3.

(2) Before making modifications under this section, the Authority must give notice to the licensee stating—

- (a) that it proposes to make the modifications;
- (b) the reasons why it proposes to make the modifications; and
- (c) the time (being not less than 30 days from the date of the notice) within which representations or objections to the proposed modification may be made.

(3) A notice under subsection (2) must be given by publication in such manner as necessary to ensure it is received by those persons likely to be affected by them.

(4) The Authority must consider any representations or objections made in response to its notice referred to in subsection (2).

(5) Subject to subsection (6), the Authority must not make the modifications unless either –

- (a) no representations or objections are duly made by the person authorised by that licence to provide a telecommunications service; or
- (b) any representations or objection duly made by such persons are withdrawn.

(6) If the conditions specified in subsection (5) are not met, the Authority may make modifications to a licence only after complying with the determination process contained under Division 3 of Part 2.

Assignment of licences

37. No licence nor any rights in a licence may be transferred, assigned, ceded, pledged or otherwise disposed of without the prior written approval of the Authority whose approval shall be on such terms and conditions as the Authority may reasonably determine.

Public registers

38.—(1) The Authority must keep a register of all applications for licences, all licences granted including any subsequent modifications or variations pursuant to this Promulgation, available to public inspection subject to confidentiality restrictions, and such a register may be kept in electronic form.

(2) Any person may request a copy of the register from the Authority subject to payment of reasonable cost for providing such copy.

Division 2 – Spectrum Licensing and Management

Spectrum management

39.—(1) The Authority must oversee radio communications and spectrum management.

(2) For the purposes of subsection (1) the Authority must—

- (a) establish and maintain a national spectrum management system that is transparent, fair, non-discriminatory and economically efficient;
- (b) publish on its website national frequency allocation plans;
- (c) ensure that all plans, systems, licences and decisions relating to spectrum are in accordance with the standards and regulations of the International Telecommunications Union and other international and regional treaties, commitments, protocols and standards;
- (d) monitor and enforce compliance with spectrum licences;
- (e) take enforcement action promptly to ensure effective protection of licensed radio spectrum bands from interference;
- (f) adopt decisions that are technologically neutral and which allow for evolution to new technologies and services; and
- (g) rely on voluntary industry standards in lieu of regulations to the extent that such industry standards achieve the objectives in section 3 and the requirements of this section and provided such standards are non-discriminatory.

(3) The Authority must establish and chair a liaison committee to address allocation and assignment of radio spectrum for use by the following departments and agencies—

- (a) military;
- (b) police;
- (c) security services;
- (d) coast guard;
- (e) ambulance and fire brigade services;
- (f) Broadcasting Licensing Authority; and
- (g) any other department or agency approved by the Authority.

(4) The Authority shall allocate broadcasting spectrum in the national spectrum allocation plan coordinated with the technical standards for broadcasting.

Spectrum licence

40.—(1) No person may use any radio frequencies except—

- (a) under the authority of a spectrum licence;
- (b) any foreign vessel or aircraft or any transit service passing through Fiji's territorial waters, skies or territories or landing in its seaports or airports on condition that it holds the necessary international radio spectrum licences from its own country; or
- (c) any foreign embassy established in Fiji on condition of the same reciprocal treatment in that country and the acquisition of a renewable permit.

(2) The Authority may exempt usage of frequencies from subsection (1) if—

- (a) particular equipment is unlikely to cause significant interference due to the level of power employed or where international recommendations and standards provide for unlicensed use; or
- (b) the risk of harm to other users is outweighed by the benefits to the population from permitting usage on an unlicensed basis.

(3) The Authority shall assign the broadcasting spectrum in the national spectrum allocation plan to the Broadcast Licensing Authority established under the Broadcast Licensing Act 2006 for further licensing to broadcasters.

(4) The Authority shall co-operate with the Broadcast Licensing Authority in preparing the Broadcasting Frequency Plan required under the Broadcast Licensing Act 2006.

(5) A person who uses a radio frequency without a spectrum licence commits an offence and is liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 4 years.

Power to issue spectrum licence

41.—(1) The Authority has the power to issue spectrum licences and only in accordance with the prescribed procedures and requirements.

(2) The procedures and conditions for licensing of radio spectrum to be used for the provision of telecommunications services must—

- (a) where the Authority considers the radio spectrum bands to be a scarce resource, use a tendering process; and
- (b) provide for a single application process covering both the radio spectrum under this Division and the telecommunications service under Division 3.

Duration and vacation of spectrum licence

42.—(1) A spectrum licence may be issued for such duration, not exceeding 15 years, to be specified in the licence which—

- (a) may be issued concurrently with the terms of the telecommunications service licence; or
- (b) shall take into account the need of the investor to earn a reasonable return on the investment over such duration period.

(2) The Authority may—

- (a) vacate radio spectrum from licence holders which have been assigned radio spectrum but do not use it for provision of a service within a reasonable period of time where there is demonstrable demand from other carriers to use all or part of that spectrum efficiently; and
- (b) vacate radio spectrum bands from licence holders for the purpose of providing new telecommunications services according to recognised international rules in exchange for fair compensation and with notice of not less than one year.

*Division 3 – Telecommunications Numbering System**National numbering*

43.—(1) The Authority must establish and publish a numbering plan for telecommunications services and may make rules pursuant to that plan regarding the assignment and use of numbers by carriers.

(2) The Authority must assign numbers for telecommunications services to licensees on a non-discriminatory basis.

(3) For the purposes of subsection (1), the Authority must—

- (a) take account of relevant international standards;
- (b) ensure that sufficient numbers are available for the current and reasonably anticipated future needs of carriers;
- (c) have regard to the role that numbers can play in conveying useful information to consumers, including information about the type of service being used;
- (d) promote efficient use of numbers;
- (e) promote fair and open competition;
- (f) as far as possible and subject to paragraphs (a) to (e), avoid the imposition of costs on consumers as a result of changes in the numbering system; and
- (g) ensure that any plan takes into account number portability to the extent it is implemented under section 44.

Number portability

44. Subject to section 21, the Minister may, on the recommendation of the Authority, make regulations under section 82 requiring licensees to offer number portability if there is a reasonable likelihood of consumer demand for number portability.

National emergency numbers

45.—(1) The Authority is responsible for the oversight of all national emergency numbers and emergency communications services.

(2) A provider of voice telecommunications services must provide access to emergency numbers to their subscribers free of charge.

