

BROADCASTING AMENDMENT BILL 2015

SAMOA

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TULAFONO TAU FAAOFI O TEUTEUGA O LE TULAFONO O FAASALALAUGA 2015

SAMOA

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2015, No.

A BILL INTITULED

AN ACT to amend the Broadcasting Act 2010 (“the Principal Act”).

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement-(1) This Act may be cited as the Broadcasting Amendment Act 2015.

(2) This Act commences on the date of assent by the Head of State.

2. Interpretation - In section 2 of the Principal Act:

(a) for the definition of “broadcasting service” substitute:

““broadcasting service” means a service that delivers television programs or radio programs to a person having equipment appropriate for receiving that service, whether the delivery uses the radio frequency spectrum, cable, optical fibre, satellite or any other means of a combination of those means, but does not include:

(a) a service (including a teletext service) that provides no more than data, or no more than

2015, Nu.

O SE TULAFONO TAU FAAOFI UA TAU

O SE TULAFONO e teuteu ai le Tulafono o Faasalalauga 2010 (“o le Tulafono Autu”).

UA FAIA e le Fono Aoao Faitulafono o Samoa i totonu o le Palemene ua potopoto e faapea:

1. Igoa puupuu ma le amataga-(1) E mafai ona taua leni Tulafono o le Tulafono o Teuteuga o le Tulafono o Faasalalauga 2015.

(2) O leni Tulafono e amata faamamaluina i le aso e tuuina i ai le maliega a Le Ao o le Malo.

2. Faamatalaina o uiga o upu - I totonu o le fuaiupu 2 o le Tulafono Autu:

(a) mo le faamatalaina o le uiga o upu “auaunaga tau faasalalauga” ia suia e faapea:

““auaunaga tau faasalalauga” o lona uiga o se auaunaga lea o lo o faaooina atu ai polokalame tau televise po o polokalame tau leitio i se tagata o lo o i ai ni meafaigaluega talafeagai e mauaina ai lea auaunaga, tusa lava po o lo o faaooina atu e faaaogāina ai fusi o alaleo o peau-ea o le leitio, uaea malosī, alavalava tioata o peau-ea mo le malamalama, satelite po o so o se isi lava faiga o le tuufaatasiga o ia auala ua taua, ae peitai, e lē aofia ai mea nei:

(a) se auaunaga (e aofia ai auaunaga tau faasalalauga o tala fou ma faamatalaga i televise) o lo o

text (with or without associated still images);
or

- (b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service;”; and

(b) insert in alphabetical order:

““Broadcasting Tribunal” means the Telecommunications Tribunal established under the Telecommunications Act 2005;”.

3. Objectives of this Act - Section 3 of the Principal Act is amended as follows:

- (a) repeal paragraphs (b) and (h); and
(b) after paragraph (o) insert:

“(p) encourage and preserve cultural diversity; and
(q) establish measures for the control of broadcasting content to protect vulnerable sectors of the public such as children and to reflect community standards.”.

4. Insertion of new provision - After section 4 of the Principal Act under Part II, insert:

“**4A. The Regulator and Office of the Regulator** - The Regulator under the Telecommunications Act 2005 shall be *ex officio* the Broadcasting Regulator and the Office of the Regulator established under the Telecommunications Act 2005 shall function as the Office of the Broadcasting

faapea ona faaooina atu ai na o faamatalaga faamauina, po o ua na o feau tusitusia faatelesi (ua i ai faatasi po o le aunoa ai ma le tuufaatasiga o ni ata e lē gaoioi); po o

- (b) se auaunaga ua faapea ona faaavanoa ai polokalame i taimi e manaomia ai, i se faiga mai le tasi tagata i le isi, e aofia ai se auaunaga o fesootaiga tau initaneti i laina telefoni;”; ma

(b) ia faaofi i le faasologa o le pi faitau faa-Peretania:

““Komisi Faamasino o Faasalalauga” o lona uiga o le Komisi Faamasino o Fesootaiga ua faavaeina i lalo o le Tulafono o Fesootaiga 2005;”.

