Report on

‘Visit to Regional Regulator’ held in association with Victoria University of Wellington

ITU Project RAS/01/380 - ‘Telecommunications Sector Governance in Pacific Island Countries’

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Suva, Fiji

Supported by the Government of Australia, APT, UNDP, Forum Secretariat and the BDT/ITU, and

Hosted by the Pacific Islands Telecommunications Association

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Table of Contents

1. Introduction

This workshop was arranged and conducted for the purpose of providing the project participants an opportunity to meet and discuss the status of their respective policy papers and draft legislation and be provided with further assistance in finalizing their respective drafts.

The workshop venue was provided by the PITA. Mr. Fred Christopher, the PITA Manager, provided logistical and technical support.

The focus on the final Pacific Governance Workshop was on the policy papers developed over the course of the project by the respective participants. The workshop activities consisted of a combination of presentations by country representatives on their respective policy development processes; consultant presentations on some key policy issues – price-setting and price benchmarking; and sub-group presentations and discussions on issues related to the implementation of the WSIS Action Plan in the Pacific.

In addition, a number of individual country consultation sessions were held with the attending country representatives.

Eleven of the fourteen national contact parties from countries participating in the project attended the Workshop, the countries not represented were Nauru, Palau and the Solomon Islands.

2. The Workshop

The agenda for the Workshop (Attachment One) and the list of participants (Attachment Two) are attached.

Session 1 consisted of three presentations. The first, by William Withers of the ITU Regional Office for Asia and the Pacific entitled 'Report on Pacific Governance Project and Overview of Workshop', provided a status report on the progress of each country in developing their policy and legislation. In addition, the project and workshop objectives were reviewed and some of the key policy issues highlighted. The mapping and measurement of policy plans and sector performance were also reviewed as well as the issue of governance relevance in terms of country's population. For the purpose of the project group sessions, the Pacific island developing economies were categorized in three groups according to population – those with more than 400,000 population - Solomon Islands, Fiji and Papua N. Guinea; those between 70 and 200,000 - Marshall Isl , Kiribati, Tonga, Micronesia, Samoa, and Vanuatu; and the final category for the smallest countries in terms of population of less than 25,000 - Palau, Cook Islands, Nauru, Tuvalu and Niue.

The second presentation in Session 1 was entitled 'Status Report on Pacific ICT Projects' by Mr. Edo Stork of UNDP Fiji. Mr. Stork reviewed the PfNet and the e-Pacifika projects being conducted by the UNDP. He advised that further 'PfNet'

projects were scheduled for Vanuatu and Papua New Guinea. The final presentation in Session 1 was by Mr. Savenaca Vocea of the Asia Pacific Network Information Centre (APNIC) and entitled 'Management of Internet Resources'. Mr. Vocea reviewed the development of ISPs in the region and the activities of APNIC and ICANN regionally and globally.

Session 2 consisted of a presentation by Professor Tony Angelo, University of Victoria Law School. Professor Angelo reviewed his findings in terms of the current structure of telecommunications sector governance in the Pacific islands. A copy of Professor Angelo's draft paper is included as Attachment 3 to this report. While the paper remains in draft form as further country specifics are to be added, it represents one of the more thorough reviews and reports on telecommunications legislation in the developing economies of the Pacific islands. Copies of the paper were provided to participating country representatives for reference purposes.

Session 3 included two presentations by Mr. Paddy Costanzo and one by Mr. Josua Turaganivalu. The first presentation by Mr. Costanzo was entitled 'Global Declarations and Telecommunications Governance in the Developing Economies of the Pacific Islands'. He reviewed the WSIS draft Declaration and identified a number of the key sections relevant to the Pacific islands. Mr. Costanzo then turned to the matter of identifying some of the unique features of Pacific island countries and relating these features to the policy development process. He drew attention to the difference in the approach to sector governance in the larger Pacific island countries such as PNG and Fiji compared to that required in the smaller countries such as Nauru and Tuvalu. He concluded his presentation by identifying some of the key features of policy development process such as the need to focus on affordable access and gain community consensus as well as prompt implementation of the policy.

Mr. Costanzo's second presentation, entitled 'Key Implications for Social and Economic Development in the Pacific Islands Due to the Absence of Effective Telecommunications Sector Governance'. Mr. Costanzo identified some of the basic drivers of ICT growth such as the rapid development of new technologies and resulting applications and services such as the Internet and the rise of e-business as a factor in economic development. He also cited the convergence of information technology platforms such as broadcasting, print media, and telecommunications as being key drivers of ICT development. He identified the challenges for policy makers was to maximize the productivity and efficiency of existing and new networks as well as extend those networks to unserved areas. Mr Costanzo then identified the consequences of ineffective sector governance both from a local and global standpoint. In concluding his presentation, he referred to the WSIS Declaration and Action plan and pointed out that without adequate national governance for the information infrastructure that the objectives of the WSIS would not be achieved.

The concluding presentation in Session 3 was by Mr. Josua Turaganivalu, Acting Deputy Secretary for Communications, Ministry of Communications. Government of Fiji and was entitled 'Developing Governance Frameworks in the Pacific – 'A Status Report on Fiji'. He outlined the process that was being followed by the Government of Fiji in developing a contemporary sector governance framework including the drafting on-going review of new telecommunications legislation. He also identified

some of the challenges ahead in the process. His presentation provided a good example for other country participants in terms of recognizing the need for a long term view in terms of both policy and legislative developments.

Session 4 was for the purpose of setting up the Groups for discussion and presparation of a presentation – Green Group: Fiji, PNG, Tonga, and Vanuatu; : Blue Group: FSM, Marshalls, Samoa and Kiribati and the Red Group: Cook Isl., Niue and Tuvalu. The topics assigned to each group were as follows: Green Group – 'Plans to Implement the WSIS Declaration and Action Plan'; Blue Group – The Mechanics of the Policy Development Process'; and Red Group – 'What is Affordability'.

In ***Session 5*** Mr. Halvor Sannaes of Total Research, Teligen Limited, made a presentation entitled 'Price-Benchmarking in the Pacific' Mr. Sannaes provided an overview of his analysis of the prices in some eleven Pacific island countries based on the data submitted by the operators. He described the model used in the analysis and explained how the Pacific calling patterns differed from those in the OECD countries. He also explained the development of a common measurement for comparing the output which was the US dollar adjusted for purchasing power differences. He then presented the results of the study and also compared the current results with those from last years study. He went on to explain in more detail some significant overall findings – international call charges are generally very high, line rentals tend to be lower than average for many countries and there were large variations between countries. He also presented a comparison of the Pacific baskets with those from other countries and noted the similarities and differences. He provided an example of a developing country, Romania, and a project to examine the prices and calling patterns for the purpose of 're-balancing' the prices. Mr Sannes then turned to the comparison of mobile prices in the Pacific and observed that the 'thresh hold' price appeared to be somewhat higher than in other regions. In concluding, he referred to a new mobile pricing option that is becoming popular with operators that is basically a 'post-paid' package with a 'pre-paid' appearance.

Session 6 consisted of two presentations. The first by Mr. Tony Muller entitled 'Developing Governance Frameworks in the Pacific – 'A Status Report – Marshall Islands' provided an overview of the progress of policy and legislative development in the Marshall Islands. Mr. Muller reviewed the steps in the policy development process and also the activities planned for the next stage. He provided the participants with another good example of what is achievable and how to go about the process of developing and process a policy paper.