(3) The Authority must ensure such services are maintained to the highest standards practicable and that all carriers allocate priority and sufficient quality of capacity on their networks to ensure the expedient transmission of emergency calls to appropriate services.

Industry working groups

46.—(1) The Authority may establish one or more industry working groups to make proposals to the Authority on the following—

- (a) numbering referred to in section 43;
- (b) number portability referred to in section 44;
- (c) national emergency numbers referred to in section 45;
- (d) relations between licensees and consumers by virtue of section 54;
- (e) equipment type, approvals, technical standards and manufacturers declarations by virtue of section 55;
- (f) such other matter the Authority determines.

(2) The Authority must ensure that any working groups established under subsection (1)—

- (a) are designed to further the objectives in section 3;
- (b) operate pursuant to fair, transparent and non-discriminatory procedures;
- (c) do not have the effect of providing an advantage to any licensee having a substantial degree of power in a relevant market; and
- (d) include any other bodies or institutions as appropriate, such as consumer groups.

(3) The Authority shall take into account any proposal made by an industry working group established under subsection (1) when performing its functions and powers under this Promulgation.

*Division 4 – Universal Service**Universal Service Advisory Committee*

47.—(1) This section establishes the Universal Service Advisory Committee consisting of the following members appointed by the Authority—

- (a) the Chief Executive Officer of the Authority;
- (b) the Chief Executive Officer of the Ministry responsible for this Promulgation;
- (c) the Chief Executive Officer of the Commerce Commission;
- (d) the Chief Executive Officer of the Ministry responsible for provincial development;
- (e) the Chief Executive Officer of the Ministry responsible for national planning;
- (f) such number of members not exceeding 3, as determined by the Authority, to represent the licensees.

(2) The Authority may invite any person to give expert advice before it but such person does not have voting rights.

(3) The members of the Advisory Committee may elect a member as the chairperson.

(4) The function of the Advisory Committee is to advise the Authority on matters relating to universal service scheme, goals and implementation strategies.

Universal service scheme

48.—(1) The Authority shall, after consulting the Minister, shall devise an economically reasonable and technically feasible universal service scheme having the ultimate objective of enabling all people in Fiji, wherever they reside or carry on business, reasonable access on an equitable and affordable basis to services including—

- (a) basic dial tone telephone services using either fixed or mobile or any other technology;
- (b) public call offices and shared phones;
- (c) the Internet; and
- (d) such other services as the Minister may, on the recommendation of the Authority, specify.

(2) In setting the universal service goals and the implementation strategies, the Minister and the Authority must ensure that any burden on any provider of universal service, persons who are required to contribute to the universal service levy or consumers of specified services are to be fair and reasonable.

Minister to declare universal service areas

49.—(1) The Minister may, after consulting the licensees, the Minister responsible for provincial development and the members of the public in the subject area, declare any area, by order in the Gazette, that is eligible for the application of universal service obligations and benefits.

(2) The areas declared under subsection (1) must meet the following criteria—

- (a) the level of current service is non-existent or considerably poorer than that in the more advanced areas of the country; or
- (b) the cost of providing services in the declared areas prevents the provision of the services identified pursuant to section 48 on a reasonable commercial basis.

Universal service obligations

50.—(1) A licensee may become subject to a universal service obligation if—

- (a) the licensee assumes a universal service obligation pursuant to a tender for universal service funding under this section; or
- (b) the licensee has a substantial degree of power in a market for access to telecommunications services and the Authority determines that it shall bear a reasonable universal service obligation.

(2) A licensee shall not be penalised for failing to meet a universal service obligation for reasons of natural or man-made disaster beyond the control of the licensee.

(3) The Authority shall, in every 3 years, review existing universal service obligations and determine whether each obligation is required to maintain the universal service objectives, and the first such review shall be undertaken 3 years after the commencement of this Promulgation.

(4) For the purposes of providing funding of universal service obligations from the Fund, the Authority shall call for tenders and the tender must include—

- (a) description of the universal service area to be served;
- (b) description of service required including time limits;
- (c) the maximum available funds for the project;
- (d) disbursement of funds;
- (e) information about licensing requirements for applicants requiring a licence under this Promulgation;
- (f) the universal service obligations to be undertaken; and
- (g) any other matters that may be prescribed.

Universal service benefits

51.—(1) A licensee subject to a universal service obligation is entitled to one or more of the universal service benefits—

- (a) funding from the Fund;
- (b) charging of higher interconnection rates for terminating services in the eligible geographic area to reflect identified costs that are not otherwise recoverable;

- (c) adjustments to regulated retail prices applying within and outside the eligible universal service area to the extent this would permit the licensee to recover identified costs that are not otherwise recoverable; and
- (d) such other means, including market-based means, as may be determined by the Authority in consultation with the Commerce Commission and the industry.

(2) The Authority shall propose the undertaking of one or more of the universal service benefits under subsection (1)(a), (b), (c) and (d), in consultation with the Commerce Commission.

(3) In this section, “interconnection” means a specific type of access to facilities involving the physical or logical linking of two networks for communication between consumers of one with the other or for transit of communications from the consumers of one network across the network of the other, irrespective of the type of signals or information conveyed.

Universal service levies

52.—(1) Upon direction of the Minister, the Authority must levy charges for universal services up to a maximum prescribed percentage of licensees’ gross revenues net of settlement charges to other licensees paying levies.

(2) The Authority may grant exemptions to the levy in subsection (1) in respect of certain services where it reasonably considers that such exemptions are consistent with the universal service objective in section 48.

Universal Service Fund

53.—(1) This section establishes a trust fund called the Universal Service Fund, into which the following moneys are to be paid into—

- (a) any money appropriated by Parliament for the purposes;
- (b) any grant, contribution or loans from any international organization or donors; and
- (c) all levies payable under in section 52.

(2) The Fund is to be kept in and administered by the Ministry of Finance in accordance with the Financial Management Act 2004.

(3) Money from the Fund may only be spent on the installation of networks, provision of services and operating costs in the eligible universal service area, as eligible for universal service funding under this Part.

(4) The Authority, in consultation with the Ministry of Finance, shall provide an audited annual report to the Minister setting out the collection and disbursement from the Fund.

(5) The management and administration costs of the Fund are to be paid from the annual budget of the Authority.

