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Government of Samoa

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MINISTRY OF COMMUNICATIONS & INFORMATION TECHNOLOGY

Private Bag, Apia SAMOA

GOVERNMENT POLICY ON INTERNATIONAL GATEWAY (IGW) SERVICES (As at 05 March 2009)

BACKGROUND

This Government Policy incorporates Government Decisions on the Government Policy on International Telecommunications Traffic Competition – FK(08)21 of 04 June 2008 (refer Annexure 1), and Government Policy on Submarine Cable and International Gateway (IGW) Services – FK(09)08 of 04 March 2009 (refer Annexure 2).

The Government held a well participatory consultation with the telecom sector providers on 18th February 2009 to discuss policy issues. The Consultation Briefing Paper (refer Annexure 3) sent to the participants before the consultation highlighted the key issues discussed and addressed in this Government Policy. The Consultation Report (refer Annexure 4) includes a vibrant discussion of the key issues on this much awaited forum by the telecom sector providers.

The annexed documents to this Government Policy discuss in detail the Background issues leading to Government deciding to formulate and develop this Policy. The Key Issues, Discussion of Key Issues, Policy Options, Recommended Policy Options, Justification of Policy Options are well addressed in Annexure 2.

The Government has been in the forefront of bringing in the American Samoa Hawaii (ASH) Submarine Cables scheduled to commence commercial activities in Samoa in late April 2009. The submarine cables resolve the issues of capacity, latency, quality and reliability in the international communications market. However, the policy issues relating to international gateway services need to be addressed as per Government Decisions of 04 June 2008 and 04 March 2009 respectively.

The key issues identified in the revised Government Policy include: (1) the Exclusivity license and policy conditions on full IGW Services to State Owned Enterprise, SamoaTel; (2) the DS3 leased by the Government from the Submarine Cable Owners – ASH Consortium; (3) the number of licenses to be issued to financially and technically qualified applicants; and (4) the management of the Cable Landing Station.

The discussions of issues have been summarised in the annexed documents respectively. After due consideration of policy options, the Government has decided on a policy statement to address the current issues in the international telecom market.

GOVERNMENT POLICY STATEMENT

The Government states that:

1. All and/or any exclusivity on full International Gateway Services to be terminated by 1 July 2009; and full liberalization of the International Telecom market to start 1 July 2009;
2. On full liberalization of the International Telecom Market, two types of Licences would be required:
 - 2.1. A Licence for Submarine Cable Landing and the establishment and operation of a Submarine Cable Telecommunications Network and the Provision of certain Telecommunication Services; and
 - 2.2. An International Gateway Services Licence.
3. The current policy of the Government on Licensing is set out in Part III of the Telecommunications Act 2005 (as amended) (**the Act**). These are additional substantive conditions on an International Gateway Services Licensee:-

3.1. General

- 3.1.1. The licence shall relate to the operation of international gateway network facilities, which in turn, shall be defined as facilities which enable the connection of telecommunications networks in Samoa with international telecommunications networks via satellite transmission and/or submarine cable transmission;
- 3.1.2. The licence shall operate for a period of 15 years and may be renewed for the same or a lesser term on the terms and conditions that the Regulator shall determine at the time;
- 3.1.3. The conditions of the licence may be amended by the Regulator following consultation with the Licensee and other stakeholders and with notice as agreed with the Licensee or failing agreement, 6 months;
- 3.1.4. The Cable Station shall be the public exchange area set aside for the termination of international submarine cables in the SamoaTel Building in Apia, and such other locations as may be determined and agreed to by the Regulator from time to time; and
- 3.1.5. All International Gateway Services Licensees shall be deemed to be dominant in relation to the provision of international services from the date of licence issue until such time, if any, when the Regulator formally determines otherwise.

3.2. Rights of Licensee

- 3.2.1. The Licensee may establish international gateway facilities for the purposes of providing international telecommunications services to and from Samoa;
- 3.2.2. The Licensee may negotiate freely with any licensed provider of international connectivity on international transmission capacity for the purposes of providing international telecommunications services to and from Samoa;
- 3.2.3. The Licensee may purchase international transmission capacity at wholesale rates approved by the Regulator;
- 3.2.4. If the Licensee is not licensed to provide a fixed telecommunications service between two locations within Samoa the Licensee may require the incumbent to extend the Licensee's leased submarine cable transmission capacity (if it has any) from the Cable Station to the Licensee's premises for the charges determined by the incumbent and agreed by the Regulator from time to time, such charges to be based on the direct costs incurred by the incumbent in providing this service;
- 3.2.5. The Licensee may establish additional Cable Stations, subject to the following conditions: -
 - 3.2.5.1. technical feasibility as determined by the Regulator;
 - 3.2.5.2. provision of access at the proposed Cable Station by all other licensed IGW operators who request such access;
 - 3.2.5.3. adequate notice, as determined by the Regulator, to all other interested parties so that they may make arrangements for their own operation in consequence; and
 - 3.2.5.4. formal approval by the Regulator having regard to the policies and requirements of the Act.

3.3. Obligations of Licensee

- 3.3.1. The Licensee shall provide to other International Gateway Services Licensed Operators international transmission capacity (satellite and/or cable) of a kind that it acquires for its own retail operations (if any) at wholesale rates approved by the Regulator. If required to provide such capacity to another International Gateway Services Licensed Operator, it shall do so in time frames and subject to other terms and conditions that are no less favourable than the terms and conditions granted to any other International Gateway Services Licensed Operator, and to its own retail business units.

