

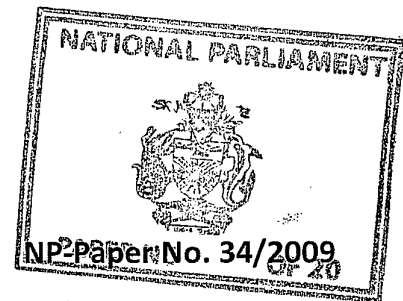


**NATIONAL PARLIAMENT OF SOLOMON ISLANDS  
BILLS AND LEGISLATION COMMITTEE**

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**Report on the  
Telecommunications Bill 2009**

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Presented on 24 August 2009

National Parliament Office

# Contents

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<b>1</b>	<b>Contents</b>	
<b>1</b>	<b>Introduction</b>	<b>2</b>
	Terms of Reference	2
	Functions of the Committee	2
	Membership	3
<b>2</b>	<b>Policy Background</b>	<b>4</b>
	Purpose of the Bill	4
	Background	4
<b>3</b>	<b>Review of the Bill</b>	<b>7</b>
	Public Hearing	7
<b>4</b>	<b>Issues Arising</b>	<b>9</b>
	Consultation on the Bill	9
	Telecommunications Commission	10
	Liberalising the Market	12
	Use and access to land	14
	Dominant Service Provider	14
	Opportunity cost on Government Revenue	16
	Compensation	16
	License Fee	17
	License Renewal	18
	Burden of Regulations	18
	Essential Facility	18
	Intellectual Property	19
<b>5</b>	<b>Recommendations</b>	<b>20</b>
<b>6</b>	<b>Appendices</b>	<b>22</b>

# 1 INTRODUCTION

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The Bills and Legislation Committee (Committee) has completed its review of the Telecommunications *Bill 2009* (“**Bill**”) introduced in the House during the current (10<sup>th</sup>) meeting of Parliament by the Minister for Communication and Aviation. The Bill was submitted to the Speaker through the Clerk to Parliament as required under the *Standing Orders*<sup>1</sup> and following examination by the Speaker<sup>2</sup>, it was authorised it to be introduced in the current Parliament meeting.

The Bill was read the first time on Monday 17 August 2009 during which the Second Reading was adjourned to Monday 24 August to allow the Committee to complete its report and give Members adequate time to review the Report. On 18 August 2009, the Committee considered the Bill and heard evidence from a range of stakeholders. The Committee met again on Monday 24 August before the House sat and following its deliberations, the Committee makes this report to Parliament, with recommendations, for the information of Members and for Parliament’s consideration.

## Terms of Reference

Pursuant to its mandate under the *Standing Orders*, the terms of reference of the Committee in this instance is to examine the Bill and to report its observations and recommendations on the Bill to Parliament.

## Functions of the Committee

The Bills and Legislation Committee is established under *Standing Order 71*, an Order made pursuant to the *Constitution*<sup>3</sup>, and under that Order has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;

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<sup>1</sup> *Standing Order 44* (1).

<sup>2</sup> As required by *Standing Order 45* (1).

<sup>3</sup> Section 62, *Constitution of Solomon Islands* 1978.

- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

### **Membership**

The current members of the Bills and Legislation Committee (9<sup>th</sup> Parliament) are:

Hon. Severino Nuaiasi, MP (Chair)

Hon. Manasseh Sogavare, MP

Hon. Siriako Usa, MP

Hon. Isaac Inoke Tosika, MP

Hon. Augustine Taneko, MP

Hon. Nelson Ne'e, MP

Hon. Japhet Waipora, MP

## **2 POLICY BACKGROUND**

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### **Purpose of the Bill**

The objects of the Bill are:

- (a) to open up the Telecommunication market and remove exclusivity of providing telecommunications systems and services under the current laws;
- (b) to provide for functions, duties and powers of the Minister and to establish the Telecommunications Commission and provide for its functions and powers;
- (c) to provide for the administrative and financial provisions in relation to the work of the Commission and fees payable by service providers;
- (d) to regulate licensing of service providers;
- (e) to provide for universal access regime;
- (f) to manage radio spectrum;
- (g) to regulate licensing;
- (h) to regulate competition, interconnection and access, pricing, equipments and technologies and protection of consumers;
- (i) to provide for national numbering plan;
- (j) to provide dispute and appeals mechanisms; and
- (k) to provide civil penalties and offence provisions.

### **Background**

At Independence, Solomon Islands relied on the Telecommunication Act passed in 1972 to regulate and administer telecommunication services in the country. The original act was passed at that time when there was an expectation of the existence and continuation of a monopoly.

In 1989 the Solomon Telekom (Limitation of Liability) Act [Cap 114] was passed by Parliament. Ten years later, in 1998, a 15 year exclusive licenses was awarded to Solomon Telekom Company Limited. This exclusive license was formally granted in November 2003 after lengthy negotiations during the period of civil unrest when it was perceived that no other operator would be remotely interested in providing

Telecommunications services to Solomon Islands. As part of the agreement, Solomon Telekom was to review in a good faith, its exclusive rights after a period of 5 years.

In early 2006, some two years before Solomon Telekom was obliged to negotiate its exclusive rights, Solomon Telekom announced after Government persuasion that it would welcome competition in the telecommunications sector subject to a number of conditions, the most important of those being:-

1. A new telecommunications legislation be made, to the satisfaction of Solomon Telekom and one which provides a fair and level playing field for all participants.
2. An the new telecommunication legislation provide for an independent regulator, free from political interference; and
3. Fair and reasonable compensation for the early loss of Solomon Telekom's exclusive rights, coupled with adequate compensations for its obligations to provide services to loss making customers.

Following several years of negotiations, discussions and review between the Government and Solomon Telekom, the Telecommunications Bill 2009 is completed and now before Parliament.

The Bill will repeal the Solomon Telekom (Limitation of Liability) Act [Cap 114]. The new Bill provides a regulatory framework that will enable significant competition between all telecommunication services providers and does that in a way where the burden of regulation is reduced as much as possible. On the one hand the Bill provides for a telecommunications commission that has real power and is capable to properly regulate competition, something not needed before because there has not been competition and for which the original Bill did not adequately provide, whilst at on the other hand, it sets up a system where the service providers will be able to negotiate with themselves in many respects and make determinations and agreements among themselves for the proper sharing of services or interconnection agreements and the like.

The Bill provides for a balance between the power of the regulator and the rights of the service providers. The Bill is drafted to anticipate a time when there will be vigorous competition among telecommunication providers in Solomon Islands and enable for that competition to occur unhindered as best as it can in an unregulated environment, but at the same time provides proper regulation by the Commission.

The work on the Telecommunication Bill began in 2005. A World Bank consultant was engaged in the drafting and subsequently came up with the first draft that year. The Bill is the central part of the Government's package of measures to assist Solomon Islands to enhance national economic and social development by promoting the ongoing development and effective utilization of the telecommunications, infrastructure services in the country.

The Bill is consistent with the telecommunications sector policy, which the CNURA Government adopted in June 2008. The significant change this Bill will bring to the country is the introduction of competition to the telecommunication sector. The Government decided to introduce competition in the telecommunications market because it believes it is a more superior system than the monopoly system in achieving Government's objectives for the telecommunication sector.