Division 5 – Consumer Protection and Technical Matters

Consumer protection

54.—(1) Any service provider that supplies telecommunications services to consumers must comply with the following requirements and the prescribed requirements—

- (a) service providers must provide all of the terms and conditions applying to the provision of telecommunications services to consumers in a manner that is simple to understand;
- (b) no service provider must make a statement or representation that is, or in all the circumstances in which it is made may be construed as being false or misleading regarding the terms and conditions on which a telecommunications service is provided (including price, quality, features and conditions of any service or product);
- (c) service providers must charge consumers only for services and products ordered or used;
- (d) service providers must bill consumers periodically and in accordance with the prescribed requirements;

- (e) service providers must keep information about consumers confidential, including billing information and call information, except to the extent necessary to publish any public telecommunications directory, enable billing of the consumer or to address fraud or bad debt; and
- (f) service providers must formulate and submit to the Authority for its approval a simple, transparent and non-discriminatory complaints handling procedure for dealing with consumer complaints and disputes, and service providers must comply with such approved procedure.

(2) Regulations made under section 82 may prescribe matters relating to the relations amongst licensees, service providers and consumers, including resolution of consumer complaints, quality of service, service level guarantees, fault response and repair timeframes, the Authority's role in providing public awareness and any other matter as the Authority considers appropriate to protect consumers.

(3) Subsection (1) and the provisions of any regulations made to give effect to this section apply without limiting the generality of the Fair Trading Decree and its application to telecommunications in any way.

Technical rules and standards

55.—(1) The Authority may make technical rules and standards applicable to the import, use, supply, installation or maintenance of telecommunications equipment and apparatus if necessary to ensure against damage to telecommunications networks or services or to public health, safety or the environment.

(2) The Authority may approve international technical rules and standards for the purposes of subsection (1).

(3) No person may import, use, supply, install, or maintain any telecommunications equipment or apparatus that does not comply with technical rules and standards published pursuant to subsection (1).

(4) A person who intends to import any telecommunications equipment or apparatus including radio transmitting devices, other than equipment exempted by regulations, shall obtain an import permit from the Authority.

(5) The Authority may enter into mutual recognition arrangements with authorities in other countries to provide for mutual recognition of type approvals conducted in the other country or in Fiji.

(6) The Authority shall rely upon declarations of manufacturers of compliance of telecommunications equipment and apparatus in countries having technical rules and standards which the Authority considers adequate for the purposes of subsection (1).

(7) The Authority must establish and maintain a list of approved countries for the purposes of this section.

(8) Any approval of telecommunications equipment or apparatus granted and not withdrawn before this Promulgation comes into force shall be valid unless withdrawn subsequently by the Authority.

PART 4—ACCESS TO LAND AND FACILITIES

Access to freehold land

56.—(1) A licensee seeking access to freehold land for the purpose of constructing, maintaining or operating any telecommunications facility may request the intervention of the Authority which must—

- (a) mediate between the licensee and the owner or occupier including the necessity of access by the licensee, co-location where technically feasible, the historical, environmental and health implications, and the terms of compensation; and
- (b) if no agreement is reached between the licensee and the owner or occupier, provide appropriate evidence in connection with an application of the licensee to the High Court under subsection (2) regarding its view of the matter.

(2) If negotiations and mediation have been attempted in good faith by the licensee and the land owner or occupier but fail, the licensee may apply to a Judge of the High Court for an order to access land for the purpose of constructing, maintaining or operating any telecommunications facility.

(3) The licensee must give the owner and the occupier of the land at least 10 working days' notice of the licensee's intention to apply to a Judge of the High Court under subsection (1).

(4) If the Judge is satisfied that the requirements set out in section 57(1) have been met, it may make an order authorising the licensee to enter the land at reasonable times for the purpose of construction, maintenance or operation of the telecommunications facility.

Requirements for a court order

57.—(1) The requirements that must be met for the making of a court order are as follows—

- (a) the construction, maintenance or operation of the facility is necessary for the purpose of telecommunications; and
- (b) no practical or commercially reasonable alternative route or location exists.

(2) In considering the application in section 56(2) or 58(3), the Judge shall take into account the following considerations—

- (a) the necessity of access by the licensee;
- (b) the promotion of co-location where technically feasible;
- (c) the historical, environmental and health implications of that access;
- (d) the terms of compensation offered by the licensee to the owner or occupier;
- (e) whether or not the licensee has sought the mediation of the Authority in accordance with section 56(1)(a); and
- (f) the objectives in section 3.

(3) Before exercising any powers authorised by an order made under section 56(4), the licensee must serve the order on the owner and the occupier of the land to which the order relates.

Access to State lands and properties

58.—(1) A licensee may apply to the Authority for assistance where it cannot on commercially reasonable terms—

- (a) obtain consent of the government authority having jurisdiction over State land or State facility to construct, maintain or operate any telecommunications facility;
- (b) gain access to the pole, duct, tower or other supporting structure of a telecommunications, electrical power or other utility transmission system constructed on State land or a State facility that is owned or controlled by a Ministry, department or other state entity; or
- (c) obtain consent of the Director of Lands and the Ministry responsible for that State land to make changes to land, including trees, shrubs, plants or other materials that interfere with a telecommunications facility.

(2) Upon receipt of an application for assistance under subsection (1), the Authority shall consult with the Director of Lands and the Ministry responsible for that State land and attempt to find a solution acceptable to both the licensee and the relevant Ministry, department or other state entity.

(3) If a solution is not found under subsection (2), the licensee may apply to a Judge of the High Court who may make an order if the Judge is satisfied that the requirements in subsection (1) are met, taking into account the considerations in subsection (2), as well as the reasons for refusal of consent by the Director of Lands and the relevant Ministry, department or other state entity.

(4) A licensee shall, in consultation with the Authority, agree with relevant Ministry, department, other state entity, local council and other persons or bodies on arrangements and fees related to the laying of ground

or aerial telecommunications network facilities on roads, streets, squares, and other public spaces under their administration.

Rights of Entry to land

59. Upon reasonable notice to the owner or occupier of the land, a licensee may—
- (a) enter land, at reasonable times, for the purpose of gaining access to any existing works or existing lines owned by the licensee; and
 - (b) perform any act or operation necessary for the purpose of inspecting, maintaining, or repairing those works or lines.

Access to native lands

60. Any request to access to native lands shall be done in accordance with the provisions of the Native Land Trust Act (Cap. 134).

PART 5—TELECOMMUNICATIONS APPEAL TRIBUNAL

Establishment and constitution of the Tribunal

61.—(1) This section establishes the Telecommunications Appeal Tribunal consisting of the following members—

- (a) a Chairperson
- (b) not less than 5 and not more than 10 other members.

