

**DRAFT FOR CONSULTATION PURPOSES ONLY**

**TELECOMMUNICATIONS AND  
RADIOCOMMUNICATIONS REGULATION ACT 2009**

AN ACT to establish a new regulatory framework for telecommunications, radiocommunications and for related purposes.

[insert date of enactment]

BE IT ENACTED by the President and Parliament as follows:

## PART 1 – PRELIMINARY

### 1. Commencement

This Act shall come into force on the [•] day of [•], 2009 or upon publication in the Gazette, whichever is sooner.

### 2. Objects

The objects of this Act are to:

- (a) Facilitate the development of the telecommunications sector; and
- (b) manage the increasing demand for radio-frequency spectrum,

in order to promote long-term national social and economic development.

### 3. Definitions

(1) In this Act:

“**access network**” means **[to be defined]**;

“**Act**” means this Telecommunications Act 2009 and, unless the context requires otherwise, includes any Regulations;

“**affiliate**” means, in relation to any one person, any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person;

“**authorisation**” means an [order] made by the Regulator pursuant to section 16;

“**bottleneck facilities**” means a facility essential for the production of services, which, for technical reasons or due to economies of scope and scale, and the presence of sunk costs, cannot practicably be duplicated by a would-be competitor;

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**Comment:** A bottleneck facility has no concept under economic principles, while the definition of dominance should be sufficient to address such circumstances eg the concept of an essential facility is based on economic principles and jurisprudence.

“**competition**” means workable or effective competition;

“**competitive process**” means an open, competitive process which is:

- (a) approved by the Tenders Board; and
- (b) conducted in accordance with that approval.

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**Comment:** This term needs to be defined

“**conduct**” includes any act and the omission to perform any act;

“**control**” means the power to determine the actions of another person in any manner, whether directly through the ownership of shares or other securities or indirectly through an agreement or arrangement of any type;

“**costs**” includes costs and disbursements on a standard or indemnity basis;

“**customer**” means a person who has a contractual relationship with a service provider for the use by that person of a telecommunications service provided by that service provider (which may include a reseller of the telecommunications service provided by that service provider), but does not include affiliates of the service provider;

“**decision**” of a Regulator includes any decision of any kind to do or not to do anything in relation to which the Regulator is empowered by this Act;

“**dominant service provider**” means a service provider designated by the Regulator in accordance with the provisions of this Act;

“**employ**” includes the entry into a contract for services;

“**end user**” means a person who is the ultimate user of a telecommunications service or another service provided by means of that telecommunications service, but does not include the service provider or affiliates of the service provider that provides that telecommunications service;

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“**equipment**” includes any thing or apparatus used in connection with telecommunications or radiocommunications;

“**Exception**” means an exception granted to a person or class of persons from the requirement to hold a licence in respect of any matter which would otherwise be prohibited without a licence;

“**Government**” means the Government of Vanuatu;

“**gross revenue**” means gross revenue earned by a service provider, before any deduction for costs, taxation, accounting or other purposes;

“interconnection agreement” has the meaning assigned to it in section 29;

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“ITU” means the International Telecommunication Union’

“knowingly” refers to the knowledge of a circumstance or a result or the awareness that the circumstance or result will exist in the ordinary course of events;

“licence” means a licence issued to a person or to a class of persons pursuant to this Act or a prior licence;

“licensee” means a person who holds either a licence issued pursuant to this Act or a prior licence;

“market” means an economic market in Vanuatu for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them;

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“Minister” means the Minister responsible for telecommunications;

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“Ministry” means the Ministry responsible for the administration of this Act;

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“person” includes, unless the context requires otherwise, a licensee;

“prior licence” means a licence granting the right to operate a telecommunications network or provide of a telecommunications service or services, issued or given prior to the coming into force of this Act;

“quarter” means [a financial quarter];

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Comment: This term is not used elsewhere in the document – suggest the definition is deleted.

“radiocommunications” means any emission of signs, signals, writing, images, sounds, or intelligence of any nature by radio waves;

“reference interconnection offer” has the meaning assigned to it in section 44;

“Register” means any register required to be kept under section 11;

“regulated service” means the provision of any good, service, equipment or facility that enables telecommunication and that is regulated in accordance with this Act;

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“Regulation” means any regulation made under this Act;

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“Regulator” means the Telecommunications and Radiocommunications Regulator appointed (or deemed to be the Regulator) pursuant to section 5;

“**service provider**” means a person that provides a telecommunications service to the public;

“**Settlement Agreement**” means the Settlement Agreement executed by the Government and TVL on 19 December 2007, as amended from time to time;

“**staff**” includes any person employed by the Regulator in accordance with section 8 and any public servant who may temporarily be assigned to the Regulator;

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“**subsidy**” refers to a subsidy provided by section [ ] and includes a single or periodical payment;

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**Comment:** Suggest that it is unnecessary and confusing to define this term here as it is used in several contexts in the draft.

“**telecommunication**” means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not;

“**telecommunications facility**” means any facility, apparatus or other thing that is used or is capable of being used for telecommunications or for any operation connected with telecommunications;

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“**telecommunications market**” means an economic market in Vanuatu for telecommunications services, telecommunications equipment or telecommunications facilities;

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“**telecommunications network**” means a system or series of systems that permit the conveyance of telecommunications;

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“**telecommunications revenue**” means gross revenue earned by a service provider in providing telecommunications services in Vanuatu, before any deduction for costs, taxation, accounting or other purposes;

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“**telecommunications service**” means any service that enables or facilitates telecommunications;

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**Comment:** Note the previous inclusion of “audio visual content” was likely to capture broadcast television services.

“**Terms of Service**” means the terms and conditions upon which a service provider shall provide telecommunications services to customers and which are set out in a document prepared in accordance with section 44. Once approved by the Regulator, the Terms of Service shall be binding upon a dominant service provider and its users;

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“**TVL**” means Telecom Vanuatu Limited, and includes any of its affiliates;

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“**UAP**” means the Universal Access Policy formulated under section 18;

“**UAP Fund**” means the Universal Access Policy Fund established pursuant to section 20;

“**Website**” means the website of the Regulator, established pursuant to section 11.

- (2) Where in this Act any licence, exception, approval, determination, contract, appointment or notice is given by, or entered into, by the Regulator, it shall be given or entered into in writing.

#### **4. Act to Bind the State**

This Act shall bind the Government of Vanuatu.