4. An International Gateway Services Licence may be granted as follows:
 - 4.1. International Gateway Services Operator

Any financially and technically qualified applicant(s) may be granted with an International Gateway Services Licence at any time from 1st July 2009 to act as an International Gateway Services Operator;
 - 4.2. International Fixed Line Services

Any financially and technically qualified applicant(s) may be granted with an International Gateway Services Licence at any time from 1st July 2009 to carry fixed line international traffic;
 - 4.3. International Mobile Services

Any financially and technically qualified applicant(s) may be granted with an International Gateway Services Licence at any time from 1st July 2009 to carry mobile international traffic; and
 - 4.4. Internet Service Providers and other Qualified Firms

Any financially and technically qualified Internet Service Provider (ISP) and any other qualified firm applicant(s) may be granted with an International Gateway Services Licence at any time from 1st July 2009;
5. The Government will transfer the lease of its DS3 (45Mb/s) Circuit to any financially and technically qualified applicant(s) that may be granted with an International Gateway Services Licence at any time from 1st July 2009; and the Government will ensure international telecom services on the leased DS3 (45Mb/s) Circuit start on 1 July 2009;
6. The number of International Gateway Services Operators not to be limited, and the limit to be determined by the market;
7. The number of Retail Internet Services not to be limited, and the limit to be determined by the market;
8. Wholesale users of IGW services who require access to international capacity and services and who do not have an International Gateway Services Licence shall have access rights and a choice of International Gateway Service Operator operating under regulatory scrutiny and monitoring
9. The Management of the Cable Landing Station to be included in a clear, transparent and non discriminatory regulatory framework.

Annexure 1

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GOVERNMENT POLICY GUIDELINES ON INTERNATIONAL TELECOMMUNICATIONS TRAFFIC COMPETITION (As at 05 June 2008)

INTRODUCTION

The Government has noted with concern SamoaTel's current status with its business developments. The SamoaTel being a Government company is undergoing business transformation in preparation to be a sound company when it is privatized. The Government sees that some time is needed for this transformation before full liberalization of the telecommunications markets.

This is the rationale behind the Government Policy on Competition in the International Telecommunications Markets 2008 (refer Attachment), whereby SamoaTel has been requested to provide a Business Plan, so that the Government can set firm dates to open up competitions in the various telecommunications services available in Samoa.

At its Meeting of 04 June 2008, and FK(08)21, the Government endorsed the following policy guidelines in regards to international telecommunications traffic competition in the telecom sector.

GOVERNMENT POLICY GUIDELINES:

1. Government Policy Guidelines on Licences issued on International Traffic and Carriers: -

- 1.1. The licences to carry fixed line international traffic may be granted to financially and technically qualified applicant(s) at any time from 1st July 2009.
- 1.2. The licences for additional gateway(s) for mobile network to carry their own international traffic may be granted to financially and technically qualified applicant(s) at any time from the 1st of July 2009.
- 1.3. Any financially and technically qualified firm(s) may apply for a licence to act as a carrier between a customer's premises and a gateway point of interconnection.

2. Government Policy Guidelines on International Internet Access: -

- 2.1. Licences to provide competitive international Internet access may be considered for financially and technically qualified applicant(s) at any time from the 1st of July 2009

- 2.2. Internet Gateway licensing may be opened to Internet Service Providers (ISP's) and other financially and technically qualified firm(s), and may be granted at any time from the 1st of July 2009

3. Government Policy Guidelines on Undersea Cable Landing Station: -

- 3.1. The Government to decide in the near future on either the South Pacific Islands Network (SPIN) or PacRim East is to be the undersea cable provider at completion of analysis;
- 3.2. The undersea Cable Landing Station is to be managed by the International Transit Operator (ITO); and
- 3.3. The ITO at the sole discretion of the Government is to be jointly owned and operated by a partnership between the Government and private operators (Telecommunications Service Providers/Internet Service Providers/Mobile Service Providers).

4. Government Policy Guidelines on Voice over Internet Protocol (VoIP): -

- 4.1. The current moratorium on provision of commercial VoIP services to be continued until such time as:
 - 4.1.1. The SamoaTel exclusivity clause has been removed; and
 - 4.1.2. Sufficient international Internet bandwidth is available to support commercial VoIP operations without detriment to the Internet speed and quality of service experienced by other users.

5. Government Policy Guideline on Retail Internet Service Providers (ISP's) Services: -

- 5.1. No limitation is to be placed on licenses for Retail Internet services, and licenses may be granted to financially and technically qualified applicants.
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**GOVERNMENT POLICY ON COMPETITION IN THE INTERNATIONAL
TELECOMMUNICATIONS MARKETS 2008**

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1. INTRODUCTION

This is a Government policy for further liberalization of the international telecommunications markets in Samoa.

Competition Policy¹ is a mandate of the Office of the Regulator. However, the Ministry of Communications and Information Technology may establish and issue policy in regard to any restrictions on the number or type of telecommunications licences issued in Samoa pursuant to Article 8(1) of the Rules on Licensing Telecommunications Services dated 21 March 2006. In this instance, the Government is concerned about the possible financial impact of liberalizing this market on SamoaTel, a State Owned Enterprise (SOE). This requires Government policy to be established to set firm policy statements for the introduction of further competition in this most important area.

2. POLICY OBJECTIVE

The main objective for this Government policy is to identify firm policy statements for the international telecommunications markets. These policy statements complement an analysis of the current international traffic in the telecommunications markets in Samoa.

The main policy objective considers the following policy issues in the international telecommunications markets environment:

- a. International Fixed Line Traffic
- b. International Internet Access
- c. Undersea Cable Landing Station and other Gateways
- d. Voice over Internet Protocol (VoIP)

3. CURRENT SITUATION ANALYSIS

At present, the telecom SOE SamoaTel has a monopoly on all international traffic used for fixed line voice and Internet service connections to and from Samoa (the current SamoaTel license containing the exclusivity clause expires on the 30th of June 2009).

The telecom SOE SamoaTel exclusivity for carriage of international traffic was partially removed by the issuance of a Global Service for Mobile (GSM) license to Digicel in 2006 which contains approval for Digicel to install and operate an international gateway for carrying international traffic to and from their GSM network.