(2) The Judicial Service Commission may, after consultation with the Minister, appoint the members of the Tribunal for a term of not exceeding 3 years and the members are eligible for reappointment.

(3) The Chairperson may select one or more members not exceeding 3 members to hear and determine any appeal made to the Tribunal.

(4) Persons appointed to the Tribunal must have qualifications and experience in one or more of the following fields; legal, financial, economic, public administration, engineering or telecommunications matters.

(5) The person appointed as the Chairperson must be a legal practitioner of not less than 7 years' admission as a legal practitioner either in Fiji or elsewhere.

(6) Subject to subsection (5), a person who is not a resident or citizen of Fiji may be appointed a member of the Tribunal.

(7) A member of the Tribunal may hold office concurrently with any other office held by him or her provided that the office is not related to telecommunications.

(8) No person shall be appointed a member of the Tribunal if the person has a direct or indirect equity or other financial interest in a licensee, except for indirect interests managed through investment and pension funds where the member cannot influence the purchase, sale or exercise of voting rights of such an interest.

Jurisdiction of the Tribunal

- 62.—(1) The Tribunal has jurisdiction to hear and determine appeals on questions of law and fact from
- (a) any determination of the Authority; or
 - (b) any decision to refuse, vary, renew, suspend, or revoke a licence or spectrum licence;
 - (c) any decision to impose, suspend, vary, or revoke a condition of a licence or a spectrum licence; and
 - (d) any decision to impose a universal service obligation either as the outcome of a tender or based on substantial degree of market power under section 50.

(2) The Tribunal may, on application by an appellant, order that the decision to which an appeal relates be stayed pending a final determination of the appeal if the appellant shows on the balance of probabilities that it stands to suffer substantial harm that cannot be remedied if the decision takes effect in accordance with its terms.

- (3) The Tribunal may dismiss an appeal if it is of the opinion that—
- (a) the appeal is frivolous or vexatious or not made in good faith; or
 - (b) the appellant does not have a sufficient interest in the subject matter of the appeal
- (4) On determining an appeal, the Tribunal may—
- (a) confirm, modify or reverse the original decision or any part thereof; or
 - (b) by a direction in writing stating reasons, refer the decision back to the Authority, as the case may be, for reconsideration by it, either generally or in relation to any matter specified in the direction.

Vacancy and resignation

63.—(1) A member of the Tribunal may at any time resign office by notice in writing to the Judicial Service Commission.

(2) The office of a member becomes vacant if the member dies, or is adjudged bankrupt under the laws of Fiji or elsewhere.

- (3) The Judicial Service Commission may remove a member from office—
- (a) for misconduct
 - (b) for inability to perform the functions of the office on medical grounds, or on the grounds of negligence; or
 - (c) if the member fails to disclose a conflict of interest.

Allowances

64. Members of the Tribunal are entitled to sitting allowances as to be fixed by the Higher Salaries Commission.

Administration of the Tribunal

65.—(1) The general administrative costs of the Tribunal shall be borne by the Authority.

(3) The Authority must maintain a reserve fund sufficient to budget for the Tribunal's expenses reasonably expected to be incurred pending payment by the parties in accordance with subsection (4).

(4) The expenses of the Tribunal relating to hearing a dispute, including the reasonable fees and expenses of legal advisors, experts and any other expenses, shall be borne by the parties to the dispute according to the order of the Tribunal.

Rules of procedure

66.—(1) A party that is aggrieved by a decision set out in section 62(1) has the right to appeal to the Tribunal.

(2) In hearing an appeal and making a decision, the Tribunal shall observe the rules of natural justice.

(3) The decision of the majority of members appointed to hear the case is the decision of the Tribunal.

(4) A decision of the Tribunal must be in writing and must state the reasons for the decision.

(5) The Tribunal may order mediation or another alternative dispute resolution process prior to a hearing and may take into account the conduct of the parties in such a process in its own decisions.

(6) The Tribunal may make interim or final orders including any other order it thinks fit to make

Evidence

67.—(1) Subject to this section, the Civil Evidence Act applies to the Tribunal in the same manner as if the Tribunal were a court within the meaning of that Act.

(2) The Tribunal may receive as evidence any statement, document, information or matter that may in its opinion assist it to deal effectively with a matter before it, whether or not the same would be admissible in a court of law.

(3) The Tribunal may take evidence on oath, and for that purpose the presiding member may administer an oath.

(4) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath.

Privileges and immunities

68. Witnesses appearing before the Tribunal have the same privileges and immunities as witnesses have in proceedings in a Magistrate's Court.

Non-attendance or refusal to co-operate

69. A person summoned by the Tribunal to give evidence or to produce documents who, without sufficient cause—

- (a) fails to attend, to give evidence or to produce documents or
- (b) refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the proceedings

commits an offence and is liable on conviction to a fine not exceeding \$2000 or to imprisonment not exceeding 12 months.

Power to award costs

70.—(1) The Tribunal, in any proceedings before it under this Promulgation, may make such order as to costs as it thinks fit.

(2) An order as to costs may be filed in a Court and may be enforced as a judgment of that Court.

Annual report of the Tribunal

71. The Tribunal shall prepare an annual report of its operation and functions under this Promulgation, and submit it to the Authority for incorporation into the Authority's annual report.

PART 6—NATIONAL INTEREST MATTERS

Authority's obligations

72.—(1) The Authority must, in performing its functions or exercising its powers, do its best to prevent telecommunications networks, telecommunications services and facilities from being used in, or in relation to, the commission of offences against the laws of Fiji.

(2) The Authority must, in performing its functions or exercising its powers, give officers and authorities of the Government such help as is reasonably necessary for the following purposes—

- (a) enforcing the criminal law and laws imposing pecuniary penalties;
- (b) protecting the public revenue; and
- (c) safeguarding national security.

(3) The Authority is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance of the duty imposed by subsection (1) or (2).

(4) An officer, employee or agent of the Authority is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the Authority as mentioned in subsection (3).

Obligations of licensees

73.—(1) A licensee must, in connection with the operation of telecommunications networks or facilities or the supply of telecommunications services, do the licensee's best to prevent telecommunications networks, telecommunications services and facilities from being used in, or in relation to, the commission of offences against the laws of Fiji.

(2) A licensee must, in connection with the operation of telecommunications networks or facilities or the supply of telecommunications services, give officers and authorities of the Government such help as is reasonably necessary for the following purposes—

- (a) enforcing the criminal law and laws imposing pecuniary penalties;
- (b) protecting the public revenue; and
- (c) safeguarding national security.