## **PART 2 – THE TELECOMMUNICATIONS AND RADIOCOMMUNICATIONS REGULATOR**

### **5. Appointment of Regulator**

- (1) The Minister shall, whenever no Regulator is appointed, convene an Evaluation Committee.
- (2) An Evaluation Committee shall comprise:
  - (a) The Governor of the Reserve Bank of Vanuatu, who shall be the chairperson of the Evaluation Committee;
  - (b) a representative of the Judicial Services Commission, who is not a member of any political party; and
  - (c) a senior officer of the Vanuatu Chamber of Commerce, who is not a member of any political party.
- (3) The Evaluation Committee shall, according only to merit, evaluate all candidates as may apply and shall recommend one or two, and if two, the order of preference.
- (4) The Evaluation Committee shall not recommend a candidate who does not reside in Vanuatu or who does not intend to reside in Vanuatu during the term of appointment.
- (5) The Minister shall:
  - (a) Negotiate with such candidates as the Evaluation Committee may recommend with a view to concluding satisfactory terms and conditions of appointment;
  - (b) appoint a person with whom satisfactory terms and conditions of appointment may be agreed in writing; and
  - (c) not appoint any person not recommended by the Evaluation Committee.
- (6) A Regulator may be appointed for a maximum term of three years which term may be extended by the Minister for a further six months or, with the approval of the Evaluation Committee, for a further three years.
- (7) Where there is no Regulator appointed, the Chief Executive Officer of the Utilities Regulatory Authority shall be deemed to be the Regulator.

## 6. Disqualification

- (1) A person is not eligible to be appointed as Regulator if that person, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, has any pecuniary or proprietary interest in:
- (a) a licensee; or
  - (c) a manufacturer or supplier of equipment, except where the supply is incidental to the general merchandising of goods by wholesale or retail.
- (2) A person is not eligible to be appointed as the Regulator if that person:
- (a) has a conviction or is convicted for any offence, in Vanuatu or elsewhere:
    - (i) under criminal law;
    - (ii) involving dishonesty or corruption; or
    - (iii) where the applicable penalty includes imprisonment for one year or longer (irrespective of whether such penalty has been imposed);
  - (b) is an undischarged bankrupt, in Vanuatu or elsewhere;
  - (c) is unable to perform the Regulator's responsibilities, functions, duties and powers due to any physical or mental incapacity;
  - (d) is a member of Parliament;
  - (e) is an officer of a Municipal Council;
  - (f) is an office-bearer or employee of any political party; or
  - (g) is an immediate family member of a person referred to in paragraphs (d), (e) or (f).

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## 7. Termination or Suspension of Appointment of Regulator

- (1) The Minister shall terminate or suspend the appointment of the Regulator if the Minister is satisfied that the Regulator:
- (a) Would, if he were not already appointed, be disqualified, under section 6;



- (b) has committed a serious breach of the terms and conditions of the appointment;
  - (c) persistently breaches one of the terms and conditions of the appointment; or
  - (d) materially fails to fulfil the responsibilities, functions, duties and powers of the Regulator granted under this Act.
- (2) Termination or suspension under subsection (1) shall be upon 28 days notice and reasons shall be provided therefor.
- (3) Where the Regulator is terminated following a period of suspension, the length of the period of suspension shall be included in the notice period for termination under subsection (2).
- (4) The Regulator may resign upon 28 days notice.

### 8. General Functions and Powers

- (1) Subject to the provisions of this Act, the Regulator shall regulate telecommunications and radiocommunications.
- (2) Without limiting the generality of subsection ~~(1)~~, the Regulator shall:
- (a) Advise the Minister as to:
    - (i) policy;
    - (ii) making of regulations; and
    - (ii) such other matters as the Minister may request,
  - (b) implement, facilitate and enforce the provisions of this Act;
  - (c) grant, suspend, vary and revoke licences and exceptions for which this Act provides; ~~▼~~
  - (d) establish and manage a numbering plan and allocate number blocks to service providers;
  - (e) establish a radio spectrum plan, manage radio spectrum and allocate and assign radio-frequencies to licensees; and

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(f) to represent the Government in regional and international organisations and obligations when the Minister has officially delegated such tasks to the Regulator.

(3) In performing its functions and exercising its powers under this Act, the Regulator must do the following:

(a) act transparently, fairly and in accordance with international best practice;

(b) consult in good faith any person who 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 meaningful submissions and be heard;

(d) give consideration to any 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 objects in section 2, its functions and powers and the factors in section 8(4).

(4) The Regulator shall, when performing its functions and exercising its power under this Act, take into account the principle of forbearance and the effect of users and licensees and shall only increase or recommend an increase in the burden of regulation where the reasonably anticipated public benefits of such regulation significantly outweigh the burden reasonably anticipated to be placed on licensees.

(5) The Regulator shall have a separate and independent legal personality and may, by and under the name "Telecommunications and Radiocommunications Regulator":

(a) enter into contracts;

(b) sue and be sued;

(c) employ staff;

(d) accept, in his sole discretion, the secondment of public servants to his staff to act under his direction; and

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(e) authorise staff to act in his name.

(6) The Regulator shall ensure that any contract the value of which exceeds or is likely to exceed VT500,000 in any 12 month period is concluded as a result of a competitive process and that legal advice is obtained from the State law Office.

(7) A contract concluded without compliance with subsection (4) and a contravention of subsection (4) shall be deemed to be a serious breach of duty by the Regulator.

(8) The provisions of the Leadership Code Act 1998 shall apply to the Regulator in relation to the exercise of his functions and powers under this Act.

(9) The provisions of the Public Service Act 1998 shall not apply to the Regulator or to his staff, except that this subsection shall not apply to staff seconded under subparagraph (3)(b).

(10) The Regulator shall act independently and impartially in performing the responsibilities, functions, duties and powers set out in this Act and other laws provided however that nothing in this Act shall be interpreted so as to prevent the Regulator from:

(a) Having regard to such Government policies as may be notified to the Regulator by the Minister;

(b) consulting with or taking advice from, any person on any matter;

(c) acting in co-ordination with other countries and international standards; or

(d) making a decision that will or might have a differential or prejudicial impact on a service provider or any other person.

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## 9. Information Gathering

(1) If the Regulator believes that a person has information or documents relevant to the exercise of any of the Regulator's powers or functions the Regulator may require the person to:

(a) Produce such documents;

(b) make copies of such documents for the Regulator; and

(c) require the service provider to furnish such information.

- (2) A person shall comply with a requirement imposed under subsection (1).
- (3) A person shall not, in relation to any requirement imposed under subsection (1), provide any document or information which is false or misleading in a material particular.
- (4) The Regulator shall compensate a person for the reasonable costs of copying documents or furnishing such information pursuant to a requirement imposed under subsection (1)(b) or (1)(c).
- (5) In exercising its powers under this section, the Regulator must:
  - (a) specify the reasons it requires the information or document specified in subsection (1);
  - (b) specify the relevant section of the Act on which the Regulator relies to make such a request;
  - (c) specify the time, manner and the form in which any such information is to be provided; and
  - (d) ensure the requirements are reasonable and practicable.
- (6) A person is not excused from giving information or producing a document or a copy of a document under this Section on the ground that the information or the production of the document or copy might tend to incriminate the person or expose the person to a penalty under this Act.
- (7) No information or documents obtained under this section are admissible in evidence against a person in any criminal proceedings.
- (8) Subject to subsection 10, no confidential information may be disclosed by the Regulator without the written consent of the party who provided such information to the Regulator.
- (9) For the purposes of this section, information is confidential information if the provider of the information has requested in writing to the Regulator that the information be kept confidential and where the Regulator is satisfied that the request is reasonable.
- (10) The Regulator shall determine the reasonableness of a request under subsection (9) taking into consideration:
  - (a) The likelihood and the seriousness of the 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 Regulator's decision making.

