

TELECOMMUNICATIONS BILL 2006

(BILL NO. 15 OF 2006)

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BILL NO. 15 OF 2006**A BILL**

FOR AN ACT 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 MANAGEMENT AND LICENSING OF RADIO SPECTRUM AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands—

PART 1—PRELIMINARY*Short title and commencement*

- 1.—** (1) This Act must be cited as the Telecommunications Act 2006.
- (2) This Act comes into force on a date or dates appointed by the Minister, by notice in the *Gazette*.

Interpretation

- 2.** In this Act, 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 audited annual gross revenue of the previous year excluding VAT, levies for Universal Service Fund and ADC and any other Government imposed levies passed through charges;
- “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 76;
- “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 Act;
- “Ministry” means the ministry responsible for the administration of this Act;
- “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 services that enable or facilitate 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;

“universal service obligation” means an obligation undertaken by or imposed on a licensee to provide services under section 50.

Objectives of the Act

3. The objectives of this Act are—

- (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 Act, except Government holding shares in a licensee under this Act so long as the Minister is not responsible for exercising rights under such shares.

Division 2 – Telecommunication 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 Act;
- (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 Act, 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 Act; 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 Act.

(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 Act, 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 Act;
- (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 Act 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 telecommunication assets.

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 Act 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 Act;
- (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 Act, 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 Act, 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 Act 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 76(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 Act 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 Act, 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 Act.

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 Act;
 - (b) fees for any application required under this Act or for the supply or making copies of documents;
 - (c) annual charges for licences to be calculated based on the gross annual turnover calculated net of settlements with other licensees paying annual licence fees of the licensee resulting from the licence, provided that such fees must not exceed a prescribed percentage of gross annual turnover from activities from which licences are granted under this Act; 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 Act;

- (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 Act and any other written laws affecting telecommunication 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 Act 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 Act.

(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 Act 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 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 Act except—

- (a) in the performance the functions or powers under this Act; or
- (b) if the disclosure is authorised under this Act 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 Act.

(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 – Telecommunication 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 telecommunication 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 Act and any other written law, a licensee may own, lease or use any telecommunication network, including technology, facility, infrastructure for the purposes of providing the telecommunication service authorised under the licence.

(4) No licence issued under this Part, including the terms and conditions of such licence shall grant or purport to grant any exclusive right or benefit to a particular person or that would 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 telecommunication 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 78, 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.

Modification of licence conditions

36.—(1) Subject to this section, the Authority may modify the conditions of a licence granted under this Act 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 Act., 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 to be specified in the licence which—

- (a) may be issued concurrently with the terms of the telecommunication 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 – Telecommunication 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 78 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 Act.

*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 Act;
- (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 Act.

(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 Act;
- (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) The Fund may only be spent on the installation of networks and services 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) 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, are to be prescribed.

(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 subsection (4).

(8) Any approval of telecommunications equipment or apparatus granted and not withdrawn before this Act 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 be 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 telecommunication 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 from
- (a) any determinations 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 procedures

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 Act, may make such order as to costs as it thinks fit.

(2) An order as to costs may be filed in a Magistrate's 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 Act, and submit it to the Authority for incorporation into the Authority's annual report.

PART 6—MISCELLANEOUS

Contraventions and breaches

72.—(1) An individual who contravenes a provision of this Act, breaches a licence condition or commits an offence and 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 Act or breaches a licence condition, commits an offence and 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 on which the breach continues.

(4) If a licensee or legal entity is convicted under this Act, 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, 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.

Power of the Authority to impose penalties

73.—(1) Without prejudice to section 72, 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 to 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 Act if the Authority has reason to believe a licensee may have or has—

- (a) engaged in any of the activities referred to in section 76(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 Act;
- (f) violated or failed to comply with a desist order issued under section 76; 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.

Defence

74. In any proceedings brought against any person in pursuance of section 72, the licensee may provide a defence to prove that it took all reasonable steps and used all due diligence to remedy the breach within the period specified.

Monitoring and enforcement

75.—(1) In addition to any other powers contained in this Act or under any other laws and for the purposes of exercising its functions and powers under this Act, 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

76.—(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 Act 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 Act 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 to the Government

77. Part 3 applies to the Government.

Regulations and rules

78.—(1) The Minister may make regulations to give effect to the provisions of this Act, 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 Act;
- (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 Act.

