



Tonga

**INTERCONNECTION AND ACCESS
(SUBMARINE CABLE SERVICES) RULES
2017**



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INTERCONNECTION AND ACCESS (SUBMARINE CABLE SERVICES) RULES 2017

COMMUNICATIONS ACT 2015

IN EXERCISE of the powers conferred by section 132 of the Communications Act 2015, the Regulator makes the following Rules -

PART I – PRELIMINARY

1 Short title

These Rules may be cited as the Interconnection and Access (Submarine Cable Services) Rules 2017.

2 Commencement and purpose

- (1) These Rules shall come into force on the date they are published in the Gazette or otherwise in accordance with section 10(e) of the Interpretation Act (Cap.1).
- (2) To make broadband services more available to people throughout Tonga at affordable prices, these Rules set out reductions in the wholesale pricing for access to the international submarine cable. It is expected that this will lead in time to reductions in retail broadband prices in Tonga. Should this not occur there are reserve powers available to mandate reductions in retail prices.

3 Definitions

- (1) Subject to subsection (2), unless the context otherwise requires, terms used in these Rules have the same meaning as in the *Communications Act 2015*.
- (2) In these Rules, unless the context otherwise requires:
 - “**access agreement**” has the same meaning given in the *Communication Act 2015*;
 - “**aggregate committed supply**” means the aggregate of individual committed supply commitments given to the providing licensee for capacity on the primary route for a 12 month period;
 - “**approved reference offer**” has the same meaning given in the *Communication Act 2015*;
 - “**cable landing station**” has the same meaning given to that term in the *Communications (Declaration of Submarine Cable Services) Declaration 2017*;
 - “**Customer**” has the same meaning given in the *Communication Act 2015*;
 - “**individual committed supply commitments**” has the same meaning given in subsection 4(f)(iii);
 - “**network operator**” has the same meaning given in the *Communication Act 2015*;
 - “**permitted range**” means a range from one per cent below to one per cent above a price specified in **Schedule 1**;
 - “**primary route**” means an international cable transmission capacity service that connects the Kingdom of Tonga at the providing licensee’s cable landing station in Nuku’alofa to a cable landing station in Suva, Fiji;
 - “**providing licensee**” has the same meaning given in the *Communication Act 2015*;
 - “**Regulator**” has the same meaning given in the *Communication Act 2015*;
 - “**requesting licensee**” has the same meaning given in the *Communication Act 2015*;
 - “**secondary route**” means an international cable transmission capacity service from a cable landing station in Suva, Fiji to any other international destination other than the Kingdom of Tonga; and
 - “**service provider**” has the same meaning given in the *Communication Act 2015*.

PART II – PRICING PRINCIPLES

4 International Cable Transmission Capacity Service

The pricing principles for the supply of the International Cable Transmission Capacity Service are as follows:

- (a) Prices for the supply of the service shall be set so as to generate expected revenue that is sufficient to provide:
 - (i) for the recovery of the capital costs associated with the provision and replacement of all of the providing licensee's transmission assets, provided that those costs reflect the costs of a reasonably efficient network operator deploying modern equipment;
 - (ii) for the recovery of so much of the providing licensee's annual operational expenditure as is directly attributable to the operation and maintenance of the service, provided that those costs reflect the costs of a reasonably efficient network operator adopting efficient work procedures; and
 - (iii) a reasonable return on investment over the economic life of the providing licensee's transmission assets that is commensurate with:
 - (A) the regulatory and commercial risks involved; and
 - (B) the actual risks and returns accepted by the providers of capital to the providing licensee.
- (b) Any one of the following cost standards is an appropriate pricing methodology to inform the determination of the efficient costs of supplying the service:
 - (i) a long-run average incremental cost that includes an equi-proportionate mark-up to reflect a reasonable contribution to common costs (LRAIC+);
 - (ii) fully allocated cost (FAC); or
 - (iii) a hybrid of LRAIC+ and FAC.
- (c) Prices for the service shall be offered on the basis of the primary route with, if required, separate and additional prices offered for extensions from the primary route to any secondary routes.
- (d) The price per megabit per second per month for the supply of the service may vary:
 - (i) by route; and
 - (ii) according to the transmission capacity of the service;but only to the extent that:
 - (iii) the costs or risks of supplying the service vary commensurately; or
 - (iv) the price differentials are consistent with common international practice.