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## 10. Finance of the Regulator

(1) The funds of the Regulator consist of moneys appropriated by Parliament to the Regulator and such funds are only to be expended for the purposes of any functions or powers under this Act.

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(2) The Regulator may determine the following charges and fees:

- (a) charges for services rendered by it in accordance with the performance of its functions or 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 licence fees to be calculated based on a percentage of audited annual gross revenue calculated net of settlements with other licensees in Vanuatu and cost of sales provided that such variable fees must not exceed a prescribed percentage of annual gross revenue and must not be below a prescribed minimum levy based on the type of service to be provided by the licensee; and
- (d) other fees and charges for the administration of state assets such as radio spectrum.

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(3) 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 Regulator on its Website or in such other form as it thinks fit; and
- (c) in the aggregate be set to do no more than recover the Regulator's budgeted costs of performing its functions and exercising its powers in the following year.

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

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

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## 11. Equipment Inspection

(1) If the Regulator reasonably believes that any person has in their control or is using any equipment contrary to this Act or a Regulation, the Regulator may:

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- (a) Search any premises, vehicle, ship or aircraft for the equipment and may be accompanied by a police officer;
- (b) inspect, take photographs or make sketches of the equipment; and

- (c) operate the equipment, if necessary to ascertain its nature or the manner of its use.
- (2) No compensation shall be payable in respect of the exercise or purported exercise by the Regulator of any power in this section, except that reasonable compensation shall be paid for any loss or damage to equipment which results from negligence.

## 12. Official Records and Website

- (1) The Regulator shall keep and maintain registers of all licences, exceptions, interconnection agreements, market determinations, and determinations of dominance made under this Act and shall, subject to subsection (4), make the same available for public inspection upon reasonable notice.
- (2) The Regulator shall establish an official website.
- (3) The Website shall, in addition to any other requirements imposed by this Act, display:
  - (a) Regulations;
  - (b) Registers; and
  - (c) relevant Government policy documents.
- (4) Any document may be expurgated for public inspection or display on the Website if, and only to the extent that, it contains confidential information.

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## 13. Annual Report

- (1) The Regulator shall provide the Minister an annual report including, but not limited to:
  - (a) a summary of the activities of the Regulator;
  - (b) such financial statements and auditor's reports as are required by this Act or other law;
  - (c) a list of all entries and deletions to the Register in the preceding year;
  - (d) a summary of material litigation involving the Regulator; and
  - (e) a list of consultants and advisors retained by the Regulator and a description of the matters in relation to which they have consulted or advised.

- (2) A contravention of subsection (1) shall be deemed to be a serious breach of duty by the Regulator.
- (3) The annual report provided to the Minister pursuant to subsection (1) shall be made available to the public on the Website.

## PART 3 – LICENCES AND EXCEPTIONS

### 14. Requirement to Hold Licence

- (1) No person shall provide a telecommunications service to the public except under and in accordance with a licence or exception.
- (2) A person shall be taken to provide a telecommunications service to the public if that person provides or offers such a service to any segment of the public, including by the resale of telecommunications services obtained from another person, even if only one other person is provided or offered such a service.
- (3) No person shall emit or cause to be emitted any radiocommunications, except:
  - (a) under and in accordance with a licence or exception; or
  - (b) any foreign vessel or aircraft or any transit service passing through Vanuatu's territorial waters, skies or territories or landing in its seaports or airports on condition it holds the necessary international radio spectrum licences from its own country and does not cause interference with existing licensees in Vanuatu.
- (4) No person shall import, offer for sale, sell or use any equipment which may be prescribed by Regulations without a licence or having had such equipment type approved by the Regulator.

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### 15. General Provisions Relating to Licences

- (1) Licences may be issued by the Regulator.
- (2) A licence is a unilateral grant of permission and shall not be regarded as a contract or bilateral agreement.
- (3) A licence may be issued to a person or to a class of persons and may be issued according to and within such divisions or categories as may be provided by Regulations.
- (4) Subject to any Regulations, the Regulator shall determine the terms and conditions of licences.
- (5) The Regulator shall make copies of licences available for inspection by the public.
- (6) No licence issued under this Part shall contain any term or condition, other than a term or condition in relation to the use of radio spectrum, that grants



or purports to grant any exclusive right or benefit to a particular person or to confer a right that is discriminatory and any such terms or conditions are void.

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### 16. General Provisions Relating to Exceptions

- (1) Exceptions may be given by the Regulator where, in the Regulator's reasonable opinion, issuing a licence would not be efficient or necessary.
- (2) An exception is a unilateral grant of permission and shall not be regarded as a contract or bilateral agreement.
- (3) An exception operates only in respect of the specific matters and circumstances described therein and shall not otherwise relieve any person from any obligation or liability unless express or necessarily to be implied.
- (4) An exception may be given to a person or to a class of persons and may be given according to and within such divisions or categories as may be provided by Regulations.
- (5) Subject to any Regulations, the Regulator shall determine the terms and conditions of licences.
- (6) The Regulator shall make copies of exceptions available for inspection by the public.
- (7) An exception may be revoked at any time in the absolute discretion of the Regulator.

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**Comment:** What about existing licences of TVL and Digicel? Greater clarity is required.

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### 17. Amendment and Revocation of Licences

- (1) The Regulator may amend the terms and conditions of, or revoke a licence if:
  - (a) the amendment or revocation has been requested or agreed by the licensee;
  - (b) the licensee has materially failed to comply with a licence term or condition, this Act, or Regulations and has not remedied that failure within a period of thirty (30) days after notice by the Regulator under subsection (2);
  - (c) (d) (e) the licensee enters into receivership or liquidation, takes any action for its voluntary winding-up or dissolution, or is the

subject of any order by a competent court or tribunal for its compulsory winding-up or dissolution.

- (2) Prior to amendment or revocation of a licence, the Regulator shall:
- (a) notify the licensee in writing that it is considering the relevant action; and
  - (b) consider any comments made by the licensee within the time frame stated by the Regulator in the notice.
- (3) The notice issued by the Regulator under subsection (2):
- (a) shall give the licensee sufficient time to prepare comments on the relevant action, taking into account the nature of the proposed action;
  - (b) shall set out any procedures the Regulator will follow in considering the relevant action; and
  - (c) may invite comments from other interested parties or the public, at the Regulator's discretion.
- (4) If the Regulator amends or revokes a licence, the Regulator shall provide the licensee with sufficient time to comply with the amendment or revocation.