This Bill will provide a legislation to regulate and manage competition in the telecommunications market. Effective regulation of the telecommunications sector is necessary in order to ensure the Government's objectives in telecommunications are achieved. The Government perceived that progress in this area is a matter of national importance. Information and technologies have proven to be crucial enablers of business productivity and economic growth. Poor telecommunication infrastructure and poor telecommunication service will impact negatively on the local economy.

With the Bill, the Government intended to promote rapid expansion of telecommunication infrastructure and services in the country, promoting access to Solomon Islanders to the widest possible range of efficient, reliable and affordable telecommunication services competitively provided in a fairly regulated market, facilitating the supply of telecommunication services to Solomon Islanders who may

not otherwise receive this services on a commercial basis or on an affordable price, promoting national economic and social development by promoting the ongoing development and then effective utilization of telecommunications in the country.

The Bill addresses the following:-

- The role of the Minister and establishment of the regulator known as the Telecommunications Commission.
- Financial matters relating to the budget and funding of the Telecommunications Commission.
- The ability of the Telecommunications Commission to issue determination, orders and regulations.
- The issuance of licenses to service providers.
- The establishment of a universal access plan and the means of funding universal access.
- Management of radio spectrum, control of anti competitive practices.
- Terms relating to interconnection and access and essential facilities.
- Regulation of Telecommunication prices, requirements for Telecommunication equipment
- Management of numbering resources and access to public and non public land for Telecommunications licenses.

This Bill is formatted on a based practice model developed by the World Bank.



### 3 REVIEW OF THE BILL

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In its review of the Bill, the Committee primarily considered submissions and evidence presented in public hearings.

#### **Public Hearing**

The Committee held a public hearing on Tuesday, 18 August 2009, with the view to hear from relevant officials from the Ministry of Communication and Aviation, Ministry of Finance and Treasury Economic Reform Unit and key stakeholders. The following witnesses appeared before the Committee at the hearings:

- Controller Communications, Ministry of Communication and Aviation
- Technical Advisor, Economic Reform Unit, Ministry of Finance
- Deputy Solicitor General, Attorney Generals Chambers
- Legal Draftsman, Attorney Generals Chambers
- External Legal Counsel, Solomon Telekom
- Director Business Development, Digicel Pacific
- Head of Business Development, Digicel Pacific
- Project Manager, Sites Acquisition Services Ltd.
- Research Officer, Law Reform Commission

A complete list of witnesses who appeared at the hearing is annexed as **Appendix 2**.

## 4 ISSUES ARISING

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### CONSULTATION

This Bill is a very important document which represents a significant milestone in terms of the telecommunications market in the Solomon Islands. Whilst the Bill is a very important and necessary document, it is also a very technical and complex document.

At the outset, the Committee raised the issue of the level of consultation, preparation and who was primarily responsible for the drafting of the Bill. The Attorney General's Chambers submitted that the first draft of the Bill was prepared in 2005. It was revealed that since then ongoing consultations periodically occur between the Government and the World Bank. Over the last 12 months there have been intense negotiations and consultations between the World Bank drafter and a team representing the Government and also involving representatives of Solomon Telekom Company Limited on the final drafting of the Bill.

The World Bank provided the drafting expertise and the policy determinations were made by the Government. During then a number of ongoing consultations between representatives of the World Bank and the Government where discussions were focused on the policy aspects of the Act. The World Bank provided advice on the world best Telecommunication practices in relation to many other aspects of the telecommunications sector. Other relevant stakeholders including the Attorney General Chambers, the Ministry of Finance through the Economic Reform Unit also had a significant involvement in the consultation stage.

The Committee further enquired if there were consultations done with other relevant ministries and organizations prior to and after the drafting. It was revealed by Controller of Communication that the Government through the Ministry of Communication and Aviation organized three public stakeholder meetings where invitations were sent to a significant number of people, however only about 15 people turned up to give comments.

In relation to initial consultations, the Committee also sought clarification as to the cost implications during the initial drafting period and consultations. The Committee heard that the remuneration of a technical advisor was met by the World Bank. There were no financial costs borne by the Ministry, however, there was a significant amount of time that was required by the Ministry and other Government departments in terms of providing input, comment and response to the drafting associated with the Bill.

### **TELECOMMUNICATION COMMISSION**

The proposed Bill provides for the establishment of a Commission which will be a statutory body that administers the act. During the hearing the committee heard that the need of a commission was the result of consultations between the Government and Solomon Telekom in which both parties agreed that there be a telecommunications commission fully independent from political interference, that is properly funded and with ample regulatory powers with members chosen by an independent evaluation committee.

The Committee also heard that the need for a Commission was borne from long experience under the present Telecommunications Act. Solomon Telekom were often faced with situations where it felt that the Telecommunications Authority was not acting independently and was in fact either being subject to political pressure or indeed pressure from outside players. Thus because of the experience Solomon Telekom was quite insistent on the need for an independent regulator to be established.

- **Single Commissioner**

The Committee sought clarification on Part 2 of the Bill particularly on the rationale behind establishing a Telecommunications Commission with a single individual as the Commissioner. Witnesses from the Attorney General's Chambers stated that the Telecommunication's Commissioner will be a highly skilled expert in telecommunications or a highly skilled expert in relation to the administration and

conduct of a Commission like the Telecommunication's Commission and it is anticipated that at least for the first number of years that, the position will be held by an expatriate. This was because currently there is not a person within Solomon Islands with the particular expertise required to conduct the role of the commissioner in the context of a highly competitive environment with all of the complexities that that brings.

The possibility of having a three man commission was debated at length by the Ministry. It was determined that for the reasons mentioned, a single commissioner was the best system. If there were two other commissioners in a three men commission then the cost of the Commission would be significantly increased or alternatively if only one of the commissioners was an expatriate and the other two were not, there could be a significant imbalance in expertise and that would negate or potentially negate the skill of the commissioner. The model allows for the employment of a highly skilled commissioner and places upon him an obligation to train and build up within Solomon Islands an expertise in Telecommunications so that reliance upon an individual expatriate would not continue into the long term. The Committee heard that having a single person commissioner was not unique. Other jurisdictions in the Pacific including Vanuatu, Papua New Guinea, and Samoa have the similar arrangements and that the rationale behind a single person commission is that it would be more cost effective.

▪ **Independence of Commission**

In relation to clause 5 of the proposed Bill, the Committee is concerned with the Commissioner's level of independence, particularly from political influences. In taking evidence the Committee heard that the commissioner will be independent in his role and in his decision making process. The selection process for the Commissioner is quite rigorous. The Commissioner will be appointed by the Minister upon the recommendation of the Evaluation Committee. The Minister can accept or reject the recommendation; however, the Minister cannot vary the recommendation and appoint someone the Minister chooses.

Further, the Committee heard that the Bill provides for circumstances in which the Commissioner can be suspended or removed from office if there is a serious breach of the terms and condition the appointment. There are other terms or conditions which include matters relating to dishonesty and corruption. This ensures that the Commissioner remains accountable and can be removed if he/she acts inappropriately.