3. Sini autu o lenei Tulafono - Ua teuteuina le fuaiupu 3 o le Tulafono Autu e faapea:

- (a) ia soloia le parakalafa (b) ma le (h); ma
(b) i le tuanai ai o le parakalafa (o), ia faaofi e faapea:

“(p) ia uunaia ma faataua eseese faaleaganuu; ma
(q) ia faavaeina faiga mo le faafoeina o mataupu o aofia ai i faasalalauga ina ia puipuia ai vaega maaleale o tagata lautele e pei o tamaiti, ma ia atagia ai tulaga aloaia o nuu ma afioaga.”.

4. Faaofiina o aiaiga fou - I le tuanai ai o le fuaiupu 4 o le Tulafono Autu, i lalo o le Vaega II, ia faaofi e faapea:

“**4A. O le Pule Faatonu ma le Ofisa o le Pule Faatonu** - O le a avea le Pule Faatonu o lo o i lalo o le Tulafono o Fesootaiga 2005 ona o le tofi, ma Pule Faatonu o Faasalalauga, ma o le a tataua ona galulue le Ofisa o le Pule Faatonu ua faavaeina i lalo o le Tulafono o Fesootaiga 2005,

Regulator in accordance with the Telecommunications Act 2005 unless and until separately appointed and administered according to this Part.”.

5. Appointment of Regulator - Section 5 of the Principal Act is amended as follows:

(a) for subsections (1), (2) and (3) substitute:

“(1) The Head of State, acting on the advice of Cabinet, may appoint a person as Regulator for a term of up to three (3) years, who shall have and exercise the responsibilities, functions and powers conferred by this Act and any applicable law.

(2) The appointment of a Regulator may be renewed by the Head of State, acting on the advice of Cabinet.

(3) Cabinet may appoint a suitable regulatory body within or outside Samoa to act as Regulator for the purposes of this Act on such terms and for such period as Cabinet approves, and if the arrangement is no longer required or considered to be unsatisfactory in meeting the objectives of this Act, Cabinet may revoke such appointment.”;

(b) subsections (4), (7)(a) and (10) are repealed;

(c) in subsections (8) and (9), for “subsection (4)”, substitute “subsection (3)”.

6. Office of the Broadcasting Regulator - In section 8, subsection (15) of the Principal Act is repealed.

7. Part III on Broadcasting Tribunal - Part III of the Principal Act is repealed.

e avea ma Ofisa o le Pule Faatonu o Faasalalauga ina ia tusa ai ma le Tulafono o Fesootaiga 2005, ae vagana ai ma seia oo ina faapea ua tofia ma faafoeina eseese e tusa ai ma lenei Vaega.”.

5. Tofiaina o le Pule Faatonu - Ua teuteuina le fuaiupu 5 o le Tulafono atu e faapea:

(a) mo le faafuaiupu (1), (2) ma le (3) ia suia e faapea:

“(1) E mafai e Le Ao o le Malo, i le faia i luga o le fautuaga a le Kapeneta, ona tofia se tagata e avea ma Pule Faatonu mo se vaitaimi e oo atu i le tolu (3) tausaga, o ia lea o le a i ai, ma ia faatinoina matafaioi, galuega tauave ma malosiaga ua faaee atu e lenei Tulafono ma so o se tulafono talafeagai.

(2) E mafai ona toe faafou le tofiga o se Pule Faatonu e Le Ao o le Malo, i le faia i luga o le fautuaga a le Kapeneta.

(3) E mafai e le Kapeneta ona tofia se faalapotopotoga faaletulafono talafeagai i totonu po o fafo atu o Samoa, e galue e avea ma Pule Faatonu mo faamoemoega o lenei Tulafono i luga o ia tuutuuga, ma mo ia vaitaimi e pei ona faamaonia e le Kapeneta, ma pe afai e le o toe manaomia le fuafuaga po o ua iloiloaina e faapea, ua lē faamalieina tulaga e ausia ai sini o lenei Tulafono, e mafai e le Kapeneta ona faalēaogāina sea tofiga.”;

(b) ua soloia faafuaiupu (4), (7)(a) ma le (10);

(c) i le faafuaiupu (8) ma le (9), mo le “faafuaiupu (4)”, ia suia i le “faafuaiupu (3)”.