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## 18. Duration and Renewal of Licence

- (1) A licence may be issued for a duration not exceeding 20 years.
- (2) The Regulator must, upon application by a licensee, renew a licence (the "original licence") on substantially similar conditions if the Regulator is reasonably satisfied that the applicant has operated within the terms of its original licence.

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## 19. **Transfer**

A licence or exception issued to a person shall not be ceded, transferred, assigned, pledged, devised, bequeathed, vested upon trust or otherwise disposed of or alienated without the prior written consent of the Regulator, which consent may not be unreasonably withheld and which may be given subject to any reasonable terms that are determined by the Regulator.

## PART 4 – UNIVERSAL ACCESS

### 20. Universal Access Policy

- (1) The Minister shall develop, and the Council of Ministers shall approve, a policy for universal access to telecommunications services.
- (2) The Minister shall consult with the Regulator, and may hold consultations with interested parties, when developing the UAP.

### 21. Subsidies

- (1) The Regulator may conclude contracts on behalf of the Government, for the payment of subsidies in respect of the provision of telecommunications services in furtherance of the UAP.
- (2) Contracts made pursuant to subsection (1) the value of which exceeds or is likely to exceed VT500,000 in any 12 month shall be concluded as a result of a competitive process and that legal advice is obtained from the State law Office.
- (3) A contract concluded without compliance with subsection (4) shall be void and a contravention of subsection (4) shall be deemed to be a serious breach of duty by the Regulator
- (4) Nothing in Part 5 shall apply to contracts made pursuant to subsection (1).
- (5) The Government Contracts and Tenders Act 1998 shall not apply to contracts made under subsection (1).

### 22. Universal Access Policy Fund

- (1) For the purposes of the UAP the Minister shall establish a trust fund which shall be administered by the Regulator as trustee.
- (2) Funds in the UPA Fund shall be deemed to be Public Money and to have been appropriated therefrom.
- (3) Subject to subsection (4), the UAP Fund shall be applied (in order of priority) to:
  - (a) compensation payable to TVL relating to TVL loss-making customers, pursuant to the Settlement Agreement and where those loss-making customers have no alternative access to telecommunications service; and

(b) subsidies to service providers as may be agreed under section 21.

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(4) Any person may voluntarily contribute towards the UAP Fund and such person may specify that such contribution be applied in a specific manner.

(5) Funds received pursuant to subsection (4) shall be deposited in the UAP Fund and applied only in the manner specified, if any.

(6) [FORMULA FOR CALCULATING UAP LEVY – TBC IAW SETTLEMENT AGREEMENT]

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**Comment:** This needs to be discussed in more detail. A possible formula could be based on annual gross revenues subject to a cap of, say 2%. Any such levies should be used solely for the deployment of new services and should not be used to subsidise existing services.

(7) The UAP Fund shall be audited annually by an independent qualified auditor and a copy of the auditor's report and books of account shall be provided to the Minister.

(8) A contravention of subsection (7) shall be deemed to be a serious breach of duty by the Regulator.

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## PART 5 – COMPETITION

### 23. Determination of Relevant Telecommunications Markets

- (1) The Regulator may in accordance with recognised economic principles, determine relevant telecommunications markets for the purposes of this Act having regard to:
- (a) the extent to which one telecommunications service can substitute another telecommunications service;
  - (b) the extent to which end users will substitute one telecommunications service for another telecommunications service;
  - (c) the extent to which a service provider not currently offering a telecommunications service may begin to offer that telecommunications service without incurring significant additional costs;
  - (d) telecommunications services that are provided to the retail market;
  - (e) telecommunications services that are provided to the wholesale market;
  - (f) the geographical area served by a telecommunications service; and
  - (g) any other relevant matter.

- (2) The Regulator shall publicly consult in a meaningful manner prior to making any determinations under subsection (1) which shall be posted on the Website.

- (3) A determination under this section is not a pre-requisite to the existence of any contravention of a provision of this Part.

### 24. Designation of Dominance

- (1) The Regulator may designate a service provider dominant within a telecommunications market where  
the Regulator reasonably considers that, either individually or acting in concert with others, the service provider:

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(b) .

- (i) enjoys a position of economic strength or controls a bottleneck facility in the relevant telecommunications market(s); and
  - (ii) such strength or control affords the service provider the power to behave to an appreciable extent independently of competitors, customers, end users or potential competitors in that telecommunications market.
- (2) More than one service provider may be designated dominant in the same telecommunications market.
  - (3) A designation under this section shall remain in force unless and until revoked by the Regulator.

## 25. Anti-Competitive Practices

- (1) A service provider shall not engage in conduct which has the purpose or effect, or is likely to have the effect, of substantially lessening competition in a telecommunications market.
- (2) Without limiting the generality of subsection (1), a service provider shall not propose, enter into, or give effect to, any contract, arrangement or understanding with another service provider containing a provision:
  - (a) directly or indirectly fixing, controlling or maintaining the price, or other terms of supply or acquisition, of a telecommunications service;
  - (b) directly or indirectly determining which person will win a contract or business opportunity relating to telecommunications services;
  - (c) apportioning, sharing or allocating the provision of telecommunications services among service providers;
  - (d) preventing or restricting the supply or acquisition of a telecommunications service to or from a person or class of persons; and
  - (e) controlling or maintaining the price or other terms of supply or acquisition, or otherwise preventing or restricting the supply, of any goods or services to or by a another service provider.
- (3) No provision of a contract that has the purpose, effect, or is likely to have the effect of substantially lessening competition in a telecommunications market is enforceable.

## 26. Abuse of Dominance

- (1) A dominant service provider shall not abuse its dominance by:
- (a) restricting the entry of any person into any telecommunications market;
  - (b) preventing or deterring any person from engaging in competition with the dominant service provider in any telecommunications market; or
  - (c) eliminating or removing any person from that or any other telecommunications market.
- (2) Without limiting the generality of subsection (1) a dominant service provider shall be deemed to have abused its dominance if that dominant service provider:
- (a) engages in any anti-competitive practice under section 25 in that or any other telecommunications market;
  - (b) ~~(c)~~ unreasonably discriminates in the provision of interconnection to other service providers;
  - (d) bundles telecommunications services, whereby the service provider requires, as a condition of supplying a service to a person, that the person acquire another service that it does not require, where it is technically feasible and economically practicable to unbundle the telecommunications service required by the person;
  - (e) offers another service provider more favourable terms or conditions that are not justified by cost differences if it acquires another service that it does not require;
  - (f) supplies competitive telecommunications services at prices below the cost of supplying the service, for a sustained period of time;
  - (g) uses revenues or the allocation of costs from a telecommunications service in which it faces limited or no competition to cross-subsidise a competitive telecommunications service;
  - (h) reduces the margin of profit available to another service provider that acquires or seeks wholesale telecommunications services from the dominant service provider, by increasing the prices for the wholesale telecommunications services provided to that service

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provider, or decreasing the prices of the retail telecommunications services in markets where they compete, or both; and

- (j) adopts technical specifications for networks or systems to prevent interconnection with a network or system of the person; or
- (k) uses information obtained from another service provider, for purposes related to interconnection or supply of telecommunications services by the person, to compete with that service provider.

