

BILL NO. 41 OF 2020

A BILL

FOR AN ACT TO AMEND THE TELECOMMUNICATIONS ACT 2008

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Telecommunications (Amendment) (No. 2) Act 2020.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

(3) In this Act, the Telecommunications Act 2008 is referred to as the “Principal Act”.

Section 49 amended

2. Section 49(1) of the Principal Act is amended by deleting “, after consulting the licensees, the Minister responsible for provincial development and the members of the public in the subject area,”.

Section 50 amended

3. Section 50 of the Principal Act is amended by—

(a) in subsection (1)(a), deleting “pursuant to a tender for universal service funding”; and

(b) deleting subsection (4) and substituting the following—

“(4) When providing funding for the universal service scheme from the Fund, the Authority in consultation with the Ministry may—

- (a) for the purposes of constructing a universal service tower—
 - (i) assign a universal service area to a licensee to service based on the industry market share model; or
 - (ii) facilitate the construction for co-location and co-sharing by determining the person responsible for carrying out the construction by way of tender; or
 - (b) for the deployment of appropriate alternative technology other than constructing a universal service tower, call for tender.
- (5) An assignment made under subsection (4)(a)(i) must include—
- (a) the description of the universal service area to be served;
 - (b) the description of the service required including time limits;
 - (c) the maximum available funds for the project;
 - (d) disbursement of funds;
 - (e) information about licensing requirements for applicants requiring a licence under this Act;
 - (f) the universal service obligations to be undertaken; and
 - (g) any other matters that may be prescribed.
- (6) A tender made under subsection (4)(a)(ii) must include—
- (a) the description of the universal service tower;
 - (b) the operations and maintenance requirements;
 - (c) the location of the site where the universal service tower is to be constructed;
 - (d) the maximum available funds for the project;
 - (e) disbursement of funds; and
 - (f) any other matters that may be prescribed.
- (7) A tender made under subsection (4)(b) must include—
- (a) the description of the universal service area to be served;
 - (b) the description of the service required including time limits;
 - (c) the maximum available funds for the project;
 - (d) disbursement of funds;

- (e) information about licensing requirements for applicants requiring a licence under this Act;
- (f) the universal service obligations to be undertaken; and
- (g) any other matters that may be prescribed.

(8) The Minister may prescribe by regulations the procedure and criteria for an assignment or tender made under this section including matters for the administration of the Fund.”

Section 62 amended

4. Section 62(1)(d) of the Principal Act is amended by deleting “either as the outcome of a tender or based on substantial degree of market power”.

Section 82 amended

5. The Principal Act is amended by deleting section 82(1)(h).

TELECOMMUNICATIONS (AMENDMENT) (NO. 2) BILL 2020

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Telecommunications Act 2008 (**‘Act’**) provides for *inter alia* the regulation of the telecommunications industry in Fiji and sets out the framework for universal service. The concept of universal service deals with ensuring that information and communications technology is accessible to as many people as possible at affordable prices.
- 1.2 In Fiji, Division 4 of Part 3 of the Act (**‘Division 4’**) which consists of sections 47 to 53, provides the framework that deals with the concept of universal service. In summary, Division 4 provides the following:
- (a) establishes a universal service advisory committee whose core function is to advise the Telecommunications Authority of Fiji (**‘TAF’**) on matters relating to the universal service scheme (**‘USS’**), goals and implementation strategies;
 - (b) empowers TAF to devise an economically reasonable and technically feasible USS with the objective of enabling all Fijians, wherever they reside or carry on business, reasonable access on an equitable and affordable basis to telephone and internet services;
 - (c) empowers the Minister responsible for communications (**‘Minister’**) in consultation with the licensees, the Minister responsible for provincial development and the members of the public in the subject area to declare an area that has limited or no telecommunications service, a universal service area (**‘USA’**);
 - (d) provisions relating to universal service obligation (**‘USO’**);
 - (e) empowers TAF to levy charges for universal services; and
 - (f) establishes a trust fund called the universal service fund (**‘Fund’**) which may only be spent on the installation of networks, provision of services and operating costs in declared USAs.

- 1.3 The telecommunications sector has grown significantly since the introduction of the Act in 2008 whereby an estimated 9% of Fijians were using mobile internet. With an unprecedented programme of administrative reforms across Government, the deregulation of the telecommunications sector, the establishment of a modern and inclusive Fijian Constitution, the establishment of the national internet exchange point in 2017, substantial and consistent public investment in infrastructure such as connecting the two main islands in Fiji in July 2018 to the Southern Cross Fibre Cable Network (global network of submarine communications cable), public utilities, education, health and social inclusion, and a concerted effort to position Fiji as the hub of the Pacific have contributed to bridging the persistent digital divide in that now 95% of Fijians have access to mobile internet connectivity.
- 1.4 The Ministry of Communications (**‘Ministry’**) has been working very closely with relevant stakeholders through a series of consultations to progress work on expanding affordable connectivity to the unconnected regions and the promotion of sustainable business models.
- 1.5 One challenge identified from the consultations was that the multiple service operators would compete with each other to construct a service tower at the most desirable elevated site in the particular area. For those who were unsuccessful in obtaining the best site, this meant building a tower on the hillside which had a smaller coverage footprint or abandoning the site which meant fewer services being available to the residents on the site. Infrastructure sharing or co-location arrangements addresses this issue in that service operators share the same service tower but install separate antennas, cabinets and backhaul.
- 1.6 As highlighted above, infrastructure sharing or co-location arrangements have many benefits. Some of these benefits include:
- (a) ensuring efficient, non-duplication placement of infrastructure;
 - (b) reducing overall costs of all underground work;
 - (c) reducing construction waste with one universal service tower being built for a number of service providers as opposed to separate towers being built; and
 - (d) savings achieved can be redirected by licensees to improve network service and deploy more product offerings.
- 1.7 Therefore, in the Ministry’s effort to connect the remaining 5% of Fijians, over 300 sites nationwide have been identified as either unconnected or poorly connected (**‘proposed sites’**). These proposed sites form 4.2 percentage points of the 5% of unconnected Fijians.
- 1.8 In order to service these proposed sites under the current legal framework, Division 4 of the Act provides that the proposed sites need to be declared a USA before the Fund can be disbursed for servicing. But before the Minister