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'Overview of Fixed and Mobile Prices, Total Basket Costs and the Impact of Rebalancing on Overall Consumer Costs' Halvor Sannaes, Total Research, Teligen Ltd, Director Tariff Services

Session Seven

'Report on Liberalisation in Tonga (Mr. Alfred Soakai,

Senior Communications Counsel, Department of Communications, Prime Ministers Office, Government of Tonga)

Developing Governance Frameworks in the Pacific – 'A Status Report – Papua New Guinea' (Mr. Kila Gulo Vui, Director of Regulatory & External Affairs, PANGTEL

Panel Discussion – Operator, Governments, Regulators – **'A Pacific Regulatory Association – Cooperative Support & Sharing Limited Resources'**

was to provide the participants with a basic legal background as determined by Pacific Island Constitutional structures. Professor Angelo compared the legal structure to that of a tree with the roots and trunk being the constitution of each country and the branches and leaves being the specific sector laws and regulations.
The second presentation in *Session 1* was by Professor Lewis Evans and he provided a background on the theory and economic principles of public utility regulation as well as an overview of the changes in the telecommunications governance framework in New Zealand. Professor Evans concluded that the optimal level and structure for regulation of an industry such as telecommunications was a combination of static (price and profit caps) and dynamic efficiency (incentives to invest). He also submitted that the regulation of access prices should be carefully considered.

Session 2 consisted of a presentation entitled *'Implementing the Public Interest in Utilities'* by Mr. Brian Johns from the New Zealand Government's Ministry of Economic Development. He indicated that the key issues for policy makers and regulators were as follows: Network Technology Issues, Universal Service, Investment Incentives, Competition, Regulatory Environment and Consumer Interests. With respect to the issue of universal access, he submitted that there are three factors to consider, namely, the stage of network development, a government's social and economic goals, and a universal service funding mechanism. While each of these are underlying factors in the development of a universal access policy, he also suggested that the rapid expansion of wireless access technologies may require a re-consideration of the historic approach which was based on wired access. On the matter of consumer interests, he indicated that they generally could be classified into three categories - privacy issues, fair trading, and consumer guarantees.

Session 3 included the presentation by Mr. Douglas Webb, Telecommunications Commissioner, New Zealand Commerce Commission and was entitled 'The New Zealand Telecommunications Regime Experience'. Mr. Webb covered the following topics in his address; The New Zealand telecommunications market, the history of regulation, elements of the New Zealand model, the access regime, universal service and unbundling. With respect to the historical development of telecommunications

regulation in New Zealand, he indicated that a 'sector-specific' regulatory model was adopted in December 2001 following a Ministerial Inquiry that concluded the reliance on light-handed regulation was found to be inadequate in ensuring effective competition emerged in the sector. The inquiry indicated that a reliance on the courts, arbitration or self-regulation resulted in significant delays in settling disputes and undue costs. As a result, there was an absence of a clear access framework for interconnecting networks as well as a cost-based pricing structure for bottleneck elements. Mr. Webb provided an overview of the structure of the regulator and described how the telecommunications commissioner is a member of the Commerce Commission but has a dedicated staff and budget that is funded from industry levies and cost recovery. He also indicated that there is 'regulatory autonomy' and that the key objective for the regulator is to promote competition for the long-term benefit of the end-users.

During ***Session 4***, Mr David Boles de Boer, a research principal at the New Zealand Institute for the Study of Competition and Regulation, addressed the topic of 'Regulating Telecommunications in Small Economies'. He drew from the example of the Maldives which is an island state in the Indian Ocean with a population of some 275,000 and some 1190 islands in 26 atolls, however, only 200 islands are populated. He indicated that the government published a telecommunications policy paper in August 2001 after conducting various analysis sponsored by the ADB and the ITU in such areas as internet development, pricing and benchmarking as well as profitability and service availability. The policy objectives were described as follows – provide standard telephone services and charges to all populated islands (USO); implement cost based pricing; expand mobile and internet to all inhabited islands; reduce cost of internet; reduce reliance on satellite; empower regulator; enable new entrants. Mr. De Boer also reviewed the process of regulatory reform in the Maldives indicating that new legislation had been prepared and that a new legal and regulatory structure was in place and ready for implementation. In addition, the Government has indicated that they intend to liberalise some market segments and issue additional licenses for the provision of Internet and mobile service. In closing Mr. De Boer briefly reviewed other initiatives being undertaken in the Maldives such as an economic analysis of the operator as well as a costing and price model analysis. He also indicated that the operator had agreed to some voluntary price reductions for international calls, Internet service and mobile services.

Session 5 included two presentations, the first by Mr. David Boles de Boer and the second by Bronwyn Howell, Research Principal, Institute for the Study of Competition and Regulation in New Zealand. Mr. de Boer's presentation traced the historical development of Telecom New Zealand from a department within the Post Office to a fully privatized company. He indicated that prior to 1987 that telecommunication services in New Zealand were provided by the government and managed through the Post Office. From 1987 to 1990, services were provided by a separate state-owned company and from 1990 onwards to the present such services were provided both by a privatized entity which operated in competitive markets. Mr. De Boer made an interesting observation on the regulatory framework when he referred to the state-owned entity prior to 1987 as being 'fully regulated' by virtue of its government ownership. He described the operating company during this time as having poor lines of accountability and also making decisions for substantially

political reasons. Following privatizing in 1990, revenues grew substantially from some 2.5B NZ$ to some 5.5B by 2001 and profitability also increased from about 1991 to 1998 and then showed declines with a loss in 2002 but a return to profitability in 2003. As to be expected, the share price of the private entity tracked the profit performance and like many other telecom entities in recent years reflect declines in market values.

The second presentation in Session 5 by Bronwyn Howell was entitled 'The Performance of the New Zealand Telecommunications Market in Perspective'. The presenter provided an overview of the trends in the New Zealand telecommunications market and identified three underlying factors – declining infrastructure costs, competition between technology platforms and the emergence of the 'information economy'. In addition, he reviewed the major trends in prices both within the group of OECD countries as well as those in New Zealand. In the OECD countries, prices for fixed residential service have increased by approximately 20% over the period from 1991 to 2000 whereas usage prices have declined by approximately 40% over the same period. The prices for business services show a similar trend with both the overall (fixed and usage) baskets for business and residential declining on average approximately 20 to 30 percent over the ten-year period. Price trends in New Zealand also reflect declining trends with the basket of residential service (rental, installation and usage combined) declining some 35% between 1991 and 2001 with higher declines for residential long distance and lower declines for rental and installation prices. The presenter also submitted that the market for fixed and mobile services both the new connection and usage markets were reaching maturity, this assumption was supported by referring to the static trend in voice minutes with a decline in fixed minutes and a slight increase in mobile minutes with some indication of a substitution effect of mobile voice for fixed. While there continues to be a growth in internet minutes on the PSTN due to the large use of dial-up access, the growth of DSL or direct broadband access to the Internet did not reflect high growth and comparing New Zealand's DSL growth with other countries shoed that it had a very low level of broadband penetration compared to countries such as South Korea and Canada.

Session 6 was the first session involving the regulated firms and the initial presentation was by Ms. Debra Blackett, Assistant General Counsel, Competition and Regulation, Telecom New Zealand. Her presentation was entitled 'Telecom's Experience of the New Zealand Regulatory Regime'. Based on the requirements of the Telecommunications Act of 2001, Ms. Blackett provided an overview of the best and the worst of the NZ Telecommunications Act. She indicated that the absence of a review process was a serious shortcoming as well as the tight timeframes specified for dealing with complex issues. She did recognize that the Act was based on a sound framework, however, submitted that it was 'polluted' at a detailed level due to economic ideology. Ms Blackett recognized both the best and worst aspects of the 2000 Act refrring to Section 65 and its 'fluidity' while also submitting that it was expensive and distracting for the firm was well as having a 'chilling' effect on innovation. She also submitted that it was both 'litigious' and increased the complexity of negotiations.