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## 27. Pre-approval

- (1) A person may invite the Regulator to approve conduct which may otherwise amount to a contravention of any provision of this Part.
- (2) An invitation for approval under subsection (1) must be made prior to engaging in the conduct in respect of which it is sought.
- (3) The Regulator may approve of conduct if the Regulator reasonably believes that the conduct will not or is unlikely to:
  - (a) Substantially lessen competition; or
  - (b) otherwise inhibit competition,in any telecommunications market.
- (4) Where the Regulator approves any conduct under this section, such conduct shall not be taken to amount to a contravention of any provision under this Part.

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## 28. Transfers of Control of Service Providers

- (1) No transfer of control of a service provider shall be effected without the prior approval of the Regulator in circumstances where:
  - (a) a dominant service provider, or an affiliate of a dominant service provider, is:
  - (b) the person ultimately acquiring control of the service provider; or
  - (c) the person whose control is being transferred, provided that the following shall not require the prior approval of the Regulator:
  - (d) a transfer of control between persons that are shareholders of the service provider; or



- (e) a reorganisation of the group structures of any shareholders of the service provider that does not result in any change of control of the ultimate holding company; or
- (f) as a result of the transfer:
- (g) a person, alone or with its affiliates, would control service providers whose gross revenues in a telecommunications market in Vanuatu constitute forty per cent (40%) or more of the total gross revenues of all service providers in that telecommunications market; or
- (h) a person, alone or with its affiliates, would be in a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers, end users or potential competitors in a telecommunications market in Vanuatu.

(2) A contract or agreement which contravenes subsection (1) shall be void.

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## PART 6 – INTERCONNECTION

### 29. Interconnection by All Service Providers

- (1) Every service provider who provides or intends to provide telecommunications services to the public (an “**interconnection seeker**”) has the right to require, by notice in writing, any other service provider that has an access network in Vanuatu (an “**interconnection provider**”) to negotiate in good faith, for the purposes of enabling the provision of telecommunications services to end users in Vanuatu, an agreement for interconnection with the telecommunications network of the interconnection provider (an “**interconnection agreement**”).
- (2) Upon receipt of a written notice from an interconnection seeker, an interconnection provider shall enter into, and participate in, good faith negotiations with the interconnection seeker to enter into an interconnection agreement to connect and keep connected the telecommunications networks used by both service providers, in order to enable the end users of the interconnection seeker to effectively communicate with the end users of the interconnection provider.
- (3) The following actions or practices shall be deemed to violate the duty in subsection (1) to negotiate in good faith:
  - (a) obstructing or delaying negotiations, or failing to make reasonable efforts to resolve outstanding disputes;
  - (b) refusing to provide information about a service provider’s own telecommunications services, telecommunications network or telecommunications facilities that are necessary for the interconnection agreement;
  - (c) misleading or coercing a service provider into reaching an agreement it would not otherwise have made;
  - (d) interfering in any way with a service provider’s ability to communicate with the Regulator, including having a service provider sign a non-disclosure agreement that precludes it from providing information requested by the Regulator; or
  - (e) refusing to permit amendment of the interconnection agreement to take into account regulatory, including changes to this Act.

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- (4) A service provider shall not be required to enter into an interconnection agreement on terms that would, in its reasonable opinion, and where the Regulator has not made an order otherwise, either:
- (a) cause or be likely to cause material danger, damage or injury to any person or any property; or
  - (b) cause material damage or otherwise materially interfere with the operation of its telecommunications network or telecommunications facilities or the provision of its telecommunications services to its end users.

### 30. Reference Interconnection Offers

- (1) The Regulator may require licensees designated as being dominant under section 24 to provide a reference interconnection offer to other licensees upon request.
- (2)
- (3) Every reference interconnection offer shall comply with the principles set out in section 32 and the Regulator may :
- (a) require a reference interconnection offer referred to in subsection (1) to be submitted to it for its approval; and
  - (b) specify matters for inclusion in, and may require changes to any such reference interconnection offers.
- (4) The Regulator must cause a copy of any reference interconnection offers to be published on its Website.
- (5) A service provider may enter into an interconnection agreement in the form of the reference interconnection offer. Service providers may mutually agree to amend any of the terms and conditions of the reference interconnection offer.
- (6) A dominant service provider shall, if requested by another service provider, enter into an interconnection agreement in the same form and with the same terms and conditions as the reference interconnection offer.

### 31. Filing of Interconnection Agreements

- (1) Every service provider shall, within ten (10) working days after execution of an interconnection agreement or any amendment to an interconnection

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<#>in preparing the reference interconnection offer, consult with service providers and other interested parties as to the terms and conditions to be included in the reference interconnection offer; -  
periodically update

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<#>publish the reference interconnection offer by: -  
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sending a copy of the reference interconnection offer to any service provider, upon request from that service provider.

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agreement, file a copy of the executed interconnection agreement or amendment with the Regulator.

### 32. Interconnection Principles

- (1) Interconnection agreements entered into by dominant service providers designated in accordance with section 1 shall:
  - (a) be no less favourable to the interconnection seeker than the terms and conditions of the reference interconnection offer approved by the Regulator pursuant to section 28;
  - (b) meet all reasonable requests for interconnection with the dominant service provider's telecommunications network at any technically feasible point; and
  - (c) in all other respects, incorporate reasonable terms and conditions for interconnection, including technical standards and specifications.
  
- (2) Every interconnection provider that is designated as being dominant in accordance with section 1 shall:
  - (a) apply similar conditions to all interconnection seekers seeking the same or similar interconnection services;
  - (b) provide interconnection to interconnection seekers under substantially the same conditions and of substantially the same quality as it provides for its own telecommunications services, or those of its affiliates;
  - (c) make available, upon request from an interconnection seeker, in a timely manner all necessary or reasonably required information and specifications to interconnection seekers; and
  - (d) only use information received from an interconnection seeker for the purposes for which it was supplied to the interconnection provider and shall not disclose the information or otherwise use the information to obtain a competitive advantage.

### 33. Interconnection Charges

- (1) Interconnection charges of all dominant service providers shall be determined on a non-discriminatory basis.