The SamoaTel exclusivity in the international market is expected to be further challenged this year and in the immediate future in a number of areas including:

- a. Digicel is expected to apply for approval to add Internet traffic on their international gateway system. They are also expected to re-apply to carry other international traffic later this year.
- b. Telecom New Zealand (PacRim East) are actively promoting an undersea cable project that would provide connections between Samoa and American Samoa and then to Hawaii. Another submarine cable project is proposed by South Pacific

¹ Telecommunications Act 2005, Part VI, Competition Policy

- Islands Network (SPIN) that would provide connections between Fiji, Wallis and Futuna, Samoa and American Samoa.
- c. The current speed and quality of international Internet connections to and from Samoa provided by SamoaTel are considered to be inadequate to provide the required level of services for the Internet users in Samoa.

3.1. The Impact of Liberalization on SamoaTel

Prior to April 2007, SamoaTel carried all fixed and mobile international traffic to and from Samoa. This traffic is very profitable for SamoaTel since they gain revenue from both incoming and outgoing calls².

SamoaTel lost a significant portion of this revenue when the Digicel gateway came into service in April 2007. Further loss of revenue may also be expected if the international market is further liberalized to allow competing operators to carry international traffic to and from fixed line subscribers in Samoa.

Faced with a reduction in these very profitable revenues, SamoaTel may well be forced to consider an earlier than planned increase in line rentals and local call charges in an effort to maintain overall profitability. This will certainly have a negative impact on local consumers who are already complaining about fixed line tariffs.

Significant price increases at the consumer level may also drive more people to abandon fixed line service in favour of mobile usage - which in turn would further exacerbate SamoaTel's fixed line revenue problems and could result in reductions in the level of service provided or the number of staff involved. The Government would also be directly affected by the reduced capacity for SamoaTel to pay dividends and the subsequent reduction in share values until such time as the lost fixed line revenue is replaced by increasing revenues from Go Mobile and other services.

The extent of the impact on SamoaTel's revenues resulting from the opening of the Digicel gateway is significant due to the very high number of minutes involved; however, the reduction in revenues from mobile calls is somewhat academic since the Digicel license has already been issued.

The main issue now is to consider the additional impact that may be expected if full competition is allowed for the carriage of all types of international traffic.

3.2. Competition For Fixed Line International Calls

This section has been divided into separate sections to discuss the issues associated with Digicel carrying fixed line traffic and then addresses the expected results if any undersea cable project eventuates.

3.2.1. Digicel (Samoa) Limited

Digicel could add international traffic destined for fixed line subscribers to their gateway facilities with very little additional cost. This would allow them to

² SamoaTel bills locally for outgoing calls and receives payments from other countries for each minute of traffic sent to Samoa via the SamoaTel international gateway facilities.

receive fixed line traffic from New Zealand (and possibly other major routes) for which they would enjoy the in-payments currently received by SamoaTel. The incoming traffic would then be forwarded to SamoaTel over the existing interconnection route for which Digicel would pay SamoaTel an interconnection rate. This is currently around 8 sene per minute for calls from mobiles to fixed lines. Digicel would then retain the difference between the in-payment and the payment to SamoaTel. This could amount to a significant sum of money given the very large number of minutes per month likely to be involved.

In effect, this would be a direct transfer of revenues from SamoaTel to Digicel for almost no added investment on behalf of Digicel. Subscribers in Samoa would not benefit from this change since all call billing for incoming international calls takes place overseas.

The Digicel network could also handle outgoing international calls from fixed line subscribers. This is unlikely to have much impact on SamoaTel or subscribers in the short term since SamoaTel is currently under no obligation to deliver international fixed line traffic to Digicel. This could change if a regulatory order was issued forcing SamoaTel to divert some of its international traffic to Digicel in interests of fostering competition in this area by allowing customers to select their choice of international carrier.

3.2.2. Undersea Cable Project

The advent of a cable landing station in Samoa will present a different set of questions since the station operator will (presumably) not be associated with any license to provide mobile or fixed services in Samoa. In other words, the cable operator will be looking for a license to provide international gateway services rather than combining this feature with other services.

If SamoaTel were to be the investor and/or sole client in the Samoa end of the cable, there would be no change to the competitive situation. On the other hand, allowing the cable operator to offer international connectivity to other operators and/or major consumers in Samoa on a competitive basis presents a number of questions regarding both licensing and the previously mentioned SamoaTel exclusivity.

In an ideal competitive environment, the cable operator would be able to offer dedicated international capacity to whoever wanted to pay the price. This represents the preferable long term solution since it will allow full competition in the international market in Samoa which in turn should provide cost and/or quality of service benefits to Samoans. On the other hand, this brings us back to the question of SamoaTel exclusivity referred to above. It would also raise the question of who would provide the connections between the cable landing station and the premises of each of the cable operator's customers. This could be handled by leasing capacity from SamoaTel or by allowing other companies, possibly including the cable operator, to provide dedicated leased lines on a local basis.

The latter question is relatively easy to resolve since the Telecom Act specifically encourages competition and it would be a simple matter to arrange for any qualified company wishing to provide the local leased lines with a suitable license. Handling of the SamoaTel exclusivity are given in the final section of this Government policy.

The far greater bandwidth available from the cable system would enable Voice over IP (VoIP) to become a commercial reality in Samoa. This service is currently not permitted on a commercial basis since it acts as a direct bypass of SamoaTel's international facilities and would further reduce the quality of internet access to other users due to the amount of bandwidth required for a VoIP call. The introduction of commercial VoIP will have a significant impact on both mobile and fixed international traffic due to the very low rates charged for this type of service.

3.2.3. Subscriber Access to Competitive International Carriers

Subscriber access to competing international operators is usually handled by one of two methods: the first allows subscribers to choose their preferred international carrier by dialling a prefix number before dialling the international number. The second method is by pre-selection of a preferred carrier. In the latter case the subscriber notifies the fixed line operator of his or her preference to place all international calls via a specified international carrier and the local exchange is then programmed to automatically route each outgoing international call to the selected long distance or international carrier.

Depending on the country involved, customer billing may be done by the company whose subscriber initiates the call. Alternatively, the cost of the call may be charged in separate components by each operator involved (e.g. the local company charges an access fee and the international operator charges subscriber for the cost of the international section of the call). Inter-operator charges for handling the outgoing calls are established between the operators involved via standard interconnection agreements.