The Committee strongly believes that the Commission should contain more than one Commissioner. This is very important particularly if the Commission is to be truly independent from the political pressure. The Committee is also not convinced that the position of Commissioner can and should only be held by an expatriate person. In a three man Commission, the Chairman can be an expatriate Commissioner, but locals with significant experience and background in telecommunications can also be part of the Commission and be guaranteed to learn from the expatriate for the purposes of taking over the position of Chairman.

## **LIBERALIZING THE MARKET**

### **▪ Rationale and approach**

One key aspect of the Bill is the liberation of the Telecommunications market. During its deliberations, the Committee noted that the Bill seeks to achieve this but only to a certain extent. For instance, the Bill opens up the telecommunications market but limits new entrants to mobile service providers. Solomon Telekom still appears to have an advantage as a dominant service provider in telecommunications markets, despite the intentions for the market to be opened up.

The Committee heard from the Deputy Solicitor General from the Attorney General's Chambers that the Bill provides for a new mobile entrant to commence providing services in April 2010. Once a new mobile entrant commences in April 2010 the rest of the telecommunications market will open up in April 2011. This appears to be designed to allow Digicel Pacific to enter the telecommunications market as soon as possible.

The Bill provides for a staged introduction of competition in relation to all aspects of telecommunications. Currently, Solomon Telekom holds an exclusive license in relation to all aspects of telecommunications. Thus, as part of the Consultations between the Government and Solomon Telekom, both parties agreed to have a phased introduction of competition for the benefit and in the best interest of Solomon Islands.

The Committee heard that the purpose of having a phased introduction of competition is to ensure that from day one the Commission can act on the basis that Solomon Telekom is dominant and review areas which it wants to open for new entrants.

Another reason for a phased introduction of competition is the fact that license granted to Solomon Telekom in 2003 gave it exclusivity in relation to all aspects of telecommunications. Therefore during consultations on the Bill Solomon Telekom and the Government agreed that the market will open to a new mobile entrant in April 2010 and also agreed to a delayed introduction of other aspects of telecommunications.

▪ **Cabling and Network**

The Committee was also concerned that despite the intention to liberalise the market, cabling and network in Solomon Islands was still to be undertaken by Solomon Telekom.

The Deputy Solicitor General pointed out that upon the issuing of licence the new entrant can commence building a mobile network. Likewise in relation to any other aspects of telecommunications, once a company is licensed or otherwise given permission by the Telecommunications Commission it can commence preparatory work for the purpose of being able to commence the service on the date the license is formally issued.

Digicel however submitted that cabling and network was not a restriction to them and their ability to provide the kind of telecommunication services that would be

required by the people. They submitted that technology allowed them to provide what would be deemed to be services requiring cabling and network, but which they can now provide through wireless network.

Irrespective of the confidence that Digicel Pacific has in entering the telecommunications market with sufficient capacity to provide quality and competitive service, the Committee is still of the view that this Bill strongly favours Solomon Telekom. The Committee is of the view that the telecommunications market must be open sooner than proposed by the Bill as Telekom has had ample time to prepare for "competition".

#### **USE AND ACCESS TO LAND**

One of the issues which the Committee was concerned about was the provisions that allowed service providers to access and use public land (Part 14) and non-public land (Part 15). The Committee sought clarification from the Ministry and the Attorney Generals Chambers as to the necessity of this provision.

The Deputy Solicitor General submitted that the section permits service providers to access public and non-public land. This is to facilitate the service providers in obtaining access to land under the control of the Government. He said that it sets out the procedure that service providers can rely upon in acquiring and having access to land under the control of the Government. It creates obligations for those operators when they seek to access Government land and provides obligations in relation to restoring things that are on public land that are damaged or in any other way impacted upon. Whilst the Committee accepts this answer, it wishes to reiterate that it is still concerned that such a provision may easily infringe on the individual rights.

#### **THE DOMINANT SERVICE PROVIDER**

The Committee noted that according to section 2 (b), Solomon Telekom will be deemed as the dominant service provider. It appears that Solomon Telekom will be the dominant service provider in all areas of telecommunications except the

provision of mobile telecommunications services. The Committee was concerned that the Bill continued to give Solomon Telekom a monopoly over other telecommunications services other than mobile telecommunication services.

In response to the question, Mr Sullivan of Solomon Telekom said that the concept of a dominant service provider in a market is not designed to give that provider any benefits. Further the committee was assured that the dominant provider will be subjected to greater regulation. An example is in the 'pricing' where the dominant service provider is subject to greater regulation by the Commission than a competitor who is not a dominant provider. The Committee was told that the Bill contains such provisions in order to protect the Government and the community from a party that distorts what is supposed to be a level playing field.

The Committee was interested to know how Solomon Telekom perceived the competitive environment that would be introduced by other service providers. Mr Sullivan in response said that in the prepaid market and with regards to prepaid mobiles, the competitor initially will have a huge advantage over Solomon Telekom because they will be an international company that would be able to buy phones in bulk for very little. Solomon Telekom will be at a great disadvantage for a period of two years or so in respect of prepaid market. Solomon Telekom will suffer some 'commercial pain' for a few years. In the post paid market however, Solomon Telekom is confident of being able to withstand any competition.

John Sullivan said "there'll be some pain for us, there's no doubt about that, but at the end of the day, hopefully in a couple of years time you'll have a very efficient Telekom as a healthy competitor to the new entrant and at that point in time, in 2011 we can open up the whole market for full competition."

One of the other issues that the Committee raised with Solomon Telekom was the quality of services. The Committee asked whether Solomon Telekom thought that this will be improved by the Bill. Mr Sullivan stated that change will occur in two ways. Firstly it will bring about change internally in order for Solomon Telekom to meet competition. Secondly, Solomon Telekom is required to commit in the new



license to a quality of service. Sullivan said that the latter will be difficult to achieve in the short term but hopefully over time they will be able to meet it.

The Committee is of the view that whilst there is so much reference on fairness and the need for a levelled playing field, the Bill does not provide a levelled playing field and gives Solomon Telekom unreasonable advantage over any other new service providers.

#### **OPPORTUNITY COST ON GOVERNMENT REVENUE**

The Committee was of the view that opening up the market will cost the Government in revenue returns. Similar sentiments came from witnesses that it is inevitable that the Government will receive less revenue directly. Competition ultimately leads to reduction in prices. That theoretically would mean a reduction in income for the company and therefore, presumably, reduction in income tax where company tax would have to be paid.

Mr. Sullivan pointed out that though Solomon Telekom though will surrender the monopoly in good faith they will continue to pay 7% in license fees to the Government up to the point when a new entrant comes into the market. Subsequently there will be a national reduction from 7% to 4% and then 2%.

Another issue is that over the first five years effectively the license fees will go to fund the compensation. Obviously, the committee notes that Government revenue returns will be greatly affected.

#### **COMPENSATION PACKAGE**

Another issue which was highlight during the hearings was in relation to the compensation payable to Solomon Telekom to allow for a Competition. Solomon Telekom submitted that the amount that the Government would pay for the loss of the monopoly is \$84million. The balance is payable out of Rural Fixed Line Special Fund which will be funded by the donors, not by the Government to compensate Telekom for its obligation to provide loss making services to fixed line customers.