Ms Balckett also identified some 'principles' of good regulation such as the regulator being aware of all the costs (of regulation) and also that the regulator should keep a

clear view of the regulatory risk and not take a 'positional' stance. In addition, she submitted that the regulator should learn about the industry from the industry and most important the regulator should be both 'moderate', 'predictable' and 'consistent'.

Session 7 consisted of three presentations from 'new entrants' to the NZ market. Mr. Roger Ellis represented Vodafone NZ Limited and emphasized the need for fair and equitable interconnection between operators and the importance of an effective and efficient regulatory framework. Similarly, Mr Smith of 'Woosh Wireless' and Ms. Rosemary Howard of Telstra Clear, a wire entrant, also emphasized the need for a sound regulatory framework to ensure effective competition in the various market segments. In addition, a presentation from the consumers' perspective was made by Mr. Ernie Newman, Chief Executive of the Telecommunications Users' Association of New Zealand. Mr. Newman highlighted the fact that the entire regulatory process was for the purpose of improving services and choice for the consumer and thereby should be strongly supported by governments as well as industry service providers.

Session 8 was configured for small group sessions with the participating countries being divided into three groups. The groups were as follows; Red Group – Mr. Feao Vakata (Tonga), Mr. Noel Molvis (Vanuatu), and Mr. Kila Gulo Vui (Papua New Guinea); Blue Group – Josua Turaganivalu (Fiji); Taom Kaitara (Kiribati), Jolden Johnnyboy (FSM) and Carthney Laukon (RMI) and the Green Group - Mr. Papehia Aviu (Cook Islands), Mr. Tutuli J. Heka (Niue), Ms. Tima Leavaiseeta (Ms. Tima Leavaiseeta), and Mr. Samuelu Laloniu (Tuvalu).

Sessions 9 and 10 were set aside for the presentations by the Red and Blue Groups addressed the matter of implementing the WSIS Declaration and Action Plan in the Pacific Island countries. The Groups identified some of the key actions necessary for ensuring the WSIS Action Plan was effectively implemented.

Sessions 11 and 12 were utilized to provide one-on-one country consultations for those countries requiring further assistance in developing their draft policy papers or draft legislation.

3. Conclusions

The Workshop activities and outputs provided a sound basis for the further development of relevant sector policy and practical regulatory frameworks. The country representatives making presentations on the implementation of the WSIS Action Plan demonstrated that the skills and insights required to integrate the WSIS Action Plan with other national planning process was available from within the respective national Governments participating in the Governance Project.

However, as previous noted, the responsibility for enacting national policy rests with the relevant national Minister and their respective Cabinets and Legislature. By developing relevant policy recommendations and embracing a public review process, the adoption of sound public policy for the telecommunication sector is achievable. What frequently is absent is sufficient political will to complete the process.

4. Recommendations

a) The development and implementation of national telecommunications sector policies needs to be integrated with an overall national ICT policy in order to ensure that national governments in the Pacific Islands are prepared to effectively respond to the WSIS Action Plan.

b) The national telecommunications policy process identifying responsibility and accountability for such an undertaking should be a matter addressed in telecommunication legislation to ensure the legality of the results and its relevance to the regulatory framework.

5. Acknowledgements

The participants of the Workshop and the ITU/BDT are indebted to the University of Victoria in Wellington, New Zealand for hosting the workshop. In particular to Professor Tony Angelo and Professor Lewis Evans for organising the venue and the speakers.

Report on Pacific Governance – December 2003 Workshop

Attachment 3: Draft Paper by Professor Anthony Angelo, University of Victoria, Law School, Wellington NZ

PACIFIC TELECOMMUNICATIONS (draft December 2003)

Tony Angelo

I INTRODUCTION

This paper considers the present legal structures for telecommunication operations in most of the English Law countries of the South Pacific. It indicates the degree to which the international models have been followed in the South Pacific or the degree to which those models may be suitable to the low population densities, low income economies, and large distances involved in South Pacific telecommunications. The survey also indicates the extent to which each of the systems allows for business competition, the manner in which universal service policies are dealt with, and the relation of those responsible for policy development to the service providers and regulators.

The legislation here surveyed is the latest that is available in New Zealand.[1] This survey provides a first step to the identification of the structures, and that in itself may stimulate reform. This survey complements the earlier report by Bill Withers which provided the operational data for the South Pacific countries,[2] and the Forum report.[3]

II OVERVIEW OF SOUTH PACIFIC DEVELOPMENT

South Pacific telecommunications systems began as government controlled regimes. Domestic telecommunications were part of the postal services department and international services were often provided by a foreign company such as Cable and Wireless. The provision of telecommunications responded to government priorities, and the rules relating to a matter of public utility were largely irrelevant given that the operation was in the truest sense a public one.

In recent times, the progression has been toward corporatising and ultimately to privatising, telecommunications operations. This is typically promoted on the basis of efficiency and encouraged by the fact that telecommunications was, in most cases, a government operation which earned rather than cost money. It was, in a commercial sense, a prime candidate for privatisation. Money-earning capacity was, however, also a good political reason for not corporatising or at least a good reason for retention of government control.

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[1] Even if the legislation is the latest available, its manner of operation is not always known. The statements made here are believed correct at November 2003. Information on new laws and practices would be much appreciated.

[2] W Withers *Telecommunications Sector Governance: South Pacific Cases* (ITU, Bangkok, 1997) 10.

[3] South Pacific Forum Secretariat *Feasibility of a Regional Co-operative Approach for Information Communications Regulation* (March 1999).

The South Pacific has aspired to follow international patterns. The corporatisation step has been taken in a number of cases, but after that step not much else has followed in the way of the privatisation and liberalisation that is observed in many parts of the world.

In the corporatisation progression the first step was usually simply to corporatise the government department, which meant that there would be continuing government control and ultimately government liability. However, there would be separate accounting and at least an effort to provide a corporate shield and some distance between the telecommunications operation and central government. That first step gave the operation a separate legal identity. The next step would typically be to make the corporation a commercial entity. This would separate it from government but might still leave it under ministerial control or as a company with 100% government shareholding. The final step in the progression is to sell some or all of the shares in that commercial entity.

With corporatisation (at any of the stages) there is often the double requirement for the corporation to operate in accordance with commercial principles, and at the same time to have regard to the public interest. The greater the government control or interest in the corporation the easier it is to fulfil these requirements. In the case of a partially or fully privatised enterprise there is an inherent contradiction in these requirements. Private interest will give priority to commercial principles rather than the public interest. The owners of the corporation will take the view that the public interest is a matter for government, not private enterprise. To manage the double requirement successfully, without the input of public money to secure the public interest, requires a very good regulatory regime or a very good licensing regime or both.

A straight shift from a government operation to a private operation is likely to leave the public utility doctrine intact.[4] However the more elaborate the corporatisation arrangement or the legislative arrangement, the more likely it is that the public utility doctrine will be overridden by the specific legal requirements.[5]

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[4] The public utility doctrine arose from core services such as inn keeping, carriage of goods, and port services. The public utility duty to provide telecommunications services can be extrapolated from the common carrier's duty to provide a service for the delivery of letters or packages. The carrier was bound to provide the service unless there was some lawful excuse not to. The carrier had to ensure that the conditions the customer had to meet were not so burdensome as to discourage use of the service. Similarly, under the public utility doctrine, telecommunications services should be provided with few financial and practical barriers so the public can access them easily.