Incoming calls are handled by interconnection agreements that state the cost of terminating an incoming fixed line or mobile call on the local network. Payments for these calls are then worked out between the operators based on the total number of calls and/or minutes per month.

These matters can be readily resolved by normal regulatory procedures, however, once again, the impact on SamoaTel revenues could be significant if other operators were allowed to carry all types of international traffic to and/or from Samoa.

3.2.4. The Impact on the Consumer

The advent of competition in the carriage of international mobile traffic is expected to result in some reduction in international call charges as both Digicel and SamoaTel continue to vie for share of the mobile market; hence some consumer benefit may be obtained in the short term. On the other hand, the loss of revenue by SamoaTel could have a negative affect on fixed line subscribers as discussed in section 3.1.

Allowing competition in the fixed line traffic could also result in lower international call charges; however, any savings here could be more than offset by the increased cost of line rentals and local call charges if competition is allowed to commence without providing SamoaTel some lead time to adjust to the situation. This would have a bigger impact on lower income subscribers who have made few, if any, international calls that would otherwise offset increases in local costs.

4. STRATEGY TO ATTAIN POLICY OBJECTIVE

As a result of the current situation analysis of the international telecommunications markets in Samoa, the Government strategise on the four major policy issues; international fixed line traffic, international Internet access, undersea cable landing station and other gateways and Voice over Internet Protocol (VoIP). This is further discussed as follows:

4.1. International fixed line traffic

SamoaTel needs to be given reasonable advance notice of the fact that they will lose their exclusivity. This should give them some time to manage the transition by developing or improving other revenue streams.

4.2. International Internet Access

SamoaTel needs to be given notice that consideration has been given to issuing competitive international Internet licenses. This lead-time should be sufficient to allow SamoaTel to finalize planned improvements to their Internet network in preparation for any subsequent competition.

4.3. Undersea Cable Landing Station and other Gateways

Undersea cable is the most pressing issue at this point in time. Other applications to install other satellite or terrestrial gateways are also expected to follow in due course. It is in the best interest of the government to look at all possible avenues to increase capacity. It is envisioned that commercial activities will need to increase in the near future, as Samoa makes access to World Trade Organisation (WTO), and graduating to developing country status.

The Government needs to decide on the most economical undersea cable option, rather than committing to both proposed cable providers (SPIN & PacRim East). SPIN is the preferred option, due mainly to the 25 year life of the cable. PacRim East cable life is 10 years. Negotiations between the Government and Cable Owners shall continue in the near future until a Cable Provider is secured for Samoa.

Policy will need to be formulated if the gateway to be used by Digicel or others to carry Internet traffic or any traffic to or from SamoaTel fixed line or mobile subscribers. Policy should also be defined to cover the possible provision of international leased line services to major end users such as Yazaki, UNDP, and others.

The policy regarding carriage of competitive fixed line traffic will be largely governed by the decision [reference made to the SamoaTel exclusivity raised in section 3 above]. Government policy will therefore need to contain a

contingency clause to cater to early launching of the cable gateway if it would otherwise be preferable to allow SamoaTel a longer period to adjust to the advent of competition.

There is a need to continue allowing private gateways. Policy regarding provision of international leased line facilities by a commercial gateway operator essentially represents the same type of service and should therefore be permitted without the need for advance notice to SamoaTel. Separate licensing will be required for operation of the connections between the cable landing or other gateway site and the consumers if this is not included in the actual gateway license itself

4.4. Voice over Internet Protocol (VoIP)

The introduction of commercial VoIP services would represent a direct bypass of the SamoaTel and Digicel networks. The government should continue with the moratorium on provision of commercial VoIP services in accordance with the policy set forth in section 5.5 below.

5. GOVERNMENT POLICY STATEMENT

As a result of strategizing on the four major policy issues above, this Government Policy on Competition in the International Markets sets forth the following policy statements:

5.1. Government Policy Statement on International Fixed Line Traffic

5.1.1. SamoaTel is to be notified before the end of February 2008 of the Government's intention in further liberalization of the international fixed line voice and facsimile market;

5.1.2. SamoaTel is required to provide a business plan detailing the impact of allowing further competition in the international voice and facsimile telecommunications markets. The business plan shall be submitted to the Ministry no later than **31st MARCH 2008**, and shall identify specific strategies for overcoming any reduction in revenues resulting from the introduction of additional competition in the international market;

The plan must quantify revenue changes (both reduction and new streams) on an annual basis for the next four years; and

5.1.3. The Government shall review the business plan to assess the overall impact on SamoaTel. Following this review, the Government shall determine the date on which further competition will be allowed in the international fixed line voice and facsimile market. These policy guidelines will then be reissued stating firm dates for the introduction of competition in this area. The action points listed in this clause, shall be completed no later than **1 MAY 2008**.

5.2. Government Policy Statement on Licences issued on International Traffic and Carriers.

5.2.1. The licences to carry fixedline international traffic may be granted to financially and technically qualified applicants following the date determined in accordance with 5.1.3

5.2.2. Licences for additional gateways for mobile network to carry their own international traffic may be granted to financially and technically qualified applicants following the date determined in accordance with 5.1.3

5.2.3. Any financially and technically qualified firm may apply for a licence to act as a carrier between a customer's premises and a gateway point of interconnection.

5.3. *Government Policy Statement on International Internet Access.*

5.3.1. Licences to provide competitive international Internet access may be considered for financially and technically qualified applicant(s) following the date determined in accordance with 5.1.3;

5.3.2. Internet Gateway licensing may be opened to Internet Service Providers (ISP's) and other financially and technically qualified firms, and may be granted following the date determined in accordance with 5.1.3.

5.4. *Government Policy Statement on Undersea Cable Landing Station*

5.4.1. The government to decide in the near future on either the South Pacific Islands Network (SPIN) or PacRim East undersea cable provider at completion of analysis; and

5.4.2. Undersea cable landing station or International Transit Operator (ITO) to be owned by the government. The operation of the ITO may be carried out by a government agency or leased to another organisation at the sole discretion of the government.