Currently Solomon Telekom provides fixed line services to those in remote areas at a considerable loss. It undertakes to continue providing this service for the next five years after which, the competitive environment would take over. The Committee was informed that the total compensation package will be in the vicinity of \$109 million.

#### **LICENSE FEE**

One of the provisions that the Bill makes is the requirement for a new entrant to pay a licence fee of 2% of their total gross revenue. This provision gave rise to considerable debate particularly by Digicel and Solomon Telekom. In their submission to the Committee, Digicel expressed great dissatisfaction over the requirement that the licence fee be 2% of a new entrant's gross revenue. Digicel has a significantly high gross revenue and paying a 2% licence fee when put into their business plan would have a negative impact. They argued that from their previous experience in similar markets, license fees were based on a rationale indicator such as population or GDP. Comparatively, the 2% licence fee is quite excessive. Digicel indicated their willingness to sit with the Government and negotiate a different package. A licence fee of 0.5% or 1% would be more reasonable from Digicel's perspective.

In response to this, Solomon Telekom submitted that the Government needs the 2% in order to meet its debt to Solomon Telekom. If the Government lowers the 2% licence fee then it would not be able to repay its debt to Solomon Telekom within the agreed five years. Solomon Telekom points out that currently it is paying a 7% of its gross revenue as licence fee. Digicel's main concern is with Licence fees and other related fees.

The Committee strongly disagrees with the provision requiring an Annual license fee of 2% of the gross revenue of a new entrant's gross revenue. The Committee is of the view that this rate is extremely unfair for a new entrant, particularly in light of the fact that this fee will go towards the payment of compensation to Solomon Telekom. The Government must reconsider this position. A new service provider should not be responsible for the payment of a compensation package.

## **RENEWAL OF LICENSE**

Another issue which was raised before the Committee was the renewal of licence. Digicel is quite concerned that even though the Bill has a 15 year licence term it does not specifically refer to automatic renewal or extension. Digicel proposes that there should be automatic renewal provided that there is no significant breach of the terms and conditions of the licence. Solomon Telekom is of the view that there should no presumption either way of whether a licence should be renewed or not. This should be left to the Telecommunication Commission to determine on a case by case basis.

The Committee agrees that renewal of licence should be automatic, subject to any breach of a condition during the initial license term. The Committee is of the view the subsequent annual license fees should be significantly reduced.

## **BURDEN OF REGULATION**

On the issue of burden of regulation the Committee was informed that consideration and care should be given to the provisions of the Bill which dealt with this.

Digicel submitted that section 30 of the Bill be amended to include:

[The Regulator] “only impose regulation, including obligations, based on dynamic market analysis and a high cogency of evidence, including that: the facts relied upon are factually accurate, reliable and consistent; that evidence contains all information which must be taken into account in order to assess a complex situation; and one is capable of substantiating the conclusions drawn from such evidence.”

## **ESSENTIAL FACILITY**

Another aspect of the Bill which Digicel sought clarification on was the definition of ‘essential facility’. It was proposed that the definition of ‘Essential Facility’ in the Bill be replaced with the following:

“essential facility” means a facility of a service provider where the following cumulative criteria are satisfied at the very least

- (a) the facility to which access is sought is indispensable, including that the facility cannot be economically or technically substituted in order to provide the service;
- (b) the lack of access prevents the emergence of a new service for which there is consumer demand;
- (c) the lack of access is unjustified, for example, on technical, legal, economic or other grounds;
- (d) the lack of access pose a barrier to entry such as to exclude any competition on a secondary telecommunications market; and
- (e) access to the facility shall not adversely impact on the investment of the facility of the facility owner or compromise the incentives for otherwise efficient and sustainable”

Solomon Telekom however objected to this and said that the new definition has the potential to impose enormous obligations on the players in the telecommunication market.

#### **INTELLECTUAL PROPERTY PROTECTION**

The issue of intellectual property protection was also discussed during the hearings, particularly by Digicel Pacific. The Bill provides that the Commission must carry out public consultation on the effect of intellectual property law on the development of telecommunications networks and services in Solomon Islands within six (6) months from the date of commencement of the Bill. While Digicel welcomed the initiative it stated that this process should take place at least 1 month after the commencement. In its view, unless intellectual property laws were secure in the Solomon Islands, it would be not able to launch some of the services that it would want to launch in the Solomon Islands.

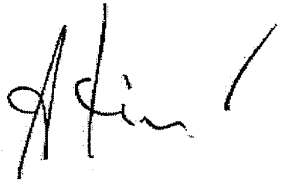
## 5 RECOMMENDATIONS

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The Committee has reviewed the Bill and recommends that the Government monitor matters raised in this report, in terms of assessing its implementation and effectiveness in achieving its important objectives, and report to Parliament 12 months after the commencement of the Act, and in particular recommends:

1. That there be proper consultation on the Bill between the relevant Ministry and the relevant Telecommunication stakeholders involved in the administration of this Bill;
2. That the Government consider reducing the time frame of six months provided for in section 80 (2) of the Bill.
3. That the Government give consideration to the suggested definition of “essential facility” suggested by Digicel Pacific.
4. That the Government give appropriate consideration to the inclusion of section 31 as suggested by Digicel Pacific.
5. That section 39 (7) and (8) be amended to provide that instead that licenses be “automatically” renewed subject to there being no material breach of the license.
6. That the Government give consideration to the Annual Licence Fee and consider having the fee based on other factors such as population or GDP and not a service providers gross revenue.

7. That subsequent Annual License Fees payable by service providers should be reduced and not the same amount as the initial annual licence fee.
  
8. That the Committee be given ample time to review complex and important Bills before its tabling in Parliament.



**Hon. Severino Nuaiasi**

Chairman

Bills and Legislation Committee

Monday, 24 August 2009

# APPENDIX 1: MINUTES

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BILLS AND LEGISLATION COMMITTEE

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NATIONAL PARLIAMENT OF SOLOMON ISLANDS

## Minutes of Proceedings Meeting No. 27

Monday 17 August 2009, Conference Room 2, Parliament House, 9:45am

### Members Present

Hon. Severino Nuaiasi, (Chair) MP  
Hon. Manasseh Sogavare, MP  
Hon. Nelson Ne'e, MP  
Hon. Japhet Waipora, MP

### Apologies:

Hon. Isaac Inoke Tosika, MP  
Hon. Augustine Taneko, MP  
Hon. Siriako Usa, MP

### Secretariat:

Mr. David Luta Kusilifu, Committee Secretariat  
Mr. Stanley Hanu, Committee Secretariat (Legal)  
Mr. Calvin Ziru, Committee Secretariat (Legal)  
Mr. Ian Rakafia, Committee Secretariat

### In attendance:

Ms. Taeasi Sanga, Clerk to Parliament  
Ms. Florence Naesol, Deputy Clerk  
Mr. Noel Matea, Committee Secretariat

### 1. Prayer

Hon. Waipora said the opening prayer.

### 2. Chair's welcome and opening Remarks

The Chair welcomed and thanked the members for their attendance, offered apologies on behalf of members who were unable to attend and delivered his opening remarks.