[5] Where public utilities are regulated by statutory means, the public utility doctrine at common law will often cease to apply because it is covered by statute. An example of this is *Mercury Energy v Electricity Corporation of New Zealand* [1994] 2 NZLR 385 (PC). The Electricity Corporation of New Zealand (ECNZ) was a state owned enterprise which had the principal objective of being a successful business, but which also had to exhibit a sense of social responsibility by having regard to the interests of the community in which it operated. It sold electricity to suppliers, of which Mercury was one. When ECNZ terminated its electricity supply contract with Mercury, Mercury argued that ECNZ had abused its position as the monopoly provider, and had ignored the public utility doctrine. The Privy Council found that where statute had expressly dealt with public utilities, the common law rule no longer applied.

The countries of the South Pacific show a great variety of legal structures for telecommunications. They range from full government control[6] to very limited government control.[7] Until recently two of the larger states in the region, Australia and New Zealand, provided different models for the smaller countries of the South Pacific. By and large the New Zealand system of weak regulation was not regarded by other countries as a viable model and has not been followed. That can be seen as an advantage because New Zealand now has a regulator following the more usual model.[8]

The survey of the Pacific legislation shows that, with the possible exception of Tokelau and Papua New Guinea, whatever the form taken of the service provider—a state corporation, a government department, or a commercial company with 100% or majority ownership by the Government—the Government controls the sector to a very substantial degree. Where the service provider is a publicly registered company, attention focuses on the extent to which there are non-government shareholdings or the extent to which it is possible under the law for there to be a complete privatisation of the industry. The hinted exceptions are Papua New Guinea and Tokelau. They relate in the case of Papua New Guinea to the independent regulator and in the case of Tokelau to the fact that, in legal terms, only new legislation action can control the operation of what is currently an independent national corporation.

III COUNTRY SURVEYS

The analysis that follows examines the legislation of the countries from a strict legal rather than operational viewpoint. Current operations may not follow the law exactly; and in some cases there are ambiguities in the law that make categorical statements about the legal situation unwise.

"Monopoly" relates to the legislative protection of a provider or service. If, for instance, the law states that a body is the "sole provider" of telecommunications, the Table records that as a monopoly position. If there is no such provision, there is no monopoly—even if a monopoly exists in the market as a result of an exclusive contract or licence clause.

The law shows that fewer than half the countries surveyed here have a monopoly. The regulators report that there is a monopoly in practice in most cases. Why this difference? If the law provides for a "sole provider", the operation of other providers is illegal. Only Parliament could change the situation.

If there is no monopoly in the legislation, one could be created by exclusive licence or by contract between the Government and the service provider. In that situation, others could provide, but then the person with the licence or contract could sue the Government for breach of a licence condition or breach of contract. A claim for

[6] For example, Niue and Norfolk Island.
[7] For example, Vanuatu and Tokelau.
[8] Telecommunications Act 2001 (NZ). Sections 9 and 10 provide for a commissioner to regulate the industry. The Telecommunications Act also refers to the Commerce Act 1986 (NZ), and states that the Telecommunications Commissioner will have all the powers to regulate and monitor normally exercised by the Commerce Commissioner.

breach of contract will probably be more expensive, political, and private. Settling a breach of licence claim may cost less, be more open, and be more likely to get to the courts.

The message for Governments and regulators is not to provide contractual monopolies. Service providers, on the other hand, will seek favourable terms by contract. It is important therefore to have clear laws in place, especially concerning licence conditions. Ultimately this should assist the Government, the regulator, and the service provider by removing political elements a little more from the scene.

The reference to "regulator" concerns licensing, tariff controls, and interconnection matters. If the legislation specifically designates a body with responsibility for one or more of these matters, the Table indicates who that body is.

Most countries report having a regulator but there are considerable differences as to who the regulator is. There are four main possibilities, and in order they suggest a more transparent and less political form of regulation:

1. A reference to "the government", "Cabinet", or "the Minister" suggests a political regulator.

2. "The Ministry", "the Secretary for …", or a department suggests administration within government.

3. "The Minister, by regulation" indicates a legislative method.

4. A reference to an independent commission suggests administration of a non-governmental kind.

Similarly, whether a universal service obligation of any sort exists depends on whether it is specified in law.

The "Policy in the law" column in the Table indicates whether there is any reference to policy in the law, or a declaration of policy. In no country is the statement strong.

Cook Islands

The basic legislation for telecommunications in the Cook Islands is the Telecommunications Act 1989. Under that statute, Telecom Cook Islands Limited, a company incorporated under the Companies Act of the Cook Islands, became responsible in 1991 for all of the Cook Islands telecommunications.[9] The company is a commercial company with limited liability. It does, however, have significant statutory protections and duties under the Telecommunications Act. In many respects therefore it has features of a statutory corporation. By law the company does not have a monopoly over telecommunications operations, however, it does have a monopoly

[9] Since 1991, telecommunications have been split between CITA, the Cook Islands Government enterprise which owns the infrastructure, and TCI, which deals with services and administration. TCI is 60% owned by Telecom New Zealand and 40% owned by the Cook Islands Government.

in respect of networks, and no person may maintain a telecommunication operation otherwise than in accordance with an agreement with the company.[10]

There is no regulator and no specific provision for universal service. The principal objective of the company is to operate as a successful business and it is required by statute to be as "profitable and efficient as comparable businesses".[11] However it is also to be "an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so".[12] Section 25 of the Act states, under the marginal note "Non-commercial activities", that where the government wishes goods or services to be provided then the government and the company shall enter into an agreement under which the government will pay in whole or part for those goods or services. It is also provided in section 25 that where the company and the Government cannot agree, then the Government may proceed independently of the company to provide those goods or services. The Cook Islands legislation is interesting in that there is a specific prohibition which makes it an offence for any person to promote or facilitate a call-back service in the Cook Islands or to use a telephone in the Cook Islands for the purposes of a call-back service.[13]

Spectrum management is a matter for the Minister under the Telecommunications Act. Broadcasting is dealt with separately under the Broadcasting Act 1989.

The maintenance of the radio frequency register is the responsibility of the Chief Executive Officer of Telecom Cook Islands Limited under the Radio Regulations 1993.

Federated States of Micronesia

Two Acts are relevant. They are the FSM Telecommunications Corporation Act 1981 and the FSM Radio Communication Act 1991.

The Corporation is a public body with a monopoly in relation to domestic and international telecommunications services.

There is a universal service obligation.

Regulation of the spectrum is under government departmental control. The technical data is provided by regulations made under authority of the Radio Communication Act 1991.

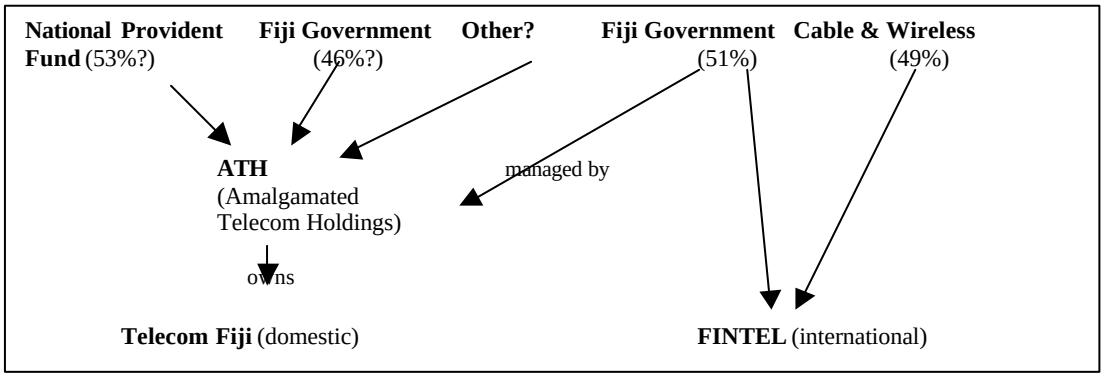
Fiji

The telecommunications system for the Republic of the Fiji Islands is provided in the Post and Telecommunications Decree 1989. This legislation provides for the administration of the sector. There are no monopoly provisions and the power of regulation is with the Minister. In other words, regulation is a matter for the relevant government department. The service providers, however, are commercial companies