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 <#>The Regulator shall determine whether all or certain portions of the information designated by a service provider under subsection (3) shall be treated as confidential. .  
**<#>Interconnection by Dominant Service Providers** .  
 <#>Sections 28 and 29(2) shall apply only to service providers that the Regulator has designated as dominant service providers for interconnection in one or more telecommunications markets. .  
 <#>The Regulator shall issue an order to designate a service provider a dominant service provider for interconnection in one or more telecommunications markets if the Regulator considers that the service provider is a dominant service provider within the meaning of this Act, pursuant to section 22. .  
**Requests for Interconnection With Dominant Service Providers**

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(2) Interconnection charges of all service providers must, unless they are otherwise commercially agreed between the parties whose networks are or are to be interconnected, be:

- (a) cost-based; or
- (b) determined using benchmarking,
- (c) .

(3) The Regulator may require the interconnection charges of any dominant service provider designated in accordance with section 1 to be approved by the Regulator in advance of the execution of an interconnection agreement, and may also direct such dominant service providers to implement the interconnection charges approved by the Regulator.

### 34. Interconnection Disputes

(1) Where two or more service providers fail to reach agreement on any terms and conditions for interconnection within a period of thirty (30) days from the date of receipt of a written notice from one service provider to the other service provider notifying it of a dispute, the dispute may be referred by one or more service providers to the Regulator for determination.

(2) Where a dispute is referred to the Regulator in accordance with subsection (1), the Regulator may determine any terms that are subject of the dispute, provided that any such determination is not inconsistent with the provisions of clauses 29 and 33,

### 35. Non-compliant Interconnection Agreements

(1) A term of any interconnection agreement which is not in compliance with any provision of this Act or any licence shall be void.

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## PART 7 – TARIFFS

### 36. Tariff Approval

- (1) A service provider designated as being dominant pursuant to section 24 shall not impose any charge or make any claim or demand in respect of a tariff not approved by the Regulator in respect of the relevant telecommunications market from time to time.
- (2) Nothing in subsection (1) shall prevent a service provider from imposing any charge or making any claim or demand being less than that provided by any approved tariff.
- (3) The Regulator may dispense with the requirement in subsection (1) where he considers that:
  - (a) competitive market forces will be sufficient to protect the interests of end-users; and
  - (b) competition in any market is unlikely to be inhibited.
- (4) In deciding whether to approve any tariff the Regulator shall consider the extent to which the proposed tariff is based on the cost of efficient service provision and whether, in the reasonable opinion of the Regulator, the proposed tariff contains excessive charges which are made as a result of the dominant service provider's dominant position.

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### 37. Publication of Tariffs

- (1) Unless the Regulator orders otherwise, when a dominant service provider files a tariff or schedule of tariffs with the Regulator, that dominant service provider shall:
  - (a) from the date on which the tariff or schedule of tariffs is filed until the date on which the tariff or schedule of tariffs is approved:
  - (b) publish an electronic copy on its official website; and
  - (c) maintain a paper copy available to the public at its main and/or registered business offices; and
  - (d) declare any discounts to the standard published tariffs that may be given to any customer or end user or group of customers or end users and set out the criteria used to determine the customer's or end user's ability to qualify to receive the discount;

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- (e) within ten (10) days from the date on which the tariff or schedule of tariffs is filed, place a notice setting out the tariffs, and the details of any discounts and qualification criteria for such discounts, in Bislama, French and English languages in a newspaper of general circulation in Vanuatu.
- (2) A dominant service provider shall maintain a complete and up to date schedule of all tariffs approved by the Regulator (clearly distinguishing Regulator approved tariffs from tariffs published pursuant to subsection (1)):
  - (a) in an electronic copy on its official website; and
  - (b) in a paper copy available to the public at its main and/or registered business offices.

### 38. General Principles for Tariff Regulation

The Regulator may issue adopt any approach to tariff regulation of dominant service providers that is consistent with this Act, including, but not limited to, international benchmarking, price cap regulation, rate-rebalancing and other forms of cost-based regulation.

### 39. Price Cap Regulation Method

- (1) The Regulator may require a dominant service provider to propose or otherwise participate in the development of a method of price cap regulation.
- (2) Where the Regulator requires a dominant service provider to propose a method of price cap regulation:
  - (a) the dominant service provider shall file with the Regulator a proposal for implementation of a method of price cap regulation of its service tariffs; and
  - (b) the proposal shall identify the proposed starting tariffs for relevant services, proposed groupings or baskets, the application of price cap formulas and the specific proposed price cap formulas for price cap regulation.
- (3) The Regulator may:
  - (a) prescribe guidelines for the development of a proposal for a method of price cap regulation; or

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<#>Tariffs charged by a dominant service provider to other service providers: .  
<#>shall be filed with and subject to approval by the Regulator in accordance with section [32]; and .  
<#>shall comply with any orders made by the Regulator in relation to such tariffs. .

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<#>The Regulator may issue an order to require a [dominant] service provider to prepare or otherwise participate in the development of a cost study of its telecommunications services if it determines that a cost study would be an effective and necessary means of preventing anti-competitive conduct or would otherwise be effective and necessary in implementing any scheme of tariff regulation. .  
<#>Where the Regulator requires a [dominant] service provider to prepare or otherwise participate in the development of a cost study: .  
<#>the [dominant] service provider shall file with the Regulator a study of its costs of providing the different categories of service, distinguishing annual capital costs from annual operating costs; .  
<#>the Regulator shall determine the cost categories, form, approach, procedures and timing of the cost study; and .  
<#>the purpose of the cost study shall be to determine the costs to the [dominant] se ... [13]

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(b) give directions for the further development of a proposal that has been filed with the Regulator in accordance with subsection (2).

(4) Prior to requiring the proposal of or participation in a method of price cap regulation, the Regulator shall consult with the dominant service provider required to propose that method of price cap regulation.

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## PART 8 – CUSTOMER RELATIONS AND PROTECTION

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### 40. Fair Dealing Practices

- (1) A service provider shall not demand payment from a customer for any telecommunications service not used or telecommunications equipment or facility not requested
- (2) Except in the case of pre-paid telecommunications services, service providers shall provide customers and end users with invoices:
  - (a) in writing (although they may be provided in an electronic format if the customer or end user consents and/or requests);
  - (b) on a regular basis;
  - (c) in a plain and simple format;
  - (d) that provide accurate information on the services and equipment provided and the amounts due for each;
  - (e) that clearly indicate the method of calculation of tariffs for any telecommunications service for which invoices are based on the length of calls or other measure of usage; and
- (3) In relation to customers and end users that are subscribed to pre-paid telecommunications services, service providers shall, upon request, provide the means by which the costs of every debit against the pre-paid credit balance during the 7 days prior to the request may be verified.
- (4) All service providers shall retain accurate records of all customer invoices for a period of at least six months from their billing date and make them available to the Regulator upon request.
- (5) A service provider shall not, in relation to the supply or proposed supply of any telecommunications service, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.