**3. Chair's Report on the Criminal Procedure Code (Amendment) Bill 2009**

The Chair tabled his draft report, which having been previously circulated, was taken as being read a first time.

According to Standing Order 72 (8) the Chair proposed the question 'That the Chair's report be read a second time page by page.' Question put and passed.

The Committee deliberated and sought advice and briefings on relevant matters from the Secretariat staff.

Consideration of the report concluded.

The Committee resolved on the motion of Honourable Née that the report be the report of the Committee to Parliament.

**4. Chair's Report on the Customs Valuation Bill 2009**

The Chair tabled his draft report, which having been previously circulated, was taken as being read a first time.

According to Standing Order 72 (8) the Chair proposed the question 'That the Chair's report be read a second time page by page.' Question put and passed.

The Committee deliberated and sought advice and briefings on relevant matters from the Secretariat staff.

Consideration of the report concluded.

The Committee resolved on the motion of the Chair that the report be the report of the Committee to Parliament.

**5. Brief on the Telecommunications Bill 2009**

The Committee Secretariat briefed committee on the hearing times and the stakeholders for the inquiry into the Telecommunications Bill 2009.

Committee deliberated.

**6. Close**

Mr. Kusilifu said the closing Prayer and the Meeting ended at 10:15am.



## **Minutes of Proceedings**

Tuesday 18 August 2009  
Conference Room 2, Parliament House, 10:00am

### **Members Present**

Hon. Severino Nuaiasi, (Chair)  
Hon. Manasseh Sogavare, MP  
Hon. Augustine Taneko, MP  
Hon. Japheth Waipora, MP  
Hon. Nelson Ne'e, MP

### **Apologies:**

Hon. Isaac Inoke Tosika, MP

### **Secretariat:**

Mr. Noel Matea, Committee Secretariat

### **Witnesses:**

Mr. Robert Bokelema, Controller Communications, Ministry of  
Communication and Avaition  
Mr. Matt Hodge Kopa, Technical Advisor, Economic Reform Unit, Ministry of  
Finance  
Mr. Steven Woods, Deputy Solicitor General, Attorney Generals Chambers  
Mr. Rupeni Nawaqakuta, Legal Draftsman, Attorney Generals Chambers  
Mr. John Sullivan, External Counsel, Solomon Telekom  
Mr. Steve Tusler, Solomon Telekom  
Mr. Lionel Puhimana, Solomon Telekom

### **1. Opening Prayer**

Hon. Augustine Taneko said the opening prayer

### **2. Deliberation on Issues and Questions for the Public Hearing**

The Chair and Members thanked the Secretariat for the preparatory work for the Public Hearing.

The Committee Secretariat briefed the Committee.

### **3. Hearing into the Telecommunication Bill 2009**

The Chair welcomed the witnesses and made his opening statement.

The Chair opened the hearing and asked the witnesses to introduce themselves and make any opening statements.

The witnesses made their opening statements to their position on the Bill.

The Legal draftsman provided an overview of the Bill.

The Committee questioned the witnesses.

Evidence Concluded.

The Committee then suspended for lunch at 1:00pm until 2:00pm.

The Hearing resumed at 2:00pm

The following witnesses appeared before the Committee;

- Mr Frank O'Carroll, Director Business Development, Digicel Pacific
- David Borrill, Head of Business Development, Digicel Pacific
- Temalesi Sikuri, In-House Solicitor
- Mr. Michael Chite, Project Manager, Site Acquisition Services Limited
- Mr Mike Hemmer, chairman, Chamber of Commerce
- Ms. Kate Halliday, Law Reform Commission

The witnesses made their opening statements to their position on the Bill.

The Committee questioned the witnesses.

Evidence Concluded.

Committee Deliberated.

#### **4. Close**

The Hearing closed with a word of pray from Noel Matea.

Meeting ended 5:00pm

## APPENDIX 2: WITNESSES

Witnesses who appeared before the Bills and Legislation Committee on 18 August 2009 were:

1. **Mr. Robert Bokelema**, Controller Communications, Ministry of Communication and Avaition
2. **Mr. Matt Hodge Kopa**, Technical Advisor, Economic Reform Unit, Ministry of Finance
3. **Mr. Steven Woods**, Deputy Solicitor General, Attorney Generals Chambers
4. **Mr. Rupeni Nawaqakuta**, Legal Draftsman, Attorney Generals Chambers
5. **Mr. John Sullivan**, External Counsel, Solomon Telekom
6. **Mr. Steve Tusler**, Solomon Telekom
7. **Mr. Lionel Puhimana**, Solomon Telekom
8. **Mr Frank O'Carroll**, Director Business Development, Digicel Pacific
9. **Mr. David Borrill**, Head of Business Development, Digicel Pacific
10. **Ms. Temalesi Sikuri**, In-House Solicitor
11. **Mr. Michael Chite**, Project Manager, Site Acquisition Services Limited
12. **Ms. Kate Halliday**, Law Reform Commission

## APPENDIX 3: SUBMISSIONS

### Issues raised by the Solomon Islands Law Reform Commission with the Bills and Legislation Committee

#### Key Points

1. Transparency and accountability of the Minister in the performance of his or her duties and functions (clause 5 the Bill).
2. Powers of Prime Minister in the case of a public emergency.
3. Application of the corruption offences contained in the Penal Code to the Telecommunications Commissioner, the Minister and employees, officers and consultants of the Telecommunications Commission.
4. The relationship between violations and criminal offences (Parts 18 and 19)
5. The fault (or mental) elements that are prescribed for many of the offences contained in Part 19 may make prosecution difficult.
6. The offence of using telecommunications for the purpose of harassment is potentially narrow.
7. Other offences contained in Part 19 do not have any specific fault element.

Clause 5 of the Bill sets out the powers and functions of the Minister. This includes the power to formulate, monitor, review and recommend policies for the telecommunications sector. There is no requirement in the Bill for the Minister to report publicly on these matters.

Clauses 96 and 97 give the Prime Minister significant powers to require a service provider to do things, including disclosure of the content of messages transmitted or received, to the Prime Minister or other person authorised by the Prime Minister. The powers are **not** confined to public emergencies declared under the Constitution but can also be used if the Prime Minister decides it is the interests of public safety. Under the Constitution a public emergency is declared by the Governor-General and confirmed by the Parliament.

Under clause 97 the Prime Minister can make a request to a service provider to intercept and produce the contents of message of a particular class, or made by, or to, particular individuals if it **appears to be expedient in the public interest**. The Prime Minister can sign a certificate that is conclusive proof that an act under the provision is in the interests of public safety.

It would be difficult to challenge these powers under the law of administrative review because they are drafted broadly. Individuals or groups of people affected by requests made under the provisions would not necessarily be aware that their messages were being intercepted and given to the Prime Minister.

Clause 11 specifically applies Chapter VIII of the Constitution (Leadership Code), the Leadership Code (Further Provisions) act and Part X of the Penal Code to the Minister, the commissioner and officers, consultants, employees and agents of the Telecommunications Commission. This is because clause 7 says the Telecommunications Commission is not in the service of the Crown, and that the commissioner, the officers, employees, consultants or agents of the Commission are not public officers for the purpose of Chapter XIII of the Constitution.