5.5. *Government Policy Statement on Voice over Internet Protocol (VoIP)*

5.5.1. The current moratorium on provision of commercial VoIP services be continued until such time as:

5.5.1.1. The SamoaTel exclusivity clause has been removed; and

5.5.1.2. Sufficient international Internet bandwidth is available to support commercial VoIP operations without detriment to the Internet speed and quality of service experienced by other users.

5.6. *Government Policy Statement on Retail Internet Service Providers (ISP's) Services*

5.6.1. No limitation is to be placed on licences for Retail Internet services, and licences may be granted to financially and technically qualified applicants following the date determined in accordance with 5.1.3.

6. *POLICY REVIEW*

This Government Policy on Competition in the International Markets shall be reviewed on an annual basis.

7. *OBJECTIVITY AND TRANSPARENCY*

This Government policy is to be seen as being objective and transparent in order to avoid criticism from the international community, and to minimize the possibility of subsequent legal action by industry participants.

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Government Policy Statement on Submarine Cable and International Gateway (IGW) Services

Government/Cabinet Endorsement

In determining the Government Policy on Submarine and International Gateway Services, the Ministry recommends the following Policy Statement for Government/Cabinet approval and endorsement at its Meeting of 04 June 2009:

Government Policy Statement-:

1. SamoaTel's Exclusivity on full International Gateway Services to be terminated by 30 June 2009, and full liberalisation of the International Telecom market to start 1 July 2009;
2. The DS3 Circuit currently under MCIT to be leased to any financially and technically qualified firm with an International Gateway Services Licence;
3. The number of International Gateway Services Operators not to be limited, and the limit to be determined by the market;
4. The Management of the Cable Landing Station to be included in a clear, transparent and non-discriminatory regulatory framework;

Regulatory Issues-:

The Office of the Regulator deals with Regulatory Issues. The endorsement of the above-stated Policy Statement will enable a revised regulatory framework to address the regulatory issues of regulation, licences and fees under the Telecommunications Act of 2005. Regulations and Licences would need to address the areas of –

- Interconnection
- Co-location and Sharing of Facilities
- Disconnection of Service
- Access to Facilities
- Quality of Service
- Capacity requirements, Forecasting and Timely Service Provision

Policy and Regulatory Issues-:

1. In a Government decision to terminate the exclusivity to SamoaTel, the Office of the Regulator would deal with the regulatory issue in licensing. Terms and conditions will be determined by the Office of the Regulator. Two types of licences would be required -

- A Licence for Submarine Cable Landing and the establishment and operation of a Submarine Cable Telecommunications Network and the Provision of certain Telecommunication Services; and
 - An International Gateway Services Licence.
2. In a Government decision to lease its DS3, an International Gateway Services Licence would be issued to any financially and technically qualified firm, under a revised licensing regulatory framework by 30 June 2009.
- The Ministry, with the Office of the Attorney General would request the ASH Consortium (Submarine Cable Owner) to revise the Cable Lease Agreement (CLA) with the Government and SamoaTel, for the second DS3 to be available by 1 July 2009; and the leased DS3 owned by the Government to be transferred to any financially and technically qualified firm with a IGW Service Operator Licence.
3. In a Government decision to let the market decide the number of IGW Services Operators, this will be addressed under a revised regulatory framework.
4. In a Government decision on the Management of the Cable Landing Station, the revised regulatory framework should be fair, transparent and non-discrimination and shall observe regulatory issues such as -
- Interconnection
 - Co-location and Sharing of Facilities
 - Disconnection of Service
 - Access to Facilities
 - Quality of Service
 - Capacity requirements, Forecasting and Timely Service Provision

Discussion

We believe the Government/Cabinet is the ultimate Policy Maker. The Ministry is responsible for providing the possible Policy Options for the Government's considerations, decisions and endorsement.

Addressing the submarine cable and IGW services via a Government Policy is a matter of priority. The submarine cable is schedule to land in Samoa this April, and full IGW Telecom Services is exclusive to SamoaTel til 30 June 2009.

In deciding possible Policy Options, the Ministry has researched and consulted past and existing related Government policies; sought expert consultant advice; and held consultations with the telecom sector players and stakeholders via a transparent Policy Development Process.

Due to the impact on the social, economic, technical and business environment that a Government policy may have on the people of Samoa and the telecom sector respectively, the Ministry has taken all precautions and appropriate measures in identifying Key Issues and possible Policy Options, now presented to Government/Cabinet for its considerations.

The Key Issues identified via the process include what the Government's decisions would be on:

1. SamoaTel's Exclusivity on Full IGW Services;
2. The DS3 Circuit leased by MCIT from the Submarine Cable Owner;
3. The Number of IGW Operator Licences to Provide Services in the Market;
4. The Management of the Cable Landing Station

Recommended Policy Options

The Government may decide on a number of Policy Options to address each Key Issue when determining a Government Policy on Submarine Cable and IGW Services. In the Policy Development Process, the Ministry identified Policy Options, Recommended Options and Justifications of Recommended Options as follows:-

Key Issue 1

SamoaTel's Exclusivity on Full IGW Services

Possible Policy Options

- 1.1. Termination of SamoaTel's exclusivity by 30 June 2009 as per Government policy and licensing condition;
- 1.2. Short-term extension on exclusivity to a period of 2 years to 30 June 2011; or
- 1.3. Long-term extension on exclusivity to a period of 10 years to 30 June 2019.

Recommended Policy Option

- 1.1. Termination of SamoaTel's exclusivity by 30 June 2009 as per Government policy and licensing condition.

Justification of Recommended Policy Option

- ✓ SamoaTel has been given more than adequate time of ten (10) years to 30 June 2009 to improve its services;
- ✓ Confirmed from the Ministry of Finance termination of exclusivity, despite of the delay in privatising the state-owned enterprise;
- ✓ Government Policy on Competition in the International Telecommunications Markets 2008 states opening up the market by 1 July 2009; and
- ✓ Full liberalisation of the telecom market as per Telecommunications Act 2005.