Review of the Act

79. This Act shall be reviewed within 5 years from the commencement of this Act.

Consequential amendments, savings and transitional

80.—(1) The Posts and Telecommunications Decree 1989 are 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 Act, and in particular for the purposes of transferring of public officers to the Authority.

SCHEDULE
(Section 80)

PART 1—TRANSITIONAL AND SAVINGS PROVISIONS

General

1.—(1) Any subsidiary legislation made under the Post and Telecommunications Decree insofar as it applies to telecommunications continues in force as if it were made under this Act until replaced under this Act.

(2) Where in any written law in force at the commencement of this Act, there is reference to the Communications Department, being a reference to any power, function or duty which by virtue is a power, function or other thing vested in or conferred upon the Authority, such reference must, unless the context otherwise requires and to the extent required to give effect to this Act, be construed as a reference to the Authority.

Continuation of Proceedings

2. 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 shall vest in the Authority may be prosecuted and without amendment of any writ, pleading or other document, continued and enforced by, against, or in favour of the Authority.

PART 2—TRANSITION PROVISIONS RELATING TO PRIOR LICENCES

Prior Licences

3.—(1) The holder of a licence issued under the Posts and Telecommunications Decree (a “**prior licence**”) must, not earlier than three months after the commencement of this Act, apply to the Authority for a new licence under this Act, and the Authority must revoke the prior licence and issue a new licence.

(2) If within twelve months after the commencement of this Act the holder of a prior licence does not apply under subsection (1), the Authority must by written notice specify a date for the revocation of the prior licence and the operation of the new licence issued under this Act.

(3) Any new licence issued pursuant to subsection (1) or (2) shall be subject to conditions that the licensee shall continue to offer telecommunications services at least to the same extent as it was offering legitimately under the prior licence.

(4) In all other respects, the provision of telecommunications services and the use of radio spectrum by the holder of a prior licence shall be subject to the licensing and other requirements, and all applicable regulations, determinations, orders, technical rules and standards in accordance with this Act.

(5) Subject to subsection (6), prior licences shall continue in force as if they were issued under this Act until replaced by new licences pursuant to subsection (1) or (2).

(6) Any exclusive right (other than with respect to radio spectrum) set out as a provision or condition of any prior licence is of no effect and shall not be enforceable upon the commencement of this Act.

Unlicensed service providers

4.—(1) Any person providing telecommunications services to the public or using radio spectrum without a licence as required by this Act must within three months after appointment of the Board apply for a licence in accordance with this Act.

5. In this Part a licence includes a spectrum licence.

Regulation of local loop unbundling

6. The regulation of local loop unbundling must only be introduced until after the third anniversary of the date on which this Act comes into force.

Attorney General's Chambers
Level 5-7 Suvavou House
Suva

September 2006

TELECOMMUNICATIONS BILL 2006

EXPLANATORY NOTE

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

1.0 BACKGROUND

1.1 The Bill seeks to replace the provisions dealing with the telecommunications under the Post and Telecommunication Decree 1989.

1.2 The Bill seeks to establish the Telecommunication Authority of Fiji, including the Telecommunication Appeal Tribunal and provide for their powers and functions.

1.3 The objectives of the Bill are set out in Clause 3 of the Bill, namely –

- (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 Bill 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 telecommunication policies.

Division 2—Establishes the Telecommunication 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 Bill. If there is a dispute about obligations under the Act 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 Act. 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 telecommunication 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 telecommunication 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 telecommunication services. A person who wishes to provide telecommunication service will need a licence. The Minister is empowered to declare certain types of telecommunication 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 telecommunication equipments and apparatus. Importation of telecommunication equipments 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 telecommunication 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—(MISCELLANEOUS)

Part 6 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 Act. The Authority is given the responsibility to formulate and prepare regulations, including undertaking of consultations.

The provisions dealing with telecommunication matters under the Post and Telecommunication Decree will be repealed except the offence provisions will remain and may be incorporated into the other laws such the Penal Code.

SCHEDULE

Schedule1 covers specific provisions dealing with transitional matters.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Bill comes under the responsibility of the Minister for Information and Communications.

Q. B. BALE
Attorney-General
and Minister for Justice