



POLICY FOR COMMUNICATION NETWORKS AND SERVICES

Regulatory Reform

Draft Paper

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1. Introduction

The Policy for Communication Networks and Services directly supports St Helena's 10 Year Plan, the 2018 Sustainable Economic Development Plan (SEDP), the Digital Strategy and key milestones for the release of funding from the European Development Fund (EDF) for the submarine cable project.

St Helena's 10 Year Plan: 2017-2027 sets out five national goals:

- Altogether Safer
- Altogether Healthier
- Altogether Better for Children and Young People
- Altogether Greener
- Altogether Wealthier

The 2018 SEDP elaborates on this goal with a vision that includes 'achieving development which is economically, environmentally and socially sustainable by increasing standards of living and quality of life.' A key enabler to the achievement of the five national goals and the vision articulated in the SEDP is the development of communications within St Helena, both access to services that are available and the quality of the services provided. The Digital Strategy anticipates that better connectivity will:

- Increase the performance of the local economy, encourage economic diversification and improve job opportunities for local people
- Provide a first class education service, supporting the development of skills, creativity and life-long learning
- Improve health delivery on the Island by harnessing more cost effective telemedicine options
- Mean improved, more productive, and sustainable public services

The EDF grant awarded to St Helena Government (SHG) to assist development of improved connectivity has a number of milestones which need to be achieved in order to draw down funding (Appendix A).

The policy for communication networks and services will further the achievement of the Digital Strategy and the EDF milestones by creating a legal and regulatory framework to support the development of communication services on St Helena. More specifically the policy aims to provide long term stability for regulatory oversight of communications for the benefit of end users.

There is stakeholder consensus that the Telecommunications Ordinance 1989, in its current form, is not fit for purpose and is unlikely to be able to support the development of communications licensing in a way that works towards the delivery of strategic goals. The communications industry values transparent and stable regulations; the lack of these can work as a disincentive to investment. A modern, robust and fit for purpose legal and regulatory framework for communications is needed. In order to develop a new legal and regulatory framework a clear policy for regulatory reform is required to shape the decisions being taken by SHG during this critical time.

The Policy for Communication Networks and Services will set out the framework for regulating the communications market. The key policy elements that are covered within this policy document are summarised in Table 1.

Table 1: Key policy elements contained within the Policy for Communication Networks and Services

Key Element	Policy position summary
<p>Overarching objective</p> <p>In order to support the overarching objective a new Communications Ordinance is needed.</p>	<p><i>To enable the development of electronic communication services, for the long-term benefit of end users through promoting consumer welfare, creating opportunities for investment and ensuring high quality, sustainable and reliable electronic communications infrastructure.</i></p>
<p>Communications Regulator</p> <p>The operationally independent Regulator will take responsibility for the effective regulation of communications in St Helena.</p>	<p>SHG will establish an operationally independent regulator that sits within the wider framework of SHG in terms of budget and salary, reporting to the Attorney General.</p> <ul style="list-style-type: none"> • Regulating, supervising and enforcing compliance with conditions placed on licensees • Investigating breaches and taking targeted action where appropriate • Scrutiny through public consultation and publication of decisions • Funded through budget appropriation with revenue going to the consolidated fund.
<p>St Helena Submarine Cable Branch</p> <p>The St Helena Submarine Cable Branch (“the Branch”) is considered to be a strategic national asset and part of the Critical National Infrastructure</p>	<p>The submarine cable branch and Cable Landing Station (CLS) will be owned, and remain owned, by SHG with a public electronic communications network and services licensee operating the CLS, unless agreed otherwise.</p> <p>SHG will be responsible for reaching agreement for capacity on the main Equiano cable (the Trunk) for capacity to South Africa and to Portugal; SHG will be responsible for purchasing the IRU for this capacity.</p> <p>The CLS will be identified as an Open Access site.</p> <p>SHG will enable the service provider to take the lead in setting wholesale capacity prices based on recovering their costs and charges from SHG. A cap will be put in place in order to provide those who need to access wholesale connectivity (such as Satellite Earth Station Operators) the confidence that prices cannot increase to unreasonable levels.</p> <p>Any party, other than SHG, wishing to land a submarine cable will require a Cable Landing Licence.</p>
<p>Licensing of public electronic communications network and service providers</p> <p>The means by which SHG will exercise control, in the public interest, over the</p>	<p>SHG will issue a specific licence for the provision of public electronic communications networks and services with spectrum licenses issued separately.</p> <p>Initial core licence terms and conditions will be set out in the legislation, subject to a negotiated agreement: scope, term, fees, Universal Service Obligation etc.</p>