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#### 41. Personal Information

- (1) A service provider shall not, without the consent of the end user, divulge any personal end user information to any other person who is not an agent or employee of the service provider.
- (2) A service provider shall not, without the consent of the end user, collect any personal end user information not reasonably necessary for the provision of any telecommunication service to the end user.

#### 42. End User Disputes and Complaints

- (1) Service providers shall establish procedures to deal with disputes and complaints from end-users.
- (2) Service providers shall keep, and maintain for 18 months, records of all disputes and complaints from end users and the amount of time taken to respond to such complaints, which information shall be made available to the Regulator upon request.
- (3) The Regulator may investigate and attempt to mediate any end-user dispute brought to its attention.

#### 43. No Unjustified Discrimination

- (1) Service providers that are designated dominant service providers in accordance with section 24 shall offer all customers the same terms and quality of service, including tariffs charged, unless:
  - (a) different terms or quality of service are objectively justified based on differences in the product provided or in supply conditions, including different costs or a shortage of available facilities or resources; or
  - (b) otherwise specifically permitted by an order of the Regulator.
- (2) Where different terms or quality of service are offered by a dominant service provider, the dominant service provider shall be obliged to:
  - (a) justify the different terms or quality of service to the satisfaction of the Regulator, considering the objective justifications in subsection (1); or

#### 44. Terms of Service

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<#>end users of the telecommunications services provided by the dominant service provider; -  
<#>customers of the dominant service provider who rely on telecommunications services from the dominant service provider in order to provide telecommunications services to end users; and -  
<#>customers of the dominant service provider and the dominant service provider itself. -

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- (1) The Regulator may require a **dominant** service provider to submit a draft Terms of Service to the Regulator for approval.
- (2) A draft Terms of Service submitted by a service provider shall:
  - (a) be consistent with this Act, the regulations, rules, orders and licence conditions;
  - (b) describe the basic terms of the business relationship between the service provider and its customers and end users in the provision and use of telecommunications services;
  - (c) set out the terms and processes regarding billing and the payment of invoices by **customers**, including actions that shall be taken where invoices are not paid by the time they are due to be paid;
  - (d) explain the processes in the event of a billing or invoice error, including the process that shall be followed in the event of an invoice dispute; and
  - (e) set out the amount of compensation that will be granted to end users by the service provider in the event of a prolonged failure in the service(s) provided to the end user.

(3) The Regulator shall approve all draft Terms of Service, with or without changes, provided that the Regulator is **reasonably** satisfied that the draft Terms of Service comply with the requirements of this section **44**, and this Act.

(4) Prior to approving any draft Terms of Service, the Regulator shall consult with the service provider and other interested parties.

(5) Once the Terms of Service have been approved by the Regulator in accordance with this section **44**, the approved Terms of Service shall;

- (a) replace the customer Terms of Service then in use by the service provider; and
- (b) become binding on the service provider and its customers.

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## PART 9 – ENFORCEMENT

### 45. General Principles of Liability

- (1) A person other than the Regulator who contravenes a provision of Parts 3, 5, 6, 7 or 8 of this Act, or a Regulation, is liable to a penalty.

A body corporate shall be taken to have contravened a provision of this Act if (an employee, agent or officer of the body corporate, acting within the actual or apparent scope of his actual or apparent authority, engaged in the conduct comprising the contravention.

- (2) The party asserting a contravention under this section shall have the burden of proving each and every element thereof.

### 46. Defences

- (1) It shall be a defence to any proceedings for a contravention of this Act that the contravention in respect of which the proceedings were instituted was caused by a reasonable mistake of fact, including a mistake of fact caused by reasonable reliance on information supplied by another person.

- (2) It shall be a defence to any proceedings for a contravention of this Act that the contravention in respect of which the proceedings were instituted was:

- (a) Due to the act or default of another person; or
- (b) to an accident or some other cause beyond control; and
- (c) reasonable precautions were taken and due diligence exercised to avoid the contravention.

- (3) In subsections (1) and (2) references to “another person” do not include a person who was, in relation to the person against whom the contravention is alleged at the time the contravention occurred:

- (a) a servant or agent; or
- (b) in the case of a body corporate, an officer, servant or agent.

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<#>A person who aids, abets, counsels or procures or by act or omission is in any way directly or indirectly concerned in the contravention of a provision of this Act is taken to have contravened that provision and is liable accordingly. .

<#>A person may be liable under subrules (2) or (3) even if no proceedings have been initiated against any another person or if any other person has been found not to be liable. .

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**Deleted:** (a) . An employee, agent or officer of the body corporate with duties of such responsibility that his conduct may fairly be assumed to represent the body corporate's policy; or -

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<#>All matters required to be proved in proceedings under this section may be proved on the balance of probabilities. .

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<#>It shall be a defence to any proceedings in respect of a contravention of section [anti-comp] that the contravention did not have the purpose or effect and is not likely to have the effect of inhibiting competition in any telecommunications market. .

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#### 47. Penalties

- (1) The maximum penalty to which a person is liable for a contravention of sections ... is:
  - (a) for an individual, VT [TBC]
  - (b) for a corporation, VT [TBC]
- (2) The maximum penalty to which a person is liable for a contravention of sections ... is:
  - (a) for an individual, VT [TBC]
  - (b) for a corporation, VT [TBC]
- (3) The maximum penalty to which a person is liable for a contravention of any sections to which neither subsections (1) nor (2) apply is:
  - (a) for an individual, VT [TBC]
  - (b) for a corporation, VT [TBC]
- (4) In determining the amount of, a penalty the court shall have regard to the general principles of sentencing applied by courts of criminal jurisdiction from time to time.

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**Comment:** This is a material issue to which Digicel would welcome meaningful consultation.

#### **48. Other Remedies**

- (1) Where a person is found to be liable to a penalty under this Part, the Supreme Court may, in addition to, or in lieu of a penalty:
  - (a) declare any rights;
  - (b) order an account to be taken;
  - (c) rescind any contract;
  - (d) order money to be refunded to any end-user;
  - (e) make an order for any mandatory or prohibitive injunction, whether temporary or permanent; or
  - (f) order that a person make corrective advertising on such terms as the court shall determine.
- (2) In determining the appropriateness and the terms of any remedy under this section the court shall have regard to the general principles associated with such remedies as applied by courts of civil jurisdiction from time to time.
- (3) The Regulator shall not be required to provide an undertaking as to damages as a pre-requisite to an injunction under this section.