[10] Telecommunications Act 1989, s 4 (CI).
[11] Telecommunications Act 1989, s 24 (1)(a) (CI).
[12] Telecommunications Act 1989, s 24(6) (CI).
[13] Telecommunications Act 1989, s 41(h) (CI).

dealing respectively with domestic telecommunications services and international services. There is a Government owned holding company that ultimately has control over two other companies.[14] The Minister as regulator is required to perform the duties under the Act in the manner "best calculated to secure that there are provided throughout Fiji, … so far as the provision thereof is impracticable or not reasonably practicable, such telecommunication services as satisfy all reasonable demands for them".[15] The Minister should also "promote the interests of consumers, purchasers and other users in Fiji in respect of the prices charged for, and equality and variety of, telecommunication services provided in Fiji".[16] The Minister has significant power in terms of the licensing of telecommunications services. The sector is also subject to the general laws relating to competition.[17] Spectrum management is by the Minister under the same Post and Telecommunication Decree. Broadcasting is dealt with by separate legislation.

Fiji Telecommunications



Kiribati

The relevant legislation in Kiribati is the Telecommunications Act and the Radio Communication Regulations 1999. The Secretary for Communications of the Government is the regulator for telecommunications. The legislation indicates this role of the Secretary but provides little or no detail as to the manner in which the powers should be exercised. The legislation makes it clear that there is no limit on the number of licences that may be given for the provision of telecommunication services.[18] The reality, however, is that there is likely to be a monopoly because the telecommunications infrastructure is owned by the Government through a limited liability commercial company (TKL) and the service provider is also a 100% Government owned commercial company (TSKL) with limited liability. The legal structure is therefore a very open and flexible one. The Kiribati circumstance is that this is a totally owned Government operation and the prospect of there being other participants in the sector is unlikely. More likely is that the government might sell

[14] FINTEL is the international telecommunications provider, owned by the Fiji Government and Cable and Wireless (*Islands Business* (Jan 2003) 41). Telecom Fiji, which deals with domestic services, is held by a parent company, Amalgamated Telecom Holdings (ATH) (*Islands Business* (August 2003) 45).
[15] Post and Telecommunications Decree 1989, s 4(1) (Fiji).
[16] Post and Telecommunications Decree 1989, s 4(2)(a) (Fiji).
[17] Commerce Act 1998, ss 3, 9 (Fiji).
[18] Telecommunications Act 1983, s 4(1) (Kiribati).

shares in one or both of its companies. Until recently Telstra was a joint shareholder in the service provider company.

Spectrum management is by the Secretary for Communications and the relevant ministry under the Radio Communication Regulations 1999. This was delegated to the operating company TSKL.

Broadcasting is dealt with in the Broadcasting and Publications Authority Act. There is no provision in the current legislation in respect of universal service requirements.

Marshall Islands

The Marshall Islands National Telecommunications Authority Act of 1990 established the Marshall Islands National Telecommunications Authority. The Authority is a statutory corporation which is governed by the Associations Law to the extent that that law is not inconsistent with the Marshall Islands National Telecommunications Authority Act. The corporation is a government owned and controlled body but there is capacity in the Act for the Authority to be privatised by the sale of shares. Initially ownership was restricted to citizens of the Marshall Islands but the privatisation provisions have recently been liberalised.[19]

The government may authorise others to engage in delivery of telecommunications services but any such grant by the government may not permit the operation of a public switch system nor adversely affect the financial ability of the Authority to serve the outer islands.[20] The Authority has substantial control over the provision of domestic and international telecommunications services. The Act sets and collects rates and charges for the provision of telecommunications services, however, there is a limit to the amounts that may be levied and further the rates are subject to the controls in the Marshall Islands Administrative Procedure Act 1979. Effectively therefore the government is the regulator.

The Authority is "to perform in a manner that will best meet the social, economic and political needs of the people of the Republic for telecommunications service and to do so as efficiently and economically as practicable; to the extent that it is reasonable and practicable, to provide telecommunications services to the widest practical number of users".[21]

Broadcasting and spectrum management are dealt with under the Broadcasting Act.

Nauru

The Telecommunications Act 2002 provided for the transfer of telecommunications facilities and responsibilities from the government department previously responsible to a statutory corporation called Rontel. This is a state controlled corporation which prima facie has a monopoly in respect of telecommunications systems and services.[22]

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[19] Marshall Islands National Telecommunications Authority (Amendment) Act 2001, §2(B), which widens §112(4)(b) and (c) and allows foreign investment of up to 25%.
[20] Marshall Islands National Telecommunications Authority Act 1990, §107 (d)(i), §107 (d)(ii).
[21] Marshall Islands National Telecommunications Authority Act 1990, §105(a).
[22] Telecommunications Act 2002, s 8 (Nauru).

It is clear, however, that Rontel may also licence other service providers.[23] The explanatory note to the law suggests that those other service providers would be in the mobile and internet service business, but the Act itself does not make that distinction.

Rontel has a policy advisory function to the government. The policy development responsibility is, however, with the minister and cabinet.

There is little in the Act about policy or consumer protection. Section 2(b) states that Rontel shall operate "as a profitable, customer-oriented, market-driven business, accessible to the public at an affordable cost". Rontel will control consumer rates and charges.[24] By section 24, 40% of any operating surplus of the corporation shall be devoted to development and capital works.

Rontel has licensing duties, allocates frequencies, and, implicitly, can deal with interconnection questions.[25]

Niue

In June 1989, Niue repealed the Post Office Act 1959 of New Zealand which applied in Niue and which dealt with both postal and telecommunications matters. That Act was replaced by the Communications Act 1989; at the same time the Broadcasting Act 1989 was enacted.

Part I of the Communications Act 1989 deals with telecommunications and Part II deals with postal services. No regulations have been made under this Act, although there is power for the Cabinet to do so to provide for the charges that may be made for government services, the fees for licences and also "the conditions upon which any private telecommunications service may be connected to the Niue telephone system".[26] The private telecommunications service licence is defined as one which "authorises the licensee to operate a service, the primary purpose of which is the transmission of sound or visual images, or both, and the direct reception of those sound or visual images, or both, by persons within a specified group of persons (other than the general public)".[27] Who would qualify as "a specified group of persons" is not clear. Conceivably it could be a group of persons identified by the fact of their subscription to a separate communications service. In that case the licensing provision would relate to the interconnection of competing telephone services within Niue.

The only regulations that exist in the field are the Niue Telephone Regulations 1968[28] and the Niue Radio Regulations 1972.[29] Both of these regulations (made in New Zealand before the date of Niue self-government) are reasonably extensive. Neither has been amended but both require significant updating to take account of the constitutional changes and commercial changes that have taken place in Niue since self-government in 1974. These regulations were made under the Niue Act 1966.

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[23] See Telecommunications Act 2002, ss 29, 30, 34 (Nauru).
[24] Telecommunications Act 2002, s 9(e) (Nauru).
[25] Telecommunications Act 2002, s 34 (Nauru).
[26] Communications Act 1989, s 18(f) (Niue).
[27] Communications Act 1989, s 7 (Niue).
[28] Niue Telephone Regulations 1968 (SR 1972/128) (Niue).
[29] Niue Radio Regulations 1968 (SR 1968/25) (Niue).