can declare those proposed sites a USA, section 49(1) of the Act provides that the Minister must first consult the licensees, the Ministry of Rural and Maritime Development and the members of the public in the given sites. This would mean up to over 300 consultation sessions for the proposed sites, many of which are located in maritime and remote areas.

- 1.9 Given this legal requirement for consultations, the process of declaring a USA would take a much longer time and would result in exorbitant consultation and travelling costs. This in turn would be a barrier to the Fijian Government's efforts to rapidly expand connectivity to all Fijians. Furthermore, affected Fijians at various Government *talanoa* sessions and through correspondences have requested for prompt connectivity access and to enjoy the suite of e-government services under the digitalFIJI programme.
- 1.10 In light of the above, it is proposed that section 49(1) of the Act be amended to remove the archaic and bureaucratic consultation process to not only save costs but to also expedite connectivity access. This will ensure that the servicing of the proposed sites, and any new site is prioritised which would increasingly help connect the already identified 4.2% of Fijians and the remaining unconnected Fijians.
- 1.11 TAF and the Ministry also noted that section 50(4) of the Act which deals with the disbursement of the Fund has hindered the swift efforts of fulfilling the USS goals and objective under the Act as well as meeting Fiji's National Development Plan goal of connecting all areas of Fiji digitally.
- 1.12 Currently, section 50(4) of the Act provides that the only way to disburse the Fund for projects is by way of tender. Given the maturity of the telecommunications sector and the infrastructure sharing arrangements already in existence among licensees, the tender process fails to accommodate these collaborative approaches which impedes on the overall objective to connect the unconnected regions. For that reason, it is proposed that section 50(4) of the Act be amended.
- 1.13 The Telecommunications (Amendment) (No. 2) Bill 2020 ('**Bill**') therefore seeks to amend the Act to expedite the process of declaring a USA and to propose a new framework for the disbursement of the Fund.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill amends section 49(1) of the Act to expedite the process of declaring an area a USA to prioritise the servicing of the proposed sites which would increasingly help connect the identified 4.2% of Fijians to telephone and internet services.

- 2.3 Clause 3 of the Bill amends section 50(4) of the Act to propose a framework that offers 3 options which TAF in consultation with the Ministry can choose from when disbursing the Fund for USS.
- 2.4 The 3 options are:
- (a) **Option 1** – assign a USA to a licensee to service based on the industry market share model. This option will allow TAF in consultation with the Ministry to assign a USA to a licensee to service, based on the licensee’s annual market share, the process of which will be prescribed by way of regulations. This option can only be used for the purpose of constructing a universal service tower.
 - (b) **Option 2** – facilitate the construction of a tower for co-location and co-sharing. This option will allow TAF in consultation with the Ministry to select any person other than a licensee to construct a universal service tower by way of tender. Like Option 1, this option can only be used for the purpose of constructing a universal service tower.
 - (c) **Option 3** – call for tenders. This option will allow TAF in consultation with the Ministry to call a tender for the deployment of appropriate alternative technology other than constructing a universal service tower. Appropriate alternative technology include technology such as satellite kits which may be deployed in areas where building a tower is not feasible such as areas with a low population density (for example in an area where 1 to 50 people live) or in areas where there are no proper infrastructure such as no road access.
- 2.5 Clause 3 of the Bill also amends section 50(1)(a) of the Act to align it to the amendments proposed to section 50(4) of the Act. Section 50(1)(a) of the Act currently provides that a licensee may become subject to a USO if the licensee assumes a USO that was made by way of tender under section 50 of the Act. Clause 3 amends section 50(1)(a) of the Act to expand the application of section 50(1)(a) to cater for the introduction of Option 1 given that Option 1 will be carried out by way of assignment.
- 2.6 Clause 4 of the Bill amends section 62(1)(d) of the Act by deleting the words “either as the outcome of a tender or based on substantial degree of market power”. Currently, section 62(1)(d) of the Act allows the Tribunal to only hear and determine matters relating to any decision that imposes a USO either as an outcome of a tender or based on a substantial degree of market power under section 50 of the Act. The Bill proposes to amend this to allow the Tribunal to hear and determine any decision to impose a USO under section 50 of the Act.

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2.7 Clause 5 of the Bill deletes section 82(1)(h) of the Act. The power to prescribe regulations for the purpose of the administration of the Fund including the procedures and criteria for an assignment or tender will now appear in section 50 of the Act for the purpose of clarity.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Act comes under the responsibility of the Minister responsible for communications.

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Attorney-General