However clause 11 does not apply the corruption offences contained in Part XXXVIII of the Penal Code to the Minister, the commissioner and officers, consultants, employees and agents of the Commission. Part XXXVIII of the Penal Code contains some important offences in relation to corruption. There appears to be no policy reason why they should not apply to this group of people.

Parts 18 and 19 of the Bill contain provisions for administrative penalties and criminal offences.

Clause 119 precludes proceedings for both administrative penalties and an offence arising from the same facts. The purpose of administrative penalties is not to punish but to promote compliance (this is specified in clause 113). Double jeopardy, or the risk of being punished twice for the same act does not therefore apply. There is no reason why the regulator should not be able to pursue an administrative penalty if a criminal prosecution is not successful; or pursue both an administrative penalty and criminal prosecution. The bill could provide that where there is a criminal conviction then an administrative penalty should not be imposed for the same act; and where both proceedings are pursued then the action for an administrative penalty should be stayed until the completion of the criminal proceedings.

Many of the offences in clause 120 contain fault elements of 'intentionally, without right and with dishonest intent.' The fault element of 'dishonest intent' is not one that is commonly used in Solomon Islands. This does not promote clarity and certainly in legislation and may make it difficult for the regulator, police and the DPP to assess whether there would be reasonable prospects for a criminal prosecution. This is also important because of the requirement in clause 119 for the regulator to elect whether to use administrative or criminal proceedings at an early stage. A criminal prosecution might be difficult for many of these offences because it would be necessary to prove this fault element beyond reasonable doubt.

The fault elements of without right and dishonest intent are not appropriate for the offence in clause 120(1)(g). A fault element of intentionally would be appropriate. The offence should be redrafted to refer to telecommunications network or service as the word facility has a specific meaning in the Bill which only refers to infrastructure for a network (the buildings, cables etc).

Consideration should also be given to clarifying and expanding the offence so it is closer to the existing offence in section 33 of the current Telecommunications Act (Cap 115). This offence covers a broader range of activities, and it is not necessary to prove that the accused had the purpose of harassing any person. There may be situations where a person persistently makes telephone calls to disrupt a business or organisation, or sends offensive or abusive messages for the purpose of disrupting the activities of a business or organisation.

The offences in clauses 120(1)(j) and (k) have no fault element. Generally it appears that contraventions of the provisions referred to in these clauses would also attract an administrative penalty. The offences need a fault element to distinguish them from violations in Part 18.

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FROM WHOM: SOLOMON TELEKOM LTD  
RECEIVED: BILLS & LEGISLATION COMMITTEE  
CHA

## TELECOMMUNICATIONS BILL 2009

### PARLIAMENTARY BILLS COMMITTEE - 18 AUGUST 2009

#### SOLOMON TELEKOM COMPANY LIMITED - PRELIMINARY STATEMENT

##### Introduction

Solomon Telekom Company Limited ("Our Telekom") welcomes the *Telecommunications Bill 2009* and, subject to some minor amendments that have been discussed with the Attorney General and the Legal Draftsman, hopes to see the Bill enacted during the present sittings of Parliament.

Our Telekom's existing exclusive licence was formally granted in November 2003, after lengthy negotiations during a period of civil unrest when there was no other operator remotely interested in providing services to Solomon Islands. Our Telekom agreed to a review of its exclusive rights after 5 years of its 15 year licence.

In early 2007, Our Telekom announced that it would welcome competition in the telecommunications sector on certain conditions, the most important of which were -

1. New telecommunications legislation, acceptable to Our Telekom, providing for a fair and level playing field for all participants.
2. An independent regulator, free from political interference.
3. Fair and reasonable compensation for the early loss of Our Telekom's exclusive rights, coupled with adequate compensation for its obligation to service loss making customers.

Discussions on new legislation commenced in 2007 and detailed negotiations with the Government started in November 2008. Those negotiations were complex and at times very technical. They were certainly hard, which reflected very difficult issues. At all times the negotiations were conducted in good faith, with compromises made by both sides. This resulted in a settlement agreement being signed on 26 June 2009. Certainly, neither side got everything it wanted, the usual hall mark of a good agreement.

Our Telekom wishes to thank the Government and its negotiators for the manner in which the negotiations were conducted. They should be congratulated for the honest and open manner in which they have gone about dealing with the various issues.

##### The Agreement

The agreement includes a provision that Our Telekom will, on certain conditions being satisfied, surrender its exclusive licence in return for the issue a new non-exclusive licence. One of those conditions is that the new Telecommunications Act will be passed substantially in the form agreed. Subsequently, we have been in further discussions with the Attorney General's chambers, particularly the Legal Draftsman to agree a number of amendments to the draft included in the agreement. This Bill is the

result and will, if enacted, provide the legislative framework needed to give effect to the agreement.

Essential terms of the agreement include -

1. This Bill will be passed substantially as agreed. While Our Telekom recognises the sovereignty of Parliament to pass the legislation in any form it sees fit, members should be aware that the obligation of Our Telekom to surrender its exclusive rights is dependent on this Bill being passed in terms acceptable to Our Telekom. Accordingly, the Government has agreed to consult with Our Telekom should new amendments be proposed.
2. A Telecommunications Commission, fully independent properly funded and with ample powers, will be established and chosen by an agreed independent Evaluation Committee.
3. Competition in the mobile sector will commence no earlier than 1 April 2010, with the issue of a new mobile licence after international tender. Full competition in all sectors, including the internet, will be open from 1 April 2011.
4. Technical provisions, including those relating to numbering, spectrum, interconnection and the internet, have been agreed.
5. Our Telekom will receive compensation in two components. First, compensation payable by the Government for the loss of Our Telekom's exclusive rights. This will be partly funded by licence fees from the sector and will comprise amounts to be accumulated in an escrow account and to be paid at the start of competition in 2010, with balance to be paid over a 5 year period. Second, Our Telekom will be entitled to further compensation for its obligations to service loss making customers. This will effectively be funded by donors over a 5 year period.
6. Our Telekom will be entitled to other benefits designed to ensure either that it is not disadvantaged compared to its current monopoly situation or to enable the level playing field objectives of the agreement to be achieved.
7. Certain disputes between the Government and Our Telekom are also settled on agreed terms.

While Our Telekom has not achieved all that it wanted, the agreement, when taken as a whole, is fair and reasonable. Our Telekom is committed to working with the Government and the new Telecommunications Commission in good faith to make the agreement work and to bring in an era of effective competition on the agreed terms.

#### The Bill

The Bill is highly technical in parts and reflects the complexity of issues that have had to be covered in negotiations, in order to bring in effective competition. Our Telekom is grateful to the World Bank for its assistance in drafting the Bill.



The Telecommunications Commission. The Bill enshrines the Commission's freedom from political interference in administering the regulatory environment, while leaving Government with an over all policy role. The Commissioner will be chosen by an Evaluation Committee chaired by the Chairman of the Solomon Islands Chamber of Commerce and Industry. The selection criteria should ensure an independent and appropriately experienced person is appointed. There are provisions for the Evaluation Committee to select an Interim Commissioner so that there should be no significant delays in bringing in competition. Our Telekom believes the Commission has been given adequate powers and is satisfied with Parts 2 and 3 of the Bill.