The general situation in Niue is that telecommunications is under the day-to-day control of the Director of the telecommunications department of the government and that there is a substantial role for the Cabinet in respect of licensing, policy direction and the making of administrative regulations. Telecommunications in Niue is therefore a statutorily regulated activity under the control of a public servant and, in the absence of specific current provision for interconnection, there is a government monopoly in the field of telecommunications.

There is no explicit provision for universal service other than the requirement that there be "a reliable and efficient telephone service at a reasonable cost".[30] This is not a major issue for Niue. Because telecommunications is still a government operation and because there is a single small island, the usual burdens of a universal service obligation (whether of a widely distributed population or significant geographical problems) do not exist.

The Broadcasting Act provides for radio and television services in Niue and this is controlled by the Broadcasting Corporation of Niue which is a government controlled corporation "with ultimate accountability of the broadcasting system to the Niue Assembly through the Minister and Cabinet". Access to the spectrum is dealt with under the Communications Act and by the Radio Regulations 1972.

The Communications (Amendment) Act 2000 made provision for ownership and management of Niue's Top Level Domain (TLD), or .nu. It adds Part IIA to the 1989 Act, and allows government control of the resource. Cabinet has the responsibility to facilitate the development of the domain name, control and supervise the information that appears under it, and manage it consistently with Niue's public policy, community matters and interests.[31] A committee (NITC) manages and monitors the TLD,[32] and electronic address matters can be handled by a specially appointed manager, who may be given directions by Cabinet for the purpose.[33]

Norfolk Island

Norfolk Island is a territory of Australia with a substantial degree of legislative autonomy. It has a Telecommunications Act of 1992. This Act mainly deals with administration of the telecommunications sector. Telecommunications is a government monopoly. Norfolk Island therefore has a system which substantially maintains the traditional approach of a government telecommunications department.

Papua New Guinea

The Telecommunications Act 1996 of Papua New Guinea established an independent regulator for the control of the radio spectrum and the provision of telecommunications. The provider of telecommunication services is a commercial company. There is no monopoly and there were, until 2002, substantial universal service requirements in Part XV of the Telecommunications Act under the heading Rural Development Obligations. A more limited provision was introduced by the

[30] Communications Act 1989, s 2(d) (Niue).
[31] Communications (Amendment) Act 2000, s 30B (Niue).
[32] Communications (Amendment) Act 2000, s 30C (Niue).
[33] Communications (Amendment) Act 2000, s 30 D (Niue).

Telecommunication Industry Act 2002.[34] It amends the general service imperative of the 1996 legislation and states that the Act aims to ensure "that the standard telephone service is supplied as efficiently and economically as practicable; and is supplied commercially at performance standards that meet the social, industrial and commercial needs of the Papua New Guinea community".[35] Telecommunications are regulated by the Independent Consumer and Competition Commission[36] which is the principal regulatory agency for all matters in the new Act except technical regulation where PANGTEL is the principal regulatory agency.[37] PANGTEL and the Commission should work together in carrying out concurrent functions, however, the Commission's view prevails in cases of disagreement. The Commission is the principal regulator, and has a contract with the telecommunications industry, and has duties which include consultation with PANGTEL, ensuring that the Act is implemented with due regard to the public interest,[38] and monitoring and assisting to resolve access disputes.[39]

The radio spectrum is managed by the regulator under the Radio Spectrum Act 1996. Broadcasting is dealt with by separate legislation. The pattern of the Papua New Guinea legislation is reminiscent of that of Australia.

Samoa

The Postal and Telecommunications Services Act 1999 of Samoa established a Ministry of Posts and Telecommunication with overall power to administer the communications legislation and for the development of an efficient and commercially viable telecommunications policy for Samoa. The Act envisaged, but did not prescribe, that a body corporate would have an exclusive licence to provide postal and telecommunications services in Samoa.[40] It was also envisaged that that provider might by incorporated under the Companies Act and further that assets previously owned by the Post Office of Samoa would be transferred to the licensed provider.

Other relevant statutes, in addition to the basic Post and Telecommunications Act, are the Public Bodies Performance and Accounting Act, the Public Finance Act, and the Companies Act. All these statutes are of recent date.[41]

The corporation is 100% government owned. The shareholding ministers are the Ministers of Finance and the Minister responsible for telecommunication. The board of directors includes the CEO, the Attorney-General, the Financial Secretary and three others appointed by Cabinet. The Minister responsible for telecommunications (currently the Prime Minister) chairs the board.

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[34] Telecommunications Act 1996, s 2(a)(i) (PNG).
[35] Telecommunications Bill 2002, 3(a) (PNG).
[36] Established under the Independent Consumer and Competition Commission Bill 2002 (PNG). The Bill is reported to have been passed without any changes.
[37] Telecommunications Bill 2002 19C and 19D(PNG).
[38] Telecommunications Bill 2002 19F(d) (PNG). The Commission has... the following functions... ensuring that this Act is implemented with due regard to the public interest".
[39] Telecommunications Bill 2002 19F(m) (PNG).
[40] Postal and Telecommunications Services Act 1999, ss 5, 6 (Samoa).
[41] The Companies Act is not yet in force. The telecommunications company is incorporated under the 1955 statute (which is still in force) and will be reregistered under the new Act when it comes into force.

The two minister shareholders are trustees for the state in their shareholding capacity. Privatisation of the company is envisaged as a distinct possibility. There is broad policy programme which will lead perhaps to the partial or total privatization of government interests in the commercial field.

There is no mention in the statute of universal service obligations though it is clear that these may be conditions of the licence granted to the service provider.

A separate company (with some government shareholding) is licensed to provide mobile phone services.

Broadcasting is dealt with as a separate matter.

Solomon Islands

The Solomon Islands situation is covered by the Telecommunications Ordinance 1971 which gives the licensing power to the Minister. There is also power by regulation to set fees and charges. There is no monopoly situation nor any universal service provision. If either Soltel or Solomon Telekom[42] (the national and international service providers respectively) have monopolies or duties these would be as conditions of their licence but not as matters dictated by the legislation. Since 1989 Solomon Telekom Company Limited has had express powers in respect of the fixed line under Part Three of the Telecommunications Act.

Spectrum management and broadcasting are dealt with by separate legislation.

Tokelau

In Tokelau the Telecommunications Tokelau Corporation (Teletok) took over the spectrum management and telecommunications services from the government in 1996. At that time, a stand-alone corporation was established by Tokelau law. The corporation reports to the national legislative body of Tokelau (General Fono), but is otherwise independent. It has by law a monopoly of the provision of telecommunications services, and there is no provision for a regulator.[43] To the extent that regulation is necessary that is in the hands of the Government of Tokelau. The Government can manage the matter by negotiation with the corporation, or alternatively the General Fono could amend the governing legislation.

In the performance of its duties the corporation is to have regard to matters of efficiency and economy and also to satisfy as far as practicable reasonable demands for telecommunication services in Tokelau.[44] It is also to have regard to "the provision of telecommunication services at reasonable prices consistent with efficient service and the necessity for maintaining independent financial viability".[45] The question could arise in Tokelau about the range of services available or about the cost. This is a

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[42] Solomon Telekom is a joint venture. It is owned by the Solomon Islands Provident Fund (51%), Cable and Wireless (41.9%) and the Investment Corporation of the Solomon Islands (7.1%) (*Islands Business* (January 2003) 42).

[43] Tokelau Telecommunication Rules 1996 (amended 1997, 1998), r 8(1)(i).

[44] Tokelau Telecommunication Rules 1996, r 8(2)(ii).

[45] Tokelau Telecommunication Rules 1996, r 8(2)(v).

matter ultimately for the Government of Tokelau to regulate. To date it has not done so. As in the case of Niue, the universal service obligation is somewhat less critical in Tokelau because of its size and because of the concentration of its small population in three villages.