Key Issue 2

The DS3 Circuit leased by MCIT from the Submarine Cable Owner

Possible Policy Options

- 2.1. The DS3 Circuit to be leased to any financially and technically qualified firm with an International Gateway Services Licence; or
- 2.2. MCIT to operate the leased DS3 Circuit.

Recommended Policy Option

- 2.1. The DS3 Circuit to be leased to any financially and technically qualified firm with an International Gateway Services Licence.

Justification of Recommended Policy Option

- ✓ MCIT to maintain an arms-length approach and focusing on policy development;
- ✓ MCIT was involved on a facilitator role in bringing in the cable to Samoa;
- ✓ The sector players have technical and management expertise;
- ✓ The sector players have developed partnerships with overseas telecom counterparts;
- ✓ The sector players have the capacity to negotiate with overseas counterparts; and
- ✓ Two local and current telecom operators have shown interests.

Key Issue 3

The Number of IGW Operator Licences to Provide Services in the Market

Possible Policy Options

- 3.1. Not limiting the number of entrants and letting the market decide;
- 3.2. Limiting the number of entrants to three operators;
- 3.3. Limiting the number but with a ‘honeymoon’ period after which the market would be opened up for another round of operators to enter; or
- 3.4. Limiting entrants to Samoan or joint ventures with Samoan involvements (This however, would have to be compliant with any offers that Samoa would have made for the World Trade Organisation).

Recommended Policy Option

- 3.1. Not limiting the number of entrants and letting the market decide

Justification of Recommended Policy Option

- ✓ It is an International best practice with other jurisdictions that are liberalising telecom markets;
- ✓ In line with Government policy on other services (example Broadcast Market); and
- ✓ In line with WTO Basic Telecoms Agreements on anti-competitive practices

Key Issue 4

The Management of the Cable Landing Station

Possible Policy Options

- 4.1. Set out clear policy and regulatory guidelines on management of the landing station; or
- 4.2. To continue with the existing fair and transparent regulatory framework as per access to satellite capacity and to existing co-location of facilities.

Recommended Policy Option

- 4.1. Set out clear policy and regulatory guidelines on management of the landing station

Justification of Recommended Policy Option

- ✓ A fair and non-discriminatory policy approach;
- ✓ It provides transparent charges for access, co-location and cable landing facilities; and
- ✓ Well defined responsibilities in terms of functioning.

Annexure 3

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Please address all correspondence
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Government of Samoa

Our Ref:

Please quote in your reply

Your Ref:

MINISTRY OF COMMUNICATIONS & INFORMATION TECHNOLOGY

Private Bag, Apia SAMOA

Briefing Paper for Consultation, 18th February 2009, on:

Government Policy on Submarine Cable and International Gateway (IGW) Services

This paper gives a brief outline of the background and the issues that will be discussed in the submarine cable and IGW policy consultation. It does not cover every aspect of the proposed Government Policy. Rather it attempts to pinpoint issues that will be of particular concern to stakeholders and telecommunications sector players. The text indicates issues that the participants might want to consider in their responses to the consultation.

1. Background

- 1.1 The Government of Samoa (GoS) has prioritised liberalising telecommunications services over the years, and has recently pursued discussions with Cable Consortium to increase international capacity via a submarine cable, as an alternative for providing further opportunities in the social and economic development of Samoa.
- 1.2 GoS has agreed and committed to the landing of the *PACRIM-EAST/ASH* submarine cable in Samoa. The American Samoa – Hawaii (ASH) submarine cable extension to Samoa will be operational in April 2009. GoS has reserved capacity on the cable to the extent of two DS3 circuits – each with a capacity of 45 Mbit/s. One of these circuits belongs to SamoaTel and the other is being held by the Government.
- 1.3 GoS via the Ministry of Communications and Information Technology (MCIT) is the responsible ministry for developing the Government policy on submarine cable and IGW. All issues pertaining to this policy shall be properly addressed, so that the GoS will act responsibly when action is taken at policy implementation.
- 1.4 The consultation with the sector players before finalising the Government policy is a crucial part of the policy development process, to ensure all relevant policy issues are discussed and addressed. While the Ministry has stated issues to be addressed as in the following section, further issues faced by sector players will be considered.

2. Issues

The GoS has identified issues to be addressed in this policy as follows:

- 2.1 The uncertainty on whether SamoaTel's exclusivity in international telecommunications services will be extended or terminated as per GoS decision;
- 2.2 The quality, price and reliability of Internet access services being adversely affected by currently relying on satellite only to support international connectivity;
- 2.3 The issue on whether GoS should retain the DS3 or attempt to have the lease transferred to an operator with a suitable licence to manage and operate the cable;
- 2.4 The issue on whether to limit or otherwise the number of IGW operator licences;
- 2.5 The issue of wholesale users of IGW services who require access to international capacity and services and who do not have an IGW licence; and
- 2.6 Management issues on a Cable Landing Station.

3. Policy Statement

The Ministry as a matter of priority is in the process of developing the Government policy on submarine cable and IGW services, and will consider all views expressed in the consultation before finalising Policy Statement to be submitted to Government/Cabinet.

Annexure 4

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Government of Samoa

MINISTRY OF COMMUNICATIONS & INFORMATION TECHNOLOGY

Private Bag, Apia SAMOA

Report on:

Consultation 18th February 2009 - Government Policy on Submarine Cable and International Gateway (IGW) Services

Introduction

The Government via the ministry is in the process of developing the above policy as a matter of priority. A crucial aspect of the process is consulting the telecommunication sector players, to ensure a participative approach is taken, and to further reflect a healthy and transparent policy development process. The consultation for the sector players was held on the 18th February 2009, and issues to be addressed by the policy was set out in the agenda (refer Annex 1).

The consultation was well represented by the sector as expected (refer Annex 2), and may have reflected the invested interests of the players in the impact of this Government policy on their strategic planning and way forward. The presence of the Telecommunications Regulator at the consultation was a real bonus for the ministry, as he has instigated views along the lines of different approaches on legal, regulatory and policy discussions. The ministry was more than satisfied with the healthy exchange of views by the participants on the discussed issues.