- (e) Prices for the supply of the service shall not vary according to whether the requesting licensee is a network operator or a service provider.
- (f) From the date these Rules take effect through to 30 June 2021, the price for the supply of the service in the quantities specified in Column 1 in **Schedule 1** shall be the amount set out in the reference offer of the providing licensee which must be within the permitted range of:
 - (i) for the primary route, the corresponding price specified in Column 2 in Schedule 1; and
 - (ii) for a secondary route, the price resulting from the sum of the corresponding price in Column 3 and, if applicable, Column 4 in Schedule 1;

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- (iii) the requesting licensee commits to purchase and receive from the providing licensee, or to pay for it if available but not taken, the minimum quantity of the service specified in Column 2 in Schedule 2 (in either case, the individual committed supply commitment); and
 - (iv) in each fiscal year the aggregate committed supply is equal to or greater than the amount specified in Column 3 in Schedule 2.
- (g) For the avoidance of doubt, where subsection 4(f) applies on its terms the service may not be supplied at any price other than a price determined in the manner described in subsection 4(f).
 - (h) Where subsection 4(f) applies on its terms, a requesting licensee that does not take the minimum quantity of the service specified in Column 2 in **Schedule 2** in a fiscal year shall pay to the providing licensee the amount determined by the application of subsections 4(f)(i) and 4(f)(ii) and the approved reference offer per megabit per second per month for the difference between the quantity of the service actually taken by the requesting licensee and the minimum quantity specified in Column 2 in **Schedule 2**.
 - (i) For the avoidance of doubt, where subsection 4(f) does not apply on its terms, the providing licensee shall determine the pricing of the service in accordance with the remainder of this section.

5 International Cable Facilities Access Service

The pricing principles for the supply of the International Cable Facilities Access Service are as follows:

- (a) Prices for the supply of the service must be based on the costs of supplying the service that would be incurred by a reasonably efficient network operator deploying modern equipment and efficient work procedures in the same, or similar, circumstances as apply to the providing licensee.
- (b) Any one of the following cost standards is an appropriate pricing methodology to inform the determination of the efficient costs of supplying the service:
 - (i) a long-run average incremental cost that includes an equi-proportionate mark-up to reflect a reasonable contribution to common costs (LRAIC+);
 - (ii) fully allocated cost (FAC); or
 - (iii) a hybrid of LRAIC+ and FAC.
- (c) Prices for the supply of the service shall not vary according to whether the requesting licensee is a network operator or a service provider.

6 Cable Landing Station Backhaul Service

The pricing principles for the supply of the Cable Landing Station Backhaul Service are as follows:

- (a) Prices for the supply of the service must be based on the costs of supplying the service that would be incurred by a reasonably efficient network operator deploying modern equipment and efficient work procedures in the same, or similar, circumstances as apply to the providing licensee.
- (b) A fully allocated cost (FAC) framework is an appropriate pricing methodology to inform the determination of the efficient costs of supplying the service.
- (c) The price per megabit per second per month for the supply of the service may vary according to the following factors to the extent that the costs of supplying the service vary commensurately:
 - (i) the transmission capacity of the service; and
 - (ii) the duration of the access agreement for the supply of the service.
- (d) Prices for the supply of the service shall not vary according to whether the requesting licensee is a network operator or a service provider.

PART III – OTHER MATTERS

7 Minimum bandwidth of transmission capacity services

The following services shall be made available to customers in any unit of transmission capacity specified by the requesting licensee that it is technically feasible for the providing licensee to supply:

- (a) the International Cable Transmission Capacity Service; and
- (b) the Cable Landing Station Backhaul Service.

SCHEDULE 1

Column 1	Column 2	Column 3	Column 4
Transmission capacity of the service (Mbps per month)	Price per Mbps per month (USD)*		
	Primary Route	Secondary Route	
		Secondary Route	Via IP transit
≥1,000	100	35	15
600–999	125	35	15
500–599	150	35	15
400–499	175	35	15
300–399	200	35	15
200–299	225	35	15
155–199	250	40	20
100–154	275	40	20
<100	300	40	20

* All prices are exclusive of VAT.

SCHEDULE 2

Column 1	Column 2	Column 3
Fiscal Year (1 July to 30 June)	Minimum individual committed supply commitment (Mbps per month)	Aggregate committed supply (Mbps per month)
2016/17	300	600
2017/18	500	1,000
2018/19	700	1,400
2019/20	900	1,800
2020/21	1,000	2,000

Made at Nuku'alofa this 31st day of March 2017.



Paula Ma'u
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Ministry of Meteorology, Energy,
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