(3) A licensee is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith:

- (a) in performance of the duty imposed by subsection (1) or (2); or
- (b) in compliance with a direction that the Authority gives in good faith in performance of its duties under section 72.

(4) A director, officer, employee or agent of a licensee is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the licensee as mentioned in subsection (3).

(5) A reference in this section to giving help includes a reference to giving help by way of:

- (a) the provision of interception services in connection with the execution of a warrant under the hand of the President or any prescribed interception services; or
- (c) providing relevant information about any communication that is lawfully intercepted; or
- (e) disclosing information or a document in accordance with section 30 of this Promulgation.

Terms and conditions on which help is to be given

74.—(1) This section applies if a person is required to give help to an officer or authority of the Government as mentioned in section 73(2).

(2) The person must comply with the requirement on the basis that the person neither profits from, nor bears the costs of, giving that help.

(3) The person must comply with the requirement on such terms and conditions as are:

- (a) agreed between the person and the Government; or
- (b) failing agreement, determined by an arbitrator appointed by the parties or, if the parties fail to agree on the appointment of an arbitrator, by an arbitrator appointed by the Authority.

(4) An arbitrator appointed by the Authority under subsection (3) must be a person specified in a written determination made by the Minister.

(5) Before making a determination under subsection (4), the Minister must consult the Attorney-General.

(6) If an arbitration under this section is conducted by an arbitrator appointed by the Authority, the cost of the arbitration must be apportioned equally between the parties.

(7) The regulations may make provision for and in relation to the conduct of an arbitration under this section.

Suspension of supply of telecommunications service in an emergency

75.—(1) If an officer of the Police Force, Military Forces or Fiji Independent Commission against Corruption specified in subsection (6) has reasonable grounds to believe that:

- (a) an individual has access to a particular telecommunications service; and
- (b) the individual has:
 - (i) done an act that has resulted, or is likely to result, in loss of life or in the infliction of serious personal injury; or
 - (ii) made an imminent threat to kill, or seriously injure, another person; or
 - (iii) made an imminent threat to cause serious damage to property; or
 - (iv) made an imminent threat to take the individual's own life; or
 - (v) made an imminent threat to do an act that will, or is likely to, endanger the individual's own life or create a serious threat to the individual's health or safety; and
- (c) the suspension of the supply of the telecommunications service is reasonably necessary to prevent a recurrence of the act done or to prevent or reduce the likelihood of the carrying out of the threat made (as the case may be),

the officer may request a licensee to suspend the supply of the telecommunications service.

(2) The licensee shall use the licensee's best endeavours to comply with the request.

(3) This section does not, by implication, limit any other powers that another licensee may have to suspend the supply of the telecommunications service.

(4) The licensee is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in compliance with the request.

(5) A director, officer, employee or agent of the licensee is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the licensee as mentioned in subsection (4).

(6) The officers of the Police Force, Military Forces or Fiji Independent Commission against Corruption mentioned in subsection (1) are:

- (a) the Assistant Commissioner of Police (Operations), or any officer of a higher rank;
- (b) the Chief Staff Officer (Operations) of the Military Forces, or any officer of a higher rank;
- (c) the Deputy Commissioner of the Fiji Independent Commission against Corruption.

PART 7—MISCELLANEOUS

Contraventions and breaches

76.—(1) An individual who contravenes a provision of this Promulgation, or breaches a licence condition, commits an offence and, except as otherwise provided in this Promulgation, is liable—

- (a) for a first offence, to a fine not exceeding \$5000 or to imprisonment not exceeding 12 months; and
- (b) for a second or subsequent offence, to a fine not exceeding \$20,000 or to imprisonment not exceeding 24 months.

(2) A legal entity that contravenes a provision of this Promulgation, or breaches a licence condition, commits an offence and, except as otherwise provided in this Promulgation, is liable—

- (a) for a first offence, to a fine not exceeding 2% of annual gross revenue; and
- (b) for a second or subsequent offence, to a fine not exceeding 10% of annual gross revenue.

(3) For the purposes of subsection 2(b), the court may instead of imposing the penalties in that subsection impose a daily penalty up to 100 days at a maximum rate of 0.1% of annual gross revenue for every day during which the breach continues.

- (4) If a licensee or legal entity is convicted under this Promulgation, the Authority may—
- (a) issue a direction to the licensee or legal entity or impose other conditions on the licence
 - (b) vary, suspend or revoke the licence or condition of the licence; or
 - (c) issue a desist order.

(5) If a legal entity commits an offence under this Promulgation, every director, manager, officers, employee or agent of a legal entity, who is responsible for the commission of the offence also commits the same offence and is liable on conviction to a fine not exceeding \$5000 for a first offence and \$20,000 for a subsequent offence, or to imprisonment for a term not exceeding 2 years.

(6) It shall be a defence for a person charged under subsection (5) to prove that the offence committed by the legal entity was committed without his consent and connivance and that he took all reasonable steps to prevent its commission.

Power of the Authority to suspend licence, etc

77.—(1) Without prejudice to section 77, if the Authority is satisfied that a licensee is contravening, or has contravened any of the conditions of the licence and that the breach is not trivial in nature, the Authority must serve a written notice on the licensee to show cause as to the breach.

- (2) Notice to show cause must state—
- (a) the condition and the acts or omissions, which allegedly constitute or would constitute the breach; and
 - (b) the period (being not less than 28 days) in which the licensee must remedy the breach.

(3) If the licensee fails to comply with the notice to show cause, the Authority may pursuant to the requirements of section 18 impose one or more of the following penalties—

- (a) issue a direction to the licensee or impose further conditions on the licence;
- (b) in the first instance, a penalty not exceeding \$500,000;
- (c) in the second or subsequent cases, a penalty not exceeding 2% of the annual gross revenue;
- (d) revoke, suspend or modify the licence or existing conditions of the licence

(4) Before imposing a penalty under subsection (3), the Authority must first give an opportunity to the licensee to be heard on the proposed penalty to be imposed.

(5) Before suspending or revoking a licence or a spectrum licence or taking actions for imposing penalty, the Authority may initiate a determination procedure under section 18 for the purpose of exercising its powers under this Promulgation if the Authority has reason to believe a licensee may have or has—

- (a) engaged in any of the activities referred to in section 79(1);
- (b) knowingly made a false statement in an application for a licence or a spectrum licence;
- (c) knowingly failed to provide information or evidence that would have resulted in a refusal to grant a licence or a spectrum licence;
- (d) wilfully failed to comply with the terms of its licence or a spectrum licence;
- (e) wilfully contravened any provision or any rules or regulations made under this Promulgation;
- (f) violated or failed to comply with a desist order issued under section 79; or
- (g) failed to make payments in a timely manner in connection with any universal service levy or other levy reasonably set by the Authority or in respect of any licence fee payable by the licensee under the terms of its licence.