#### **49. Jurisdiction of Supreme Court**

- (1) The Supreme Court shall have jurisdiction with respect to any matter arising under this Act.
- (2) The Regulator may recover any fee due under this Act as a debt.
- (3) Proceedings in respect of contraventions of this Act shall be instituted by the Regulator in the civil jurisdiction of the Supreme Court in accordance with applicable rules of court.
- (4) The Chief Justice may make rules relating to practice and procedure in relation to proceedings arising under this Act.
- (5) The Supreme Court shall not be deprived of jurisdiction under this Act only because conduct amounting to a contravention of this Act occurred wholly or partly outside Vanuatu.

## 50. Civil Liability

- (1) A person who suffers loss or damage by conduct of another person that was done in contravention of sections [list TBC] may recover the amount of the loss or damage (and interest thereon) by action against:
  - (a) that other person; or
  - (b) any person knowingly concerned in the contravention.
- (2) An action under subsection (1) may be commenced at any time within 2 years after the date on which the contravention occurred.
- (3) Nothing in subsection (1) shall be taken to limit, restrict or otherwise affect any right or remedy a person would have if that subsection were not enacted, provided that there shall be no double recovery of damages.
- (4) Proceedings under this section may be commenced by the Regulator, as representative of a class of persons suffering loss or damage.
- (5) The Regulator may, subject to any conditions imposed by the court, intervene in any proceeding instituted under subsection (1).

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**Comment:** Digicel would welcome and respectfully requests further and more meaningful consultation on this issue.

## 51. Costs

- (1) The Regulator may recover, and become liable for costs according to the general principles applicable in civil cases between individuals.
- (2) The Regulator is entitled to costs calculated in accordance with the rates applicable in civil proceedings between individuals whether or not the Regulator in fact paid, or is liable to pay, for legal representation.

## PART 10 – REVIEW OF DECISIONS OF THE REGULATOR

### 52. Provision of Reasons

- (1) Any person aggrieved by a decision of the Regulator may invite the Regulator to give reasons or, if any reasons have already been given, supplementary reasons for such decision and the Regulator shall, if he has not already provided reasons, comply within a reasonable time.
- (2) Nothing in subsection (1) prevents or limits any obligation of the Regulator to provide reasons or supplementary reasons at any time without invitation.

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### 53. Internal Review

- (1) Any person aggrieved by a decision of the Regulator may invite the Regulator to reconsider such decision.
- (2) The Regulator shall reconsider a decision when invited under subsection (1) if the invitation is received within 30 days of the decision being notified or published, as the case may be;
- (3) The Regulator may reconsider a decision when invited under subsection (1) if the invitation is received after 30 days of the decision being notified or published, as the case may be.
- (4) An invitation under subsection (1) shall be in writing and shall contain all the material upon which the invitation is based.
- (5) In reconsidering a decision the Regulator may:
  - (a) confirm the decision;
  - (b) vary the decision; or
  - (c) revoke the decision;
  - (d) if the decision is revoked, make a new decision.
- (6) The regulator shall not reconsider any decision in respect to which a person has applied to the Supreme Court for judicial review.

### 54. Judicial Review

- (1) A person aggrieved by a decision of the Regulator may seek judicial review of the decision in the Supreme Court.



- (2) No application for judicial review shall be brought after three months of the decision.
- (3) Judicial review shall not be available in respect of:
- (a) 
  - (d) any advice given by the Regulator to the Minister; or
  - (e) a decision to commence or continue proceedings for a contravention of this Act.
- (4) Nothing in subsection (3)(a) or (b) shall limit the ability to review the original decision in respect of which internal review was sought except that there shall be no duplication of review in respect of the same matters.

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(b) a decision under section 11, except to the extent of any variance, revocation or new decision; -  
(c) a decision under section 25;

## PART 11 – MISCELLANEOUS

### 55. Immunity of the Regulator

- (1) The Regulator shall not be liable to any action or claim, other than by way of judicial review, arising from the exercise or intended exercise of any of the functions or powers under this Act in good faith.
- (2) The Regulator shall not be personally liable to any action or claim arising from the exercise or intended exercise of any of the functions or powers under this Act.
- (3) Any person authorised by the Regulator to act in his name shall have the same immunity as the Regulator, to the extent of that authority.
- (4) Neither the Government nor the Republic of Vanuatu shall be vicariously liable for any conduct to which subsections (1), (2) or (3) apply.

### 56. Regulations

- (1) The Minister, acting on a recommendation of the Regulator, may make such regulations as may be necessary or convenient to give effect to the provisions or the objects of this Act.
- (2) Without limiting the generality of subsection (1), the Minister may make regulations:
  - (a) providing for standard terms in various licences and exemptions;
  - (b) specifying procedures and forms in respect of any licence or exemption or anything which might be done by the any person under this Act, except the provision of reasons for any decision by the Regulator;
  - (c) providing formulae for the calculation of Licence fees and related charges.
  - (d) establishing and managing a national numbering plan and allocating blocks of numbers in accordance therewith;
  - (e) establishing a domain names registry and exclusively managing domain names for Vanuatu;
  - (f) imposing restrictions or limitations upon the importation, sale or use of any equipment;

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- (g) providing for the type of information required to be included in invoices for customers;
- (h) ~~(i)~~ requiring the introduction of number portability; or
- (j) requiring licensees individually or by class, to keep and retain records and as to the nature and form thereof.

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## 57. Financial Management

- (1) All penalties recovered under this Act shall be deemed to be Public Money.
- (2) All fees and costs recovered under this Act shall be deemed to be Public Money and are hereby appropriated for the use of the Regulator.
- (3) The Regulator shall produce annual financial statements in accordance with international accounting standards which shall be audited annually by an independent qualified auditor and a copy of the auditor's report and financial statements shall be provided to the Minister.
- (4) A contravention of subsection (3) shall be deemed to be a serious breach of duty by the Regulator.

## 58. Repeal

The Telecommunications Act [Cap 206] is hereby repealed to the extent described in Schedule 1. [Note: Sched.1 not included, not yet drafted]

## 59. Savings and Transitional Provisions

- (1) Every document, regulation and act of authority made under the Telecommunications Act [Cap 206] and relevant to any matter set out in this Act shall continue and have effect under the corresponding provisions of this Act until such time as they are altered, amended or cancelled, as the case may require, under the provisions of this Act.

(2) [Retention of interim regulator – TBC]

## 60. Transitional Provisions for Prior Licences

- (1) At any time after the coming into force of this Act, the holder of a prior licence shall apply to the Regulator for a licence or exception issued in accordance with this Act to replace the prior licence. The prior licence will be deemed to have been revoked on the day the replacement licence takes effect.

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- (2) If the holder of a prior licence does not apply to the Regulator for conversion of its prior licence in circumstances where it is [permitted/required] to do so under this section 60, within [ ] days after the coming into force of this Act, the Regulator shall revoke the prior licence and issue a licence or exception (as applicable) in accordance with this Act.
- (3) In all other respects, the supply of telecommunications services under prior licences shall be subject to the requirements of this Act.

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PETER STIFFE 14/1/09 2:48 PM  
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