Local FM radio services are operating in Tokelau. There is no specific legal provision for those services other than the requirement that the transmitters be licensed under the Post Office Regulations 1991 by Teletok.

Tonga

The Tonga Communications Act 2000 is an elaborate Act which provides for the establishment of Department of Communications under the control of the Minister responsible for communications. The role of the department is to act as the co-ordinating body in respect of telecommunications, broadcasting, radio-communications, and telegraph laws. The department is the licensing body responsible for tariffs, consumer protection and management. The department also has control over interconnection matters and has responsibilities in respect of consumer standards.

The Tonga Telecommunications Corporation was established under the Companies Act for the purposes of the Act and to take over and maintain the services purchased by the government from Cable and Wireless. The corporation is a commercial corporation which initially will have the government as its sole shareholder but there is provision in the Act for investor participation and also for members of the community to participate by way of purchase of shares.[46] The law describes the corporation as being in "the business of installing, owning, operating and developing infrastructure to provide communication services to meet the needs of the users in Tonga".[47] There is therefore no specific provision for universal service and there is no legislative monopoly.

Spectrum management and broadcasting are dealt with separately from telecommunications—generally in the Communications Act 2000 and specifically in the Radio Communication Act and in the Tonga Broadcasting Commission Act.

The universal service system is set out in sections 50, 51 and 52 of the Act which provide that a system may be developed to promote the widespread availability of services by licensees under the Act. Any such universal service system shall be approved by declaration of the Minister. The system relates to underserved areas of Tonga and to underserved groups within the community, the affordability of services, the equitable sharing of costs of services throughout the community and related matters. Under section 52 a licensee may be directed to comply with aspects of the universal service system.

The key element in the Tongan system is the Communications Act 2000. The establishment of the Tonga Communications Corporation under the Act is limited to

[46] Tonga Communications Corporation Act 2000. Sections 11 and 12 outline the participation scheme, and sections 13 and 14 outline the Tongan Participation Scheme which encourages and helps Tongans to become shareholders.

[47] Tonga Telecommunications Act 2000, s 4.

formal matters which relate that corporation and its future ownership structure to the general system envisaged by the Communications Act 2000.

Tuvalu

Tuvalu telecommunications are governed by a statutory corporation which is government controlled. That corporation has a monopoly in the supply of telecommunications services and in the development and establishment of the telecommunications system in Tuvalu.[48] It is required "to conduct its business as a business" and "in accordance with prudent commercial principles and … as far as possible ensure that its revenue is sufficient both to meet its expenditure properly chargeable to revenue and to derive a profit".[49] There is no regulator, but the Minister by way of regulations may provide for the fees to be paid for licences and for the fees to be paid for the supply of telephone services to consumers.

Spectrum management and broadcasting are not matters for the corporation. Both are dealt with independently.

Vanuatu

The case of Vanuatu is interesting. In the Telecommunications Act 1989 provision was made for a number of significant developments. The first of those was that the Act established a Telecommunications Authority which was a fully fledged regulator with powers in respect of interconnection, licensing, control of the spectrum, consumer protection, and monitoring of a universal service policy. The second significant aspect was that provision was made for the transfer of the assets and liabilities of the government telecommunications operation to a commercial company registered under the Companies legislation of Vanuatu.

In terms of internationally promoted ideals and models for best practice the legislation of Vanuatu was a Pacific leader in 1989. One restriction on competition in the Act was that there should be no more than one operator licence for public international telecommunications services and no more than one operator licence for public national telecommunications services issued at any time.[50] The licence itself would specify the period for the licence and the fee payable for the licence.

In 1993 a major amendment was made to the Telecommunications Act 1989, the result of which was that the provisions relating to the Telecommunications Authority were repealed, and, as a general pattern, its powers were vested in the Minister. The result is that the Minister responsible for telecommunications matters is now in control of licensing; the operators report to the Minister. The Minister is also in control of the spectrum.

The net result of the reforms of 1989 and 1993 is therefore that telecommunications has shifted from being a government activity to being a commercial sector enterprise[51] in respect of which the responsible Minister has substantial authority, having taken

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[48] Tuvalu Telecom Corporation Act 1993, s 6.
[49] Tuvalu Telecom Corporation Act 1993, s 24.
[50] Telecommunications (Amendment) Act 1993, s 16(6) (Vanuatu).
[51] Telecom Vanuatu is jointly owned by the Vanuatu Government (50%), and Cable and Wireless and France Telecom (50%) (*Islands Business* (December 2002) 41).

over the powers of the independent regulator which was set up in 1989 but disestablished in 1993.

Broadcasting is dealt with as a separate matter under the Broadcasting and Television Act 1992.

IV COMMENTARY

The Pacific has been as much affected by international telecommunication trends as elsewhere over the last decade or so. This is immediately apparent from the Table appended to this paper, which shows the date of the current enactments dealing with telecommunication. Most of the legislation is recent and aspires to international ideals or at least shows some influence of international trends. The titles of the statutes themselves tell part of the story. In only two of the 15 countries are postal services mentioned in the title and the word telephone has disappeared.

Some such as Papua New Guinea and Tokelau have moved dramatically from the old legislative models. In legal form they are least like the old post and telegraph departments of government.

Most of the countries have corporatised their telecommunication service delivery. Some have also privatised or provided for a privatisation option. In terms of telecommunication as a private enterprise operating in a competitive market the pattern shows extreme reluctance on the part of governments. In all but two or three of the countries the government controls telecommunications either because telecommunications still operates as a government department, or because government owns the commercial company that provides telecommunication services, or the government is a major shareholder of the company.

This fact of government control impacts on the question of whether or not the incumbent operator has a legislative monopoly. In most cases, as the Table shows, the law does not provide for a monopoly for any particular operator. The reality may nevertheless be that there is a monopoly. This could be because the law limits the number of licences available (as in Vanuatu) or because the incumbent has a monopoly on the network or, alternatively, by way of the licensing regime the incumbent may have an exclusive licence for a period (as in Samoa).

Only in Papua New Guinea was there for a short time an independent telecommunications regulator (until the passing of new legislation in 2002). Usually the government retains the regulatory function—it issues licences, it sets the standards, it sets or approves rates and where necessary it deals with interconnection issues. These powers are exercised administratively or in some cases by the making of regulations by the government. The ideal would be to have the standards set out in legislation and to the extent that they are not provided in statute, to have them in a set of regulations. In practice, in the Pacific countries most are governed by administrative decision because the statutory provisions are not detailed and appropriate regulations have not been made. Given the government control of the operator and the legal or actual monopoly of the operator, in most cases the fact that the regulator is also the government provides a fact situation (as distinct from a legal

situation) which is not markedly different from the days when telecommunications was a government departmental function.

Telecommunications services provided by government through a central government department merge all aspects of the industry, and therefore legislative controls are less meaningful. Legislative controls can in some cases be rendered meaningless by government action. For instance, if a wholly government owned service provider is sold to non-government owners either with a contractual monopoly or with an exclusive licence, there may cease to be a role for the regulator—the Government may by its transaction effectively create a monopoly situation.

To protect consumers, would-be competitors, and future governments, legislation should be in place to provide for universal service and oversight (for example, of prices) by a regulator. Such legislation should be in place and provide the background against which any contracts are made or licences issued.

The patterns of legal development, for instance, in Papua New Guinea and Vanuatu, suggest ambivalence of government towards the privatisation and sector specific management ideals. A result is that the corporate structure presents an appearance of an activity outside of direct government control. The result is that government accountability is reduced by the corporate structure, but official control through shareholding and management boards is undiminished. The move to corporatisation has not been matched by the other policy or structural changes that would be needed for the desired model to work, or by the development of independent regulatory systems. By abstracting the activities from general public service control and management, government has isolated and concentrated its power in the sector.