(6) In any proceedings brought in pursuance of this section, the licensee may provide a defence by proving that the licensee took all reasonable steps and used all due diligence to remedy the breach within the period specified in the notice to show cause.

Monitoring and enforcement

78.—(1) In addition to any other powers contained in this Promulgation or under any other laws and for the purposes of exercising its functions and powers under this Promulgation, the Authority has the following powers—

- (a) to authorise in writing the search of premises and seizure of documents, equipment and other items;
- (b) to order any person, in writing, to appear before it to give evidence or to produce documents, and such evidence may given on oath to be taken by the presiding member of the Board;
- (c) to direct a person, in writing, to undertake a specific action or to cease a specific action if there is a breach of a regulation, licence, spectrum licence, technical rule, standard or order.

(2) The Authority may, in writing, request a police officer to assist in carrying out the powers under subsection (1).

Power to issue desist orders

79.—(1) The Authority may issue a desist order if the Authority has made a determination that one or more of the following activities have been carried out by a person

- (a) provision of a telecommunications service to the public without a licence issued under this Promulgation unless the telecommunications service is subject to an exemption from licensing;
- (b) use of an apparatus that is likely to cause undue interference with any radio-communication used for the purposes of any safety of life service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend;
- (c) unauthorised use of an apparatus in relation to radio spectrum that is not licensed under this Promulgation and such use causes or is likely to cause undue interference on use of licensed radio spectrum;
- (d) operation of a facility or provision of a service in a manner which causes interference, endangers health or compromises network security or integrity; or
- (e) violation of any term, or any regulation, determination, decision, licence or spectrum licence in force under it.

(2) Before issuing a desist order, the Authority must serve notice on the person—

- (a) stating the facts constituting the alleged activity and where appropriate, the name of the person against whom the allegation is made; and
- (b) specifying the period within which and a place at which a hearing are to be held to provide the person concerned an opportunity to show good cause why the order should not be made.

(3) If at a hearing referred to in subsection (2)(b)—

- (a) the person concerned fails to show good cause why the desist order should not be made, the Authority must issue such order; or
- (b) if the Authority is satisfied that the alleged activity did not occur, the Authority must not issue such order.

(4) An order under subsection (1) must—

- (a) containing a statement of the facts referred to in subsection (2)(a);
- (b) require the person concerned to desist from the conduct giving rise to the order;
- (c) be accompanied by documents in support of the allegation; and
- (d) be served on the person who is the subject of the order.

Application of this Promulgation to the Government

80. Part 3 applies to the Government.

Safety of Life at Sea Services

81. Telecommunications services in relation to safety of life at sea shall be the responsibility of the Government.

Regulations and rules

82.—(1) The Minister may make regulations to give effect to the provisions of this Promulgation, and in particular to—

- (a) provide for procedures for public consultation;

- (b) prescribe the qualifications and procedures for the appointment of members of the Board;
- (c) prescribe procedures for appointments of the Chief Executive Officer, officers, consultants, employees and consultants of the Authority;
- (d) prescribe other matters relating to preparation of annual reports of the Authority and the Tribunal;
- (e) prescribe procedures for determinations, including enforcement procedures;
- (f) prescribe procedures for filing determinations in the Magistrate's Court for enforcement;
- (g) prescribe procedures for collection of charges and fees to be paid under this Promulgation;
- (h) prescribe procedures and criteria for the universal service tender process, including other matters for the administration of the Fund and the transition of prior universal service subsidy arrangements to universal service scheme;
- (i) prescribe procedures for and other matters relating to spectrum licences, including classes and types of radio spectrum and radio equipment, fees, conditions and technical standards;
- (j) prescribe procedures for licensing of telecommunications services, including conditions, forms, reporting requirements and any matter relevant to licensing of telecommunications service;
- (k) prescribe the types of licences for telecommunications services;
- (l) prescribe matters for the purposes of regulating the relationships between service providers and consumers, including settlement of disputes and complaints protection of consumers; and
- (m) regulate the installation and maintenance of telecommunications apparatus.

(2) The Authority shall formulate and prepare regulations to be made by the Minister, including undertaking consultations with the licensees and where appropriate with the members of the public.

(3) Any offence created in any regulations may prescribe a fine not exceeding \$5,000 or to imprisonment not exceeding 2 years.

(4) The Tribunal may, with the approval of the Chief Justice, make other rules of procedures relating to hearing of appeals under this Promulgation.

Review of this Promulgation

83. This Promulgation shall be reviewed within 5 years from the commencement of this Promulgation.

Consequential amendments, savings and transitional

84.—(1) The Posts and Telecommunications Decree 1989 is amended by repealing the following provisions—

- (a) Parts II, III, V and VI;
- (b) Schedule 1; and
- (c) sections 159 and 166.

(2) The Schedule sets out the savings and transitional matters.

(3) The Minister may make regulations for the purposes of making transitional and saving provisions within 12 months of the commencement of this Promulgation, and in particular for the purposes of transferring of public officers to the Authority.

SCHEDULE
(Section 84)

Interpretation

1. In this Schedule, unless the context otherwise requires—

“Settlement Deed” means the settlement deed between Vodafone Fiji Limited, Telecom Fiji Limited, and Fiji International Telecommunications Limited (“the licensee parties”), being holders of licences issued under the repealed provisions of the Posts and Telecommunications Decree 1989, and Amalgamated Telecom Holdings Limited and the Government of the Fiji Islands, the terms of which were agreed in principal and initialled by the parties on 19 November 2007, and which the parties have agreed is to be executed immediately after the publication of this Promulgation in the Gazette; being a deed giving effect to arrangements between the licensee parties and the Government whereby, among other things –

- (a) it is agreed that certain exclusive rights enjoyed by the licensee parties under their licences issued under the Posts and Telecommunications Decree 1989 will be surrendered and will, after the expiry of a transitional period following the commencement of this Promulgation, no longer be enjoyed by them and accordingly will not be reflected in any licences that may be issued to them under this Promulgation; and
- (b) the general terms on which, having regard to the agreed surrender of exclusive rights mentioned in paragraph (a), the licensee parties will be entitled to receive licences issued under this Promulgation are established;

“repealed provisions of the Posts and Telecommunications Decree 1989” means the provisions of that Decree that are repealed by section 84(1) of this Promulgation.