Financing of the Commission. The Bill establishes independent funding of the Commissioner through the application of licence fees to the Commission's budget, which the Commission and not the Government will control. This is achieved by the establishment of the Telecommunications Commission Special Fund. Our Telekom is satisfied that Part 3 of the Bill meets its requirement that the Commission be financially independent. It is noted that during the 5 year compensation period over, funding will be supplemented by donors. Licence fees are set at 2% of gross revenues for the first 5 years and cap at that rate thereafter. Our Telekom will continue to pay a 7% fee until competition commences although this will be paid to an escrow account to fund the compensation to be paid at commencement. Our Telekom is satisfied with Part 3 of the Bill.

Licensing Regime. Our Telekom is satisfied that the Part 5 of Bill provides adequate controls over the issue, suspension and revocation of new licences, without interference from Government.

Universal Access. Part 6 is a key provision to ensure that in a competitive environment non profitable areas are serviced. The establishment of the Universal Access Special Fund will enable operators to tender for subsidies from the fund for future rural roll out. After the transitional 5 year period, this fund will be financed through additional licence fees capped at 2% of gross revenues. During the transitional period, funding will come from donors. This should be distinguished from the Rural Fixed Lines Special Fund established under s.134, which is designed to provide compensation to Our Telekom over the 5 year transitional period for its ongoing provision of fixed line services to loss making customers. Our Telekom supports Part 6.

Technical Provisions. Parts 7, 9, 12 and 13 deal with technical issues including, the use of spectrum, interconnection with competitors, numbering etc. As members will know, mobile numbering is being transitioned to a 7 digit system. We are currently in a dual dialling period. Our Telekom will be allocated numbers commencing with 7 and the new mobile entrant will be allocated numbers beginning with 8. Our Telekom will vacate certain parts of the radio spectrum in an orderly manner. The Bill provides for numbering and spectrum reviews after specified periods of time. The agreement with the Government provides for the initial interconnection arrangements between Our Telekom and the new mobile entrant. Thereafter the Bill provides for interconnection arrangements to be generally the subject of commercial negotiation, with the Commission only being involved where the parties fail to reach agreement. Our Telekom is satisfied with the technical provisions of the Bill.

Anti-competitive Practices, Pricing and Consumer Affairs. The Bill in Parts 8, 10 and 11 deals with anti-competitive practices both generally and in relation to pricing and consumer relations. Our Telekom accepts the need for these provisions, although they will immediately affect Our Telekom more than the new entrant, given Our Telekom's deemed dominance in most markets. These provisions are fair and reasonable.

Access to Land. The introduction of competition has necessitated some focus on the manner in which operators can gain access to land for the placement of their infrastructure. Parts 14 and 15 deal with this. Of particular concern has been the perennial problem of dealing with customary landowners. There is no easy solution until Parliament is willing to tackle the problem through comprehensive legislation dealing with all investment sectors. That said, the compromise reached in negotiations is to permit operators to deal with landowners who can show an interest or right in the land based on a final court decision or on other grounds. However, it will not be sufficient for a person to merely assert that he is the owner of the land. In short there must be some documentary proof. Landowners must have access to independent legal advice. While it is not perfect, it does mean that operators should be able to negotiate agreements without undue delay. Our Telekom supports these provisions.

Disputes and Appeals. This has been a difficult topic, with a wide range of views. telecommunications is a highly technical market and it was felt necessary to ensure that disputes should generally be resolved quickly and by experts. At the same time, there has been a need to retain the ultimate oversight by our courts. In the end we have achieved the necessary balance in Part 17. Disputes will generally be resolved by the Commission or a Dispute and Appeal Panel comprising international experts. Appeals of right to the High Court will lie on questions of law and jurisdiction and by special leave on other matters. Appeals to the Court of Appeal will require special leave. The right of judicial review by the High Court has been retained. Part 17 is quite technical, but is supported by Our Telekom.

Offences and Civil Remedies. It has been decided to split offences into two categories, violations and offences. The former can be dealt with by the Commissioner and the latter through the courts. Civil remedies are preserved. Our Telekom supports Parts 18 and 19.

Miscellaneous and Transitional Provisions. Part 20 is extremely important to Our Telekom as it provides in legislative form many of the benefits and safeguards negotiated by Our Telekom, including the preservation of its existing licence until the new licence is issued in accordance with the agreement. Until those procedures are complied with, the new mobile licence cannot be issued - see ss. 125 and 127. The issue of the new mobile licence is covered by s.128. Note that apart from limited testing, the new entrant cannot commence providing services to the public before 1 April 2010. Full competition is delayed until 1 April 2011 by s.129. Both these sections are critical to Our Telekom. Other critical transitional sections are ss.126, 130, 131 and 132. The negotiated compensation provisions are covered by s.133. The Committee will note the escrow arrangements. When read with the agreement, s.133 will have the effect that Our Telekom will receive significant upfront compensation when competition starts, with the balance due from the new Compensation Special Fund over a 5 year period. There are protective provisions to ensure Our Telekom is paid in full should that Fund not be sufficient to fully compensate Our Telekom. While it has been widely

publicised that the amount of compensation to be received by Our Telekom under this provision is SBD84,000,000, that amount will in fact be adjusted after a final independent report is received in relation to loss making customers covered by s.134. Our Telekom accepts that, taking the Bill as a whole the agreed compensation is reasonable.

Our Telekom's obligations to rural loss making customers is covered by the additional compensatory provisions of s.134, which sets up the Rural Fixed Lines Special Fund mentioned previously. We are awaiting a final independent report, which will fix the amount of compensation to be paid over 5 years (funded by donors) and will result in a minor adjustment to the main compensation payable under s.133. Again there are protective provisions should this fund not meet the full compensation requirement over 5 years. Our Telekom is satisfied with these arrangements.

Sections 136 to 141 include other provisions negotiated to ensure that Our Telekom is not disadvantaged by the new competitive environment and will be able to operate on a level field. All of these provisions are critical to Our Telekom.

The Schedules provide for the form and essential terms of Our Telekom's new licence and the new entrant's mobile licence. The Government has indicated that it may move an amendment to increase the term of each licence to 20 years from the 15 years set out in the schedules. Our Telekom has no objection to these amendments as long as the terms of each licence are the same.

Other Amendments. Our Telekom has proposed certain minor amendments which are annexed. These are largely grammatical in nature, but some are not without significance. The proposed amendments are attached.

Conclusion. Our Telekom welcomes this Bill. The new legislation will require Our Telekom to become more efficient, but that can only be a good thing. Our Telekom looks forward to moving to a competitive market next year in the terms agreed with the Government. We commend the Bill to the Committee.

PROPOSED AMENDMENTS

32(2) – Delete the words “of its” or alternatively “determination, order or direction” should all be in the plural

53(2) – insert “, regulation” after “order”

60(3) – insert “, regulation” after “order”

60(4) – insert “, regulation” after “order”

76(6) – insert “, regulation” after “order”

79(1) – “regulations” should be “regulation”

85(5) – “, regulation” after “order”

100(10) – “regulations” should be “regulation”

100(11) – “regulations” should be “regulation”

119 – delete “If” and capitalise “a”. Insert “may” in lieu of “can”

128(8) – Delete the word “initially”.