The approach taken by the ministry in the discussion of issues is via looking at possible options on each individual issue, so that the ministry would be in a better position to consider such options when advising the Government.

Discussion of Issues

1. SamoaTel's Exclusivity

The Government's policy and licence on SamoaTel's ten (10) year exclusivity for providing full international gateway services will expire this year in 30 June 2009. This is an important issue to consider in light of the submarine cable becoming operational in Samoa in April this year, in that it will provide further opportunities for IGW services. The forum discussed the options that the Government may consider in this policy, such as an extension of exclusivity for a further 1 or 2 years; an extension on a long term basis up to 10 years; or termination of exclusivity on 30 June 2009 as per existing Government policy.

Computer Services Limited (CSL) expressed their views along the lines of terminating SamoaTel's exclusivity by 30 June 2009 as stipulated. In the advent of the submarine

being operational next April, they've echoed their concerns over their efforts afforded to strategic planning with the opportunity to become an IGW in mind. If in the event the Government decides to extend, then all their efforts would be gone down the drain. After all, they cannot move forward on exploring other options unless the IGW market is fully opened for competition. They've also stated that consideration of the exclusivity issue should not have any relation to privatisation, because that other issue may support the option on exclusivity extension. Further to that, the Government is the custodian of the Telecommunications Act, and should ensure liberalisation and opening up of the market is carried out as stated in legislation.

Ipasifika relayed their support of CSL's view on opening up the international market. Whilst they are not in a position to apply for an IGW operator licence, it is a point of interest as an ISP to open up opportunities to have access to more than one IGW operator. They would also like to know where the Government is heading so that they can inform their customers.

Samoatel stated that privatisation should be considered as a separate issue, and if the Government policy is to privatise Samoatel, then they should consider maximising the value of the asset for the good of the government and the people of Samoa. That's on one hand, but if the Government deliberately sets out a policy to devalue that asset, then all should take that matter up and see what the Government's expectations are as well. Also, the market is partially opened and the largest segment today is with Digicel. They welcome opening up the competition to the ISP market provided that the entrant or service such as ISP can apply for international access provided that they can terminate the traffic on their own network, rather than some other alternative means, maximise their network by sub-using the Samoatel. Say for example they would apply for an IGW and have access on cable because they can terminate it on their own network for their customers, and that's fine from Samoatel's point of view. Samoatel is conscious of the fact that when opening up the market, people would look at part of what they have, part of an uneven interconnection rates – now where other companies can just capitalise on all Samoatel's benefits and use that to facilitate their service which is really not anything competition at all. In the case of ISP's, they are competing; they've got an infrastructure locally; make up of combination and they can terminate their traffic, so they have more competition. Their issue would be just on what costs they would incur in achieving international connectivity. Samoatel also believes that if that approach is taken and when it comes around to privatisation; then the company looking at buying Samoatel would see Samoatel positively, and would see competitors in the market with their own network competing and that would be more or less a level playing field for everybody concern.

CSL stated they cannot do anything now in regards to international traffic because of the exclusivity to Samoatel.

Samoatel responded that while CSL can't do that, Digicel has now, through their mobile network, and that exclusivity is not just with Samoatel. But if CSL considers applying for international connectivity, they must have a network in place to terminate it on. For example, they have a Zoom network, so just hook it on and roll. The difference with Digicel is it's got its mobile network – and can say to all those around the world to come to them, as with very distorted interconnection rates in place, they can pay only a couple of cents to Samoatel, and they can use all the Samoatels facilities to terminate the phone

calls on. That is total destruction on the market, whereas in a case like CSL, they have the internet and data coming in, they stick it on through their wireless and race it off to their customers like they are doing now. And that all they are doing is transposing the international pipe coming through Samoatel on coming straight to them. Alternatively, they can still elect to buy it off Samoatel or for that matter buy it off the Government.

The Regulator said that Samoatel has to be careful to identify policy issues as distinct from regulatory issues, in a statement about the value and devalue of their asset i.e. Samoatel if exclusivity is removed because in any event, if it is today, tomorrow or whenever, they will recognise the value at the time. As to whether in fact their asset is devalued when exclusivity is removed, is a question that can debate, but that is something one favours because the opening up of markets in other areas have shown that competition in fact benefits the incumbent if its done properly, free and fair.

Samoatel responded by saying the Regulator has a couple of misleading statements. One is that competition does not automatically increase the income for the incumbent, because it depends on the state of the economic background of users.

The Regulator did not agree he was misleading, but agreed with a correct regulatory framework, you cant allow a new entrant coming in and just be a parasitic on the network, as it will destroy competition.

Digicel commented that given SamoaTel has access to the submarine cable and controls the cable landing station and further to Cabinet Decision F.K (08)21 of 19 June 2008, they respectfully requests the Government to level the playing field for international services, including:

- amending Digicel's licence to remove the restriction on the bypassing of SamoaTel's network;
- requiring Digicel, SamoaTel and other international carriers to maintain a minimum quality of service for bypassing traffic; and
- ensuring that Digicel is regulated on no less favourable terms than SamoaTel in respect of the submarine cable and landing station.

2. Quality, Price and Reliability

The issue of quality, price and reliability was instigated by the ministry due to reliance on satellite only for international connectivity. The bringing in of the cable as a Government initiative is another option for international connectivity.

Digicel stated that everyone is aware that in 3 or 4 years ago, satellite connectivity fell down, and that everyone was struggling to find capacity. Satellite owners were reluctant to put in some more user space, because it was not enough. Due to economy of scale, there is not many countries in the region to grant more space. The fact that the cable is coming to Samoa is a blessing. It is an opportunity for bringing prices down. Also looking at the opportunity of bringing in more services and products. ISP services for example would be able to do different things in the future. If we have capacity, think of cable TV to every Samoan in the country. There is cost in deployment, but those are the opportunities that are lying ahead.

Samoatel responded that in 2006, there has been a shortage of capacity, and there has been poor satellite spotted throughout the region. There's more capacity available now. In

fact, capacity is not the question. The question with satellite, particularly with the internet is latency, and there's no argument about that. That is the advantage of the cable.