Prior Licences; Replacement Licences under this Promulgation

2.—(1) Licences that were issued under the repealed provisions of the Posts and Telecommunications Decree 1989 and are in effect immediately before the commencement of this Promulgation (“prior licences”) shall, subject to this section, continue in force as from the commencement of this Promulgation as if they were licences issued under this Promulgation.

(2) If within a period of 12 months from the commencement of this Promulgation the holder of a prior licence applies to the Authority for a licence under this Promulgation, the Authority must issue a licence under this Promulgation (“replacement licence”) and, upon the issue of that replacement licence, the prior licence shall be deemed to be surrendered.

(3) Any replacement licence issued as provided in subsection (2)—

- (a) shall be issued subject to section 3 of this Schedule;
- (b) subject to paragraph (a), but notwithstanding any other provision of this Promulgation, shall be issued in terms that confer on the licensee—
 - (i) the right to offer telecommunications services to at least the same extent; and
 - (ii) in addition, in the case of a replacement licence issued to a licensee who is a party to the Settlement Deed, at least the same rights in relation to spectrum use and duration of licence, as the licensee was entitled to under the prior licence; and
- (c) in all other respects shall be a licence issued in accordance with this Promulgation.

(4) If at the expiry of the period specified in subsection (2) the holder of a prior licence has not applied for a replacement licence under this Promulgation, then—

- (a) the Authority may by notice published in the Gazette, specify a date for the purposes of this subsection; and
- (b) the licence shall by virtue of this section be deemed to be surrendered on the date so specified.

(5) For the purposes of subsection (1), any provision or condition of a prior licence conferring on the licence holder any exclusive right, other than—

(a) exclusive rights with respect to radio spectrum;

(b) any right that is conferred in compliance with the requirements of section 3, is of no effect and shall not be enforceable.

Provisions applicable to all licences

3.—(1) Any licence issued under this Promulgation shall not permit the licensee, during the period of 18 months following the date of signing the Settlement Deed, to obtain telecommunications services to and from Fiji other than from Fiji International Telecommunications Limited, so long as Fiji International Telecommunications Limited provides the specific service requested by the licensee and does so at prices approved by the Commerce Commission.

(2) Any licence issued under this Promulgation shall not permit any person operating a mobile network, other than Vodafone (Fiji) Limited, to offer commercial mobile services to the public before 1 October 2008.

(3) No person shall be entitled, whether under a licence issued under this Promulgation or under any other law, before 1 July 2012, to access any broadband infrastructure investment implemented by Telecom Fiji Limited, otherwise than on commercially negotiated terms.

(4) For the avoidance of doubt, reference in this section to a licence issued under this Promulgation includes reference to a replacement licence issued under section 2 of this Schedule.

Certain services not to be regulated initially

4. This Promulgation will not apply in respect of the following services during the period of 3 years following the signing of the Settlement Deed—

(a) national roaming;

(b) mobile virtual network operator or other wholesale mobile services (including cellsite co-location, toll, bypass or carrier selection);

(c) local loop unbundling;

but nothing in this section shall prevent a licensee from entering into arrangements for such services on commercially negotiated terms.

Designations by the Minister under section 48(1)(d) of this Promulgation

5. During the period of 3 years beginning with the commencement of this Promulgation, the Minister will not make any designation of a service under section 48(1)(d) of this Promulgation.

Deferred commencement of section 81 of this Promulgation

6.—(1) On or before 1 July 2009, the Government shall assume responsibility for any safety of life at sea services then being provided by Telecom Fiji Limited or any other holder of a licence issued under this Promulgation or under the repealed provisions of the Posts and Telecommunications Decree 1989.

(2) Notwithstanding its earlier commencement, section 81 shall have effect on and from the date of the assumption of responsibility by the Government under subsection (1).

Continuation of Proceedings

7.—(1) This section applies to any action, arbitration, proceedings or cause of action that relates to a transferred asset or liability and that immediately before the commencement is pending or existing by, against, or in favour of the State or to which the State is a party.

(2) Any action, arbitration, proceedings or cause of action to which this section applies shall vest in the Authority and may be prosecuted and, without amendment of any writ, pleading or other document, continued and enforced by, against, or in favour of the Authority.

Subsidiary Legislation

8. Any subsidiary legislation made under the Post and Telecommunications Decree 1989, insofar as it applies to the repealed provisions of that Decree, continues in force as if it were made under this Promulgation, until replaced by subsidiary legislation made under this Promulgation.

Precedence of certain provisions of this Schedule over other laws

9. Sections 2 and 3 have effect notwithstanding —
- (a) any other provision of this Promulgation;
 - (b) any provision of the Fair Trading Decree 1992, the Commerce Act 1988 or any other legislation or regulation; or
 - (c) any principle of law with respect to competition or restraint of trade.

Given under my hand this 18th day of January 2008.

J. I. ULUIVUDA
President of the Republic of Fiji

TELECOMMUNICATIONS BILL 2006

EXPLANATORY NOTE

(This note is not part of the Promulgation and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Promulgation seeks to replace the provisions dealing with the telecommunications under the Post and Telecommunications Decree 1989.
- 1.2 The Promulgation seeks to establish the Telecommunications Authority of Fiji, including the Telecommunications Appeal Tribunal and provide for their powers and functions.
- 1.3 The objectives of the Promulgation are set out in Clause 3 of the Promulgation, namely, to provide a regulatory framework for telecommunications that promotes the long term interests of end users of telecommunications services, or of services provided by means of telecommunications services, and the efficiency and international competitiveness of the telecommunications industry in Fiji and, as consistently with that objective as is practicable—
- (a) to provide rapid expansion of reliable and as affordable as possible telecommunications services on an equitable basis, with particular improvement in rural areas;
 - (b) to promote efficient investment and innovation in telecommunications networks and services;
 - (c) to provide fair competition among service providers and allowing market forces to operate; and
 - (d) to provide and promote appropriate consumer protection and other safeguards in relation to telecommunications services where market forces are insufficient.

CLAUSES

PART 1—PRELIMINARY MATTERS

Part 1 of the Promulgation deals with the preliminary provisions and covers the short title, commencement, definitions and the objectives.