6. Ofisa o le Pule Faatonu o Faasalalauga - I totonu o le fuaiupu 8, ia soloia le faafuaiupu (15) o le Tulafono Autu.

7. Vaega III e faasino i le Komisi Faamasino o Faasalalauga - Ua soloia le Vaega III o le Tulafono Autu.

8. Appeal of orders of the Regulator to the Broadcasting Tribunal - In section 10(1) of the Principal Act omit “established under section 11”.

9. Broadcasting policies-(1) Section 29 of the Principal Act is amended as follows:

- (a) in subsection (1), for “The Ministry shall propose, and the” substitute “The”;
- (b) subsection (4) of the Principal Act is repealed;
- (c) in subsection (9), after “consult with” insert “the Regulator and other”.

10. Functions and duties of the Regulator regarding competition - Section 31 of the Principal Act is amended as follows:

- (a) in subsection (1), paragraphs (c), (d) and (e) are repealed;
- (b) for subsection (2), substitute:

“(2) Wherever a conflict arises between the provisions of this Act and the provisions of any other legislation regulating competition in broadcasting markets in Samoa, the provisions of this Part shall prevail except in relation to the Telecommunications Act 2005 in which case the latter shall prevail.”.

11. Repeal of sections - Sections 32 and 33 of the Principal Act are repealed.

12. Determination of abuse of dominance and anti-competitive practices - For section 35 of the Principal Act, substitute:

8. Talosaga tetee e tuina atu i le Komisi Faamasino o Faasalaluga e uiga i poloaiga a le Pule Faatonu - I totonu o le fuaiupu 10(1) o le Tulafono Autu, ia aveese upu “ua faavaeina i lalo o le fuaiupu 11”.

9. Faiga faavae a le Ofisa o Faasalaluga-(1) Ua teuteuina le fuaiupu 29 o le Tulafono Autu e faapea:

- (a) i totonu o le faafuaiupu (1), mo upu “E tatau i le Matagaluega ona faatu mai, ma e” ia suia i upu, “E”;
- (b) ua soloia le faafuaiupu (4) o le Tulafono Autu;
- (c) i totonu o le faafuaiupu (9), i le tuanai ai o upu “faatalanoa ma” ia faaofi upu, “le Pule Faatonu ma isi”.

10. Galuega tauave ma tiute o le Pule Faatonu e uiga i faiga faatauva - Ua teuteuina le fuaiupu 31 o le Tulafono Autu e faapea:

- (a) i totonu o le faafuaiupu (1), ua soloia le parakalafa (c), (d) ma le (e);
- (b) mo le faafuaiupu (2), ia suia e faapea:

“(2) Afai e tulai mai se feteenaiga i le va o aiaiga o lenei Tulafono ma aiaiga o so o se isi lava tulafono o lo o faatonutonuina ai faiga faatauva i maketi tau faasalaluga i totonu o Samoa, e tatau ona mausali pea aiaiga o lenei Vaega seia vagana ai le tulaga e faasino i le Tulafono o Fesootaiga 2005, mo lea tulaga, e mausali lava le tulaga o lo o taua mulimuli.”.

11. Soloia o fuaiupu - Ua soloia le fuaiupu 32 ma le 33 o le Tulafono Autu.

12. Faia o faaiuga mo le faaaoga sese o tulaga iloga o kamupani ma faiga e taofiofia ai faiga faatauva - Mo le fuaiupu 35 o le Tulafono Autu, ia suia e faapea:

“35. Determination of service provider’s anti-competitive practices - The Regulator may, on application by any person, or on the Regulator’s own initiative, determine:

- (a) whether or not the actions or activities of a service provider amount to an anti-competitive practice within the meaning of section 34; or
- (b) that an action or activity of a service provider under sections 34 is authorized and does not contravene this Act, on the grounds that such activities are in the public interest and otherwise consistent with the objectives set out in section 3.”.