134(2) – insert “Telekom” in lieu of “Telecom”

Schedule 1

4.1 – “directions” should be “direction”

7.1 – delete “regulation” and insert “determination or” before “order”.

Schedule 2

7.1 – as for Schedule 1

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 FROM WITHIN: SOLOMON TELEKOM LTD  
 RECEIVED: BILLS & LEGISLATION COMMITTEE

Year End	Mar 2004	Mar 2005	Mar 2006	Mar 2007	Mar 2008	Mar 2009	TOTALS
ICSI - DIVIDEND	\$ 460,754	\$ 520,651	\$ 384,691	\$ 811,826	\$ 1,153,323	\$ 0	\$ 3,331,245
TAX	8,838,426	6,979,967	11,169,371	12,223,087	20,636,784	18,648,025	78,495,660
PAYE	2,215,998	2,812,761	4,213,910	5,020,715	5,343,911	4,561,932	24,169,227
SALES TAX	5,144,051	6,790,432	8,205,901	10,053,043	13,183,726	14,411,799	57,768,952
GOODS TAX	1,211,038	2,151,668	3,582,222	3,867,612	5,560,777	6,979,787	23,353,104
LICENCE	3,941,854	6,711,367	7,752,319	8,084,693	11,237,452	5,231,540	42,959,225
CUSTOMS DUTY				1,098,537	3,003,943	3,064,856	7,167,336
PAID TO SIG	21,812,121	25,966,846	35,308,414	41,159,513	60,099,916	52,897,938	237,244,748
DIVIDEND PAID TO SINPF	3,309,641	9,798,913	7,665,504	19,595,546	27,778,808		68,148,412
DIVIDEND PAID TO C&W	2,719,097	3,030,454	4,130,543	9,861,679	5,352,240		25,084,013
PAID TO C&W & SINPF	6,028,738	12,829,367	11,796,047	29,457,225	33,131,048	0	93,242,425

*State*

# Digicel™

The Bigger, Better Network.

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Tuesday, 18 August 2009

Honorable Severino Nuaiasi  
The Chairman  
Bills and Legislation Committee  
National Parliament of Solomon Islands  
HONIARA

Dear Honorable Severino Nuaiasi

RE: INVITATION TO APPEAR BEFORE THE BILLS AND LEGISLATION COMMITTEE ON THE HEARING INTO THE TELECOMMUNICATIONS BILL 2009

Thank you for your kind invitation for Digicel to appear before the Bills Committee to make submissions on the Telecommunications Bill 2009.

Digicel has several key areas of continued serious concern re the Telecommunications Bill 2009. We would very respectfully ask the Bills Committee to take such concerns into account. The Task Force and advisors to the Solomon Islands Government do not necessarily agree with our positions, which we believe are wholly reasonable and are similar to those requested in other countries in which we operate. Several of these key concerns are outlined below.

#### Key Concerns with Draft Legislation

1. *Annual Licence Fee* (section 20(2)): The annual licence fee has been established to pay the compensation due to STL. It seems that it will be applied for the first 5 years. The same level will be applied after this period too. This annual licence fee is meant to cover the costs of regulation only. Regardless of the fee for the first five years, the new fee in year 6 should be a flat fee: SBD \$2 million to be divided between operators. There is no justification for the rate in year 6 to be equal levels of the previous years, the latter of which were based on compensation and NOT the costs of regulation. This is even more justified given that the annual licence fee can be increased by a supplementary licence fee to meet legal costs of an appeal with the approval of the Accountant General. Section 21(2) – It should also be allowed for any new entrant to pay any licence fee upfront during the first five year period if necessary.
2. *Universal Service Levy*: (section 51(3)): A universal access levy of greater than 0.5% seriously undermines the business case in the Solomon Islands. A five year exemption does not avoid

this. We have inputted 1% in our business model and it seriously affects making a return on investment. As previously discussed, the business case already results in a very low return rate when compared with the general expectations of global investors in the mobile sector. The issue becomes whether the Government wishes to introduce effective and sustainable competition or risk undermining the latter with a USO which makes any market entry unworkable. The Government seriously needs to review this issue: a cap of 0.5% should be established. The alternative is not to set any cap and review this issue after year 5. Digicel will work with the Government to ensure rural coverage.

3. *Renewal of Licence* (section 39(7) and (8)): A new entrant's licence should be automatically renewed subject to there being no material breach of the licence during the initial term of the licence. This is similar to Vanuatu.
4. *Burden of Regulation* (section 30): The Regulator must be subject to a burden of proof and aware of when and when not to impose regulation. We ask that the following clause be incorporated at section 31 of the draft Telecoms Act. This is similar to what was set by the European Court of Justice in the EU.

[The Regulator] *"only impose regulation, including obligations, based on dynamic market analysis and a high cogency of evidence, including that: the facts relied upon are factually accurate, reliable and consistent; that evidence contains all information which must be taken into account in order to assess a complex situation; and one is capable of substantiating the conclusions drawn from such evidence"*.

5. *Definition of Essential Facility* (section 2): The definition of "essential facility" should be based on the concept as traditionally defined in European and US case law. Digicel respectfully requests that the current definition be replaced by the following:

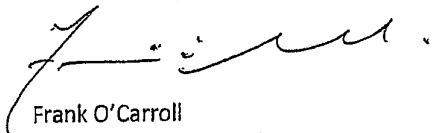
*"essential facility" means a facility of a service provider where the following cumulative criteria are satisfied at the very least: the facility to which access is sought is indispensable, including that the facility cannot be economically or technically substituted in order to provide the service; the lack of access prevents the emergence of a new service for which there is consumer demand; the lack of access is unjustified, for example, on technical, legal, economic or other grounds; the lack of access poses a barrier to entry such as to exclude any competition on a secondary telecommunications market; and access to the facility shall not adversely impact on the investment of the facility owner or compromise the incentives for otherwise efficient and sustainable*

6. *Access to Essential Facilities* (section 64): Digicel is making a significant investment in state of the art infrastructure in the Solomon Islands. The current draft legislation allows a third party to access this infrastructure after 4 years. This is wholly unacceptable to Digicel and would undermine any incentive to invest. Why would you allow somebody to piggyback on your risk and investment? A period of at least 10 years should apply.
7. *Number Portability* (Section 83(1)): Number portability after 2 years is too early to review this issue. STL and Digicel will be making significant investments in their networks and should be allowed to channel all resources into such rollout. A 5 year period is far more commercial.
8. *Introduction of Intellectual Property Protection* (section 80): Can we please introduce an initial review that should be undertaken within 1 month of legislation coming into effect as

otherwise this critical issue will be delayed. We should dictate the pace now. The benefits to Solomon Islands are enormous if we can ring fence IP laws for telecoms. The current legislation does not allow, for example, Blackberry services to be provided in Solomon Islands.

Thank you for your attention and we trust that the Bills Committee will accord due consideration to Digicel's submission of our key concerns re the Telecommunications Bill 2009.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Frank O'Carroll', written in a cursive style.

Frank O'Carroll  
Director Business Development  
Digicel Pacific Limited