3. Decision on the Government's DS3

The options put to the floor for consideration on this issue were whether the Government shall operate its DS3 or lease it out to a competent license holder.

CSL expressed their interest in leasing the Government's DS3. They stated they have negotiation expertise with overseas counterparts in this area. They have now learned to make options. They further stated that even with 2 DS3 now officially brought in by the Government and SamoaTel, this would still be less than enough with the existing needs of the market for use of telecom products and services.

SamoaTel further supported this via saying with respect that the ministry neither has the manpower nor the expertise to deal with the management of a DS3. With capacity, there is possibly 12 other DS3 circuits available in the cable, and it may just be a matter for players in the market to deal directly with the cable consortium for leasing when need be.

Ipasifika also support the view of sector players managing DS3 circuits, and for the Government/ministry to concentrate on policy development for the sector.

LTS asked as to why the Government was involved in the cable issue and in leasing a DS3 circuit; whether this is a move by the Government to act as a caretaker for the small operators like them. It was explained by the ministry that it only got involved because the cable owners would not allow connection between Samoa and American Samoa if we are not committed to 2 DS3's. Samoatel only wanted the capacity of one DS3.

4. Limit to the number of IGW operator licenses

The options for discussions were whether the IGW operator licences to be issued to the sector players were to be limited to a certain number if and when the market is liberalised or whether to let the market decide.

All sector players opted for the option of letting the market decide.

The Telecom Regulator was interested in this issue so that they would be in a better position to come up with the best licensing framework.

The Regulator advised options could be:-

- Not limiting the number of entrants and letting the market decide;
- Limiting the number of entrants to three operators;
- Limiting the number but with a 'honeymoon' period after which the market would be opened up for another round of operators to enter; and
- Limiting entrants to Samoan or joint ventures with Samoan involvements. This however, would have to be compliant with any offers that Samoa would have made for the World Trade Organisation.

Further comments from the Regulator on the issue are as follows:

- While limiting their comments to the issue of the required Regulatory Framework, the Office notes that the key issue to be determined by the Policy Unit of MCIT would be an early decision on the termination of SamoaTel exclusivity in International Telecommunications Services;

- The required regulatory framework would need to address the issues of regulation, licences and fees, under the Telecommunications Act of 2005. Regulations and Licences would need to address the areas of -:
 - Interconnection
 - Co-location and Sharing of Facilities
 - Disconnection of Service
 - Access to Facilities
 - Quality of Service
 - Capacity requirements, Forecasting and Timely Service Provision
- Two types of licences would be required:
 - A Licence for Submarine Cable Landing and the establishment and operation of a Submarine Cable Telecommunications Network and the Provision of certain Telecommunication Services, and;
 - An International Gateway Services Licence
- There would be Policy considerations of allowing competitive advantage of any Provider having access for a prolonged period before other Providers who wish to do so. The Policy decision in this regard needs to be communicated early to allow for appropriate licences.

SamoaTel reiterated their previous point of opening up the market, but as long as a licence holder has a network to terminate it on.

5. Rights and Choice of access of non-licensed IGW wholesale users

The Telecom Regulator with a firm stand on this issue stated that from a policy perspective, the Government should make sure that all non-licensed IGW service provider access rights and freedom of choice to have access to any IGW licensed Operator.

6. Cable Landing Station(s)

SamoaTel stated that there is no such thing as a landing station, but just a place joining one fiber to another fiber. This particular space is owned by the cable consortium. Cable between here and American Samoa has no power on it. In theory, this should last forever. But from American Samoa to Hawaii, it is a fully load cable. They stated there is no need for a Policy consideration on this issue.

The Telecom Regulator stressed the point on management structure of the cable landing station. While there was discussion on this issue, the players were committed to submitting their views on this issue via written statements.

Digicel has further commented as follows:

In order to ensure efficient, transparent and non-discriminatory access to submarine cable at the landing station, it is necessary to introduce obligations that provide for, for example:

- new operators having access to the capacity in the same way as SamoaTel;
- activated capacity no being unduly delayed by SamoaTel due to its control over cable landing station;
- SamoaTel's charges being transparent and non-discriminatory;

- restoration and maintenance services;
- well defined responsibilities in terms of functioning;
- transparent charges for access, co-location and cable landing facilities;
- time limits for access, co-location and cable landing facility.

Several of these principles are detailed below.

The policy must address the following in the proposed regulations for facilitating and enabling the timely provision of access to essential facilities including landing facilities and Co-location at Cable Landing Station (CLS), on a fair and non-discriminatory basis to the requesting service provider by the Owner of Cable Landing Station (OCLS).

- Eligibility for Access Facilitation
- Operators eligible to seek access facilitation to the International submarine cable capacity in submarine cable systems landing at the CLS shall mean duly licensed International Long Distance Operators (ILDOS) or Internet Service Providers (ISPs) holding valid International gateway permission.

CSL like Digicel has more or less similar views on management of the landing station as follows:

- They are agreeable with SamoaTel being the chosen in-country services provider. They would like a clearly defined understanding as to their role toward the servicing and technical operation of the landing equipment.
- They request a policy that would define who and how to co-locate equipment inside the landing station area – costs, location, access, work done, approval
- What “grooming services” will SamoaTel provide and how and what charges would be due for these.
- Clearly define any access rights for 3rd parties into the Landing station area (especially for co-located equipment etc)
- Clearly defined timings by SamoaTel/ASH for all work performed/requested.
- The Cable Landing Station Operator (i.e ASH) should be licensed in Samoa and provide a Reference Interconnect Offer.
- There should be clearly defined rights on the Cable provider and Landing Station Operator including disconnection rights – for example escalation procedures due to non payment of fees.

Way Forward

Participating sector players and stakeholders were to submit their written statements by Tuesday 24, February 2009 for the ministry to consider before it finalises its policy statement to submit to Government/Cabinet.

The sector players and stakeholders will be informed of the Policy Statement once its approved and endorsed by Government/Cabinet.