PART 2—MANAGEMENT OF TELECOMMUNICATIONS

- Division 1 – sets out the functions of the Minister, which is to formulate, implement, monitor and review telecommunications policies.
- Division 2 – establishes the Telecommunications Authority of Fiji (TAF) as a statutory body with legal personality. A Board of the Authority is also proposed in this Division comprising the Chairperson and 4 other members who are to be appointed in accordance with the procedures to be prescribed by regulations. Other provisions deal with terms of appointment, vacation of office, meetings,

disclosure of interest. The staff of the Authority will include the Chief Executive Officer and other officers and employees, including consultant and agents. Any person employed by the Authority will be subject to Parts 11 and 40 of the Penal dealing with official corruption, bribery and secret commissions, as they apply to public officers.

- Division 3 – spells out the functions and powers of the Authority. The functions include implementation of the policy, regulation of technical aspects of access and interconnection, management of radio spectrum and frequencies and the national numbering system and consumer protection. It will also establish alternative dispute resolution schemes for settlement of disputes between licensees and consumers. Its powers include making determinations, issuing of technical rules and standards, grant, etc licences and monitor and enforce compliance with the Promulgation. If there is a dispute about obligations under the Promulgation or conditions for licence or other related activity, a person or the Authority itself may initiate a process of settling the dispute. If the dispute is not resolved, the Authority may then make a determination, which is binding on the parties. The determination will be enforces in accordance with the process to be set out in the Regulations. The Authority will ensure that it does not over regulate the industry when exercising their powers and functions under this Promulgation. There is an obligation to ensure that it take into account procedural fairness.
- Division 4 – Provides for the matters relating to the finances of the Authority. The Authority will require annual appropriation to be approved by Parliament and such appropriation is to be used only for the purpose set by Parliament. The Authority will determine charges and fees for its services but the charges and fees collected will be paid into the Consolidated Fund. The Authority may borrow only in respect of overdraft facility subject to the approval of the Minister for Finance. Other provisions includes preparation of annual reports, corporate plans and exemption form taxes, as it will not derive any income because all money collected by it will be paid into the Consolidated Fund.
- Division 5 – This Division deals with miscellaneous provisions dealing with management of telecommunications services. The Authority can enter into arrangements with any person including Ministries and departments in order to carry out its functions. The Authority will be required to establish a website where certain documents and information should be made available, such telecommunications policy, technical rules and standards, licences and licensees, etc. These information may be inspected by any person who may obtain copies subject to reasonable charge for making information available. It deals also with protection of confidential information and power to require information.

PART 3—REGULATION OF TELECOMMUNICATIONS

- Division 1 – Provides for the licensing of telecommunications services. A person who wishes to provide telecommunications services will need a licence. The Minister is empowered to declare certain types of telecommunications services that will not require a licence, such for the purpose of home or private use. Other provisions deal with duration of the licence (maximum of 15 years), variation

of conditions of licences, assignment of licences which require prior approval of the Authority and establishment of public registers

- Division 2** – Deals with the management and licensing of radio spectrum, which ranges from very low frequency (ELF – 1 band) to extremely high frequency (EHF – 11 band). For example, FM 96 radio station and TV One are assigned frequency spectrums. A person who intends to use a radio frequency will need a licence to use the assigned radio frequency. The Authority will co-operate with the Broadcast Licensing Authority when preparing the Broadcasting Frequency Plan under the Broadcasting Licensing Act.
- Division 3** – Provides for the regulation of a national numbering system, including Number portability, which means that a consumer can change from one service provider to another without changing the telephone number. It also regulates the management of emergency numbers and establishment of industry working groups.
- Division 4** – Provides for universal service, which allow reasonable access of telecommunications to all areas and to prevent concentration of service to particular areas. An advisory committee will be established to advise the Authority on matters relating to universal service scheme, goals and strategies. The Minister is empowered to declare areas which are identified as eligible for the universal service. A person who is given the authorisation to provide universal service to an area will be subject to the universal obligations and benefits, including funding from the Universal Service Fund. All licensees will be required to contribute to the Universal Service Fund of up to a rate to be fixed by regulations based on the gross revenue net of settlement charges. Universal service levies, which the Authority collects and pays to a trust account, and the collected funds are in used only for partial subsidies of initial network investment for rural services in underserved areas, based on competitive tenders in which the offer requesting the lowest subsidy may win. The Fund is to be administered by the Ministry of Finance in accordance with the Financial Management Act 2004.
- Division 5** – deals with the protection of consumers and the issuance of technical matters and standards. Consumer protection - Deals matters relating to consumer protection will be prescribed by regulations, including simple procedures, making representations, charges, billing information, etc. Technical Rules and Standards – The Authority will make technical rules and standards relating to telecommunications equipment and apparatus. Importation of telecommunications equipment and apparatus will require an import permit issued by the Authority.

PART 4 — ACCESS TO LAND AND FACILITIES

If a licensee wishes to access land for the purpose of constructing, maintaining or operating telecommunications facilities the licensee will normally make its own private negotiations for access (no law is required for this process). If the negotiation is not successful, then this Part will be invoked so that first the Authority can assist, by way of mediation, the parties. If mediation or attempt by the Authority is not successful, then the matter should be left to the High Court to decide. This process will only apply to freehold land or State lands or properties. As regards the native lands, the provisions of the Native Land Trust Act will apply.

PART 5—TELECOMMUNICATIONS APPEAL TRIBUNAL

This Part establishes the Tribunal and provides for its jurisdiction and procedures. The Tribunal will hear and determine appeals relating to licences and the determinations of the Authority.

PART 6—NATIONAL INTEREST MATTERS

Part 6 deals with the obligations of the Authority and licensees in respect of matters concerning the interests of the community at large such as the enforcement of the criminal law, the safeguarding of national security and the suspension of telecommunications services in order to deal with emergencies threatening the lives or safety of citizens.

PART 7—MISCELLANEOUS

Part 7 deals with miscellaneous provisions, including offences and penalties, other enforcement provisions such as notice to show cause and issuance of desist order. The Minister is given the power to make regulations to give effect to the provisions of the Promulgation. The Authority is given the responsibility to formulate and prepare regulations, including undertaking of consultations. The provisions dealing with telecommunications matters under the Post and Telecommunications Decree will be repealed except the offence provisions will remain and may be incorporated into the other laws such the Penal Code.

SCHEDULE

Schedule 1 covers specific provisions dealing with transitional matters.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Promulgation comes under the responsibility of the Minister for Industry, Tourism, Trade and Communications.

A. S. KHAIYUM
Attorney-General and Minister for Justice,
Electoral Reform, Public Enterprise and Anti-Corruption