13. Remedies for abuse of dominance and anti-competitive practices - Section 36 of the Principal Act is amended as follows:

- (a) in the section title, omit “abuse of dominance and”;
- (b) omit, “an abuse of the service provider’s dominant position or”.

14. Transfers of control of service providers - In section 37, subsection (2) of the Principal Act substitute:

“(2) No transfer of control of an individual licensee shall be effected without the prior approval of the Regulator if as a result of the transfer, a person, alone or with affiliates, would control service providers whose gross revenues in a specific

“35. Faia o faaiuga i faiga e lē faatauva a kamupani e tuuina atu auaunaga - E mafai e le Pule Faatonu, i luga o se talosaga a so o se tagata, po o i luga o lona ia lava sogasoga lelei, ona fuafuaina e faapea:

- (a) e tusa lava pe ua tulai mai e faapea ua faia ai pe leai foi i gaoioiga po o galuega a se kamupani o tuuina atu auaunaga, ni faiga e le o ni faiga faatauva e tusa ai ma le uiga o le fuaiupu 34; po o
- (b) e faapea ua faatagaina se gaoioiga po o se galuega a se kamupani o tuuina atu auaunaga i lalo o le fuaiupu 34, ma e le o solia ai lenei Tulafono i luga o mafuaaga e faapea, o ia ituaiga galuega e mo le manuia o tagata lautele ma ogatasi i se isi faiga e ese ai, ma sini ua faatulagaina i totonu o le fuaiupu 3.”.

13. Auala e foia ai le faaaogā sese o tulaga iloga ma faiga e le o ni faiga faatauva - Ua teuteuina le fuaiupu 36 o le Tulafono Autu e faapea:

- (a) i le ulutala o le fuaiupu, ia aveese upu “faaaogā sese o tulaga iloga ma”;
- (b) ia aveese upu “faaaogā sese o le tulaga iloga o kamupani o tuuina atu auaunaga po o”.

14. Faasee atu o le vaaiga o kamupani e tuuina atu auaunaga - I totonu o le fuaiupu 37, i le faafuaiupu (2) o le Tulafono Autu, ia suia e faapea:

“(2) E lē tatau ona faamamaluina le faasee ese atu o le vaaiga o se kamupani tutoatasi ua laiseneina e aunoa ma le faamaoniga na uluai tuuina atu e le Pule Faatonu pe afai, i le taunuuga o le faasee atu, o le vaaiga o se tagata na o ia pe ma

broadcasting market constitutes 40% or more of the total gross revenues of all service providers in that market.”.

15. Appeal against surcharge - In section 40(2) of the Principal Act omit “established under section 11”.

16. Consequential amendments-(1) In the Principal Act, omit “dominant” wherever occurring.

(2) In section 2 of the Principal Act omit “universal access policy” and meaning from interpretation.

(3) Section 30(1)(a) of the Principal Act is repealed.

sui auai o le a vaaia se kamupani e tuuina atu auaunaga, lea o le aofaiga atoa o a latou tupe maua i se maketi tumaoti tau faasalalauga, e 40% pe sili atu foi, i le tuufaatasiga atoa o tupe maua a kamupani uma e tuuina atu auaunaga, i totonu o lea maketi.”.

15. Talosaga tetee e faasaga i tau faaopoopo - I totonu o le fuaiupu 40(2) o le Tulafono Autu, ia aveese upu “ua faavaeina i lalo o le fuaiupu 11”.

16. Teuteuga faatupulaia-(1) I totonu o le Tulafono Autu, ia aveese upu “iloga” i fea lava o aliali mai ai.

(2) I totonu o le fuaiupu 2 o le Tulafono Autu, ia aveese upu “faiga faavae e faatino ai avanoa lautele” ma lona faauigaina mai le vaega o le faamatalaina o uiga o upu.

(3) Ua soloia le fuaiupu 30(1)(a) o le Tulafono Autu.