The accountability gap relates particularly to the public interest in oversight of public investment. The increasing autonomy of an agency means that ministerial responsibility to Parliament and the electorate decreases. Public servants are no longer responsible for delivery, and the Auditor-General may not be the auditor.

Telecommunications is a public utility. It is important that there be government oversight for that reason also. Ideally, declared policy would be in place before the corporatisation process begins, and a regulator in place at the time of corporatisation of the service provider. In that way, the regulator is part of the environment rather than a late addition to it.

It is desirable that a government, by statute or otherwise, commits itself to a universal service policy. This is more obviously needed when the government is not the service provider. However even in that case the legislation does not always show commitment to universal service policy. It might be argued that the more the government is involved in service delivery the less critical it is for there to be a service obligation. In most cases there is a declared government policy for the provision of basic services at reasonable cost through the whole country, but only in seven of the countries surveyed is such a view expressed in law. In countries with populations scattered over a wide area, universal service policy is of great significance. In a country with a compact population (eg Niue), the universal service has very different aspects from the situation in (eg Kiribati).

In most countries the setting of technical standards for equipment and services is regulated by the government.

In three of the countries, spectrum management is by the telecommunications service provider; in five of the countries spectrum management is by the regulator, and in the balance of countries by the government directly.

The legislative pattern of the countries surveyed follows the traditional division of telecommunications from broadcasting. The result is that telecommunications, radio public broadcasting, and television are typically dealt with as individual items. Any move towards convergence of administration or in legislation would not appear to present major difficulty. The focus in the public broadcasting and television regimes is on the public interest, and government interest in the content aspects of the operation rather than on technical matters. To have convergence at the technical regulatory level therefore would not present special difficulties other than the obtaining of the policy decisions at the political level.

As the reform activities of various of the Pacific states to accommodate the ever-changing nature of the international market, the continuing technical advances, and the Forum Secretariat report entitled the "The Feasibility of a Regional Co-operative Approach for Information Communications Regulations" of March 1999[52] show, the pressure is still on to find the appropriate structure for the demands of the international community as well as those of the particular national situation. The pressure is still on to liberalise and liberalisation is a generally accepted policy in the South Pacific. The declared goal is to distance government from the operation of telecommunications and to let the market operate subject to the limitations of pre-established standards which are supervised by a regulator which is independent both of the government and of the service providers. This is obviously going to be much easier in the larger economies such as Fiji, Papua New Guinea, and Samoa. Their development may be assisted by overseas patterns, the ITU models, or the establishment of some sort of regional standards. Additionally, it may be possible for assistance and guidance to be provided by a regulator that is already well established in the Pacific.

Nevertheless the realities are there too. In most countries the commercial market for telecommunications is limited either because of a small population or because of the low per capita income. Therefore in many, there is only a small commercial interest. That situation combined with nationalistic tendencies on the part of some governments limits liberalisation. For most of the states of the South Pacific a universal service policy creates huge technical and financial burdens. Human resources to provide for the industry are limited. Most countries may be able to provide the technical resources for the provision of good telecommunication services; few, if any, however are likely to be able to triplicate those resources by having skilled personnel in the service provider, skilled personnel in the regulator and people with the requisite technical knowledge within government to provide sound policy

[52] South Pacific Forum Secretariat *Feasibility of a Regional Co-operative Approach for Information Communications Regulation* (March 1999); KVA Consult and Global Empowerment Through Information Technology Pte Ltd.

advice. Development of the wireless technology can be a great boon to those with few and widely spread populations. Equally those wireless technology advances can be seen as something of a threat for a country with a major capital investment in fixed-line technology.

V CONCLUSION

It is clear that the future for most of the countries of the South Pacific will be more legislative reform. The goal will be to provide clearer rules, better administrative structures, and greater administrative transparency. There will be an endeavour to emulate international best practice in terms of the governance of the industry. For a wide range of local reasons however, the likelihood is that actual dominance by the government will remain. This dominance may be the reason for the general absence of clearly articulated national telecom policies, particularly as they relate to universal service policy and price setting criteria.

The passage of legislation in the South Pacific is generally slow. The parliaments do not deal with large volumes of legislation and history indicates that the governments generally do not promote a great deal of legislation. Any legislation therefore should be able to stand the test of time. If the current legislation has been in place for 15 years then it may be envisaged that the next legislation if it came immediately would have to remain in force for at least that length of time. With all the uncertainties of government, of technology and of best practices, it is difficult to be confident that a piece of legislation will meet both current and future needs with a degree of success. The answer probably is to build on the present structures and to provide a flexible regime which will allow adaptation to a range of differing governance situations over time without the need to refer the matter back to parliament for legislative intervention.

TABLE—PROVISION OF TELECOMMUNICATIONS—THE LEGAL STRUCTURES

Name	Date	Status of provider	Mono-poly	Regulator	Universal Service	Spectrum Management	Broadcasting	Policy in the law
ecommunications	1989	Company under Companies Act with statutory protection under Telecommunications Act (network)	No	No	"social responsibility"	Minister Register maintained by Telecom CI Ltd	Broadcasting Act 1989	No
t and ecommunications :ree	1989	Commercial companies - domestic - international	No	Minister for technical, Commission for commercial	Yes	Minister	Separate	Yes
M ecommunications poration Act	1981	Statutory corporation	Yes	Secretary for Transport and Communicatio ns	Yes, "to extent practible"	Secretary of department FSM Radio Communication Act 1991	Separate	Yes
ecommunications	1983	Commercial companies[100% govt] - network - service provider	No	Secretary for Communicatio ns	None	Radio-Communication Regulations 1999	Broadcasting and Publications Authority Act	No
rshall Islands ional ecommunications :hority Act	1990	Statutory corporation	No	Government	Yes	Separate	Separate	No
ecommunications	2002	Statutory corporation	Yes?	Yes?	"accessible to the public at an affordable cost" No ?	Corporation	Separate	Yes
nmunications	1989	Government Department	No	Cabinet by regulations	"reliable and efficient telephone service at a reasonable cost" + Niue Telephone Regs 1968	Director Telecom Niue Radio Regs 1972	Broadcasting Act 1989	Yes
ecommunications	1992	Government	Yes	No	None	Separate	Separate	-

Name	Date	Status of provider	Monopoly	Regulator	Universal Service	Spectrum Management	Broadcasting	
ecommunications [amended 2002]	1996	Commercial company [100% government]	No	Independent Consumer and Competition Commission Act 2002—Commission is regulator	Yes	PANGTEL is technical regulator	Separate	Y
tal and ecommunications vices Act	1999	Commercial company (100% govt) Mobile=non-govt	Yes	Ministry	Yes	Spectrum Management Agency	Broadcasting Act 1959	Y
ecommunications	1971	Commercial company	No	Minister	None	Telecommunications Regulations 1971	Broadcasting Act 1989	N

ɛelau ecommunications es	1996	Independent corporation	Yes	None	Duty of the Corporation	The Corporation—Tokelau Post Office Regs 1991	No legislation	N
ıga nmunications ɾporation Act	2000	Government corporation – Tonga Telecommunication Commission TONFON - private company (operates .to, provides telephone services, TV services)	No	Minister	Duty of licensee	Communications Act 2000 Radio Communication Act	Communications Act Tonga Broadcasting Commission Act	Y
ɣalu ecommunications ɾporation Act	1993	Statutory corporation —total government control	Yes	Minister by regulations	"operate as a business" revenue to meet expenditure and to derive a profit	? separate	? separate	N
ecommunications	1989	Commercial company	No, but statutory limit on licences: one national, one international	Minister	None	Minister	Broadcasting and Television Act 1992	N