Key Element	Policy position summary
<p>opportunity to offer communications services to the public</p>	<p>SHG may consider the inclusion of exclusive rights within the licence if it is in the public interest. Exclusive rights will be clearly defined as to what services they cover and what the exclusions are. Any Exclusive Rights will be agreed by Governor in Council.</p> <p>Power for the Regulator to revoke a licence subject to approval by the Supreme Court.</p>
<p>Licensing of electronic communication services and networks</p> <p>The means by which the Regulator will licence networks and services that are not offered to the public.</p>	<p>Where the licence is not for public services, and not prevented on the basis of exclusivity, then the responsibility for issuing electronic communication service and network licences will fall to the Regulator.</p>
<p>Universal Service Obligation</p> <p>SHG considers that all residents on St Helena must have access to a certain basic level of communications regardless of where they live at an affordable price.</p>	<p>SHG must ensure that people and businesses in St Helena have access to services irrespective of their geographical location on St Helena and at a price that does not prohibit access. It is anticipated that this can only be achieved on St Helena through mandatory service obligations placed on the licensed provider of public electronic communication services.</p>
<p>Consumer Safeguards</p> <p>Communication services are an important consumer purchase. SHG considers that consumers' rights must be protected in relation to communication services</p>	<p>Licensees obliged to:</p> <ul style="list-style-type: none"> • Establish consumer complaints-handling procedures, with the Regulator investigating unresolved complaints; • Not engage in misleading or deceptive conduct • Protect the privacy of users' communications, subject to lawful interception and warrant; • Protect the confidentiality of users' personal information • Publish a Consumer Code that is approved by the Regulator
<p>Quality of Service</p> <p>A culture of compliance is important to protect consumer rights. An important function of the Regulator is ensuring that public communication services are of an appropriate quality.</p>	<p>Quality measures will be set that draw on SMART principles.</p> <p>In addressing matters of quality SHG will look to keep regulatory initiatives proportionate so as not to unduly increase consumer prices.</p> <p>Licence conditions will ensure that licensees need to comply with any Direction issued by the Regulator regarding any quality of service indicators and measurement.</p> <p>Licensees will be obligated to provide services that meet minimum quality/reliability standards (that may be</p>

Key Element	Policy position summary
	<p>prescribed in the Licence and by the Regulator) and pay a penalty/compensation if in breach;</p> <p>Compensation to consumers should be increased incrementally if targets are not met within a reasonable period.</p>
<p>Price controls</p> <p>In the absence of competitive pressures, price controls protect consumers against the possibility of high price increases in services by putting a ceiling on prices for regulated services at the same time the price controls enable the communications provider to have returns no lower than those associated with a firm with a comparable size operating under similar risks in a competitive setting.</p>	<p>Primary legislation will allow for the setting of price controls but will not specify the nature of these controls, that will be specified in the licence conditions and be subject to negotiation. Price controls will:</p> <ul style="list-style-type: none"> • be outcome based, • give the licensee strong incentives for investment; and • seek to improve efficiency whilst protecting end users. • be designed in such a way as to impose the least burden necessary to achieve this purpose. <p>Price controls will:</p> <ul style="list-style-type: none"> • represent good value for consumers • allow the licensee to earn returns that are fair, • properly reflect the risks faced in operating communication services on St Helena • remain simple by focusing on items of greatest value to consumers. • be set at a default period of 4 years
<p>Electromagnetic spectrum resource</p> <p>The electromagnetic spectrum is a resource which the Government considers should be managed by the Regulator in the best interests of St Helena.</p>	<p>The Regulator will have the power to:</p> <ul style="list-style-type: none"> • Allocate, licence and assign spectrum frequencies through Radiocommunication Licenses. • Establish effective liaison on spectrum matters • Undertake enforcement action in the event of a breach of radiocommunications licence <p>The Governor in Council will make regulations, on advice of the Regulator, for spectrum licence fees, procedures for the licensing of radiocommunications and exemptions to the requirement for a licence. The Governor in Council should also be empowered to make regulations of their own accord</p>
<p>War, emergencies and resilience of communications</p> <p>The electronic communications network is national critical infrastructure</p>	<p>Legislation will specify</p> <ul style="list-style-type: none"> • that the Governor, acting in his or her discretion, considers it necessary in the interests of defence, public safety or public order, may take any steps appropriate to assume control over any network or services. <p>The licensed provider of public communications networks and services will be expected to work with SHG as part of a multi-layered strategy to protect consumers on St Helena from cyber-attacks and other threats and will be obliged to report to SHG on any malicious activity that degrades, or threatens, the integrity of the national communications infrastructure.</p>

Key Element	Policy position summary
<p>Public service acquisition and control</p> <p>In the event of an electronic communications network and service licence being revoked, or terminated at the end of the agreed licence period without a replacement licence being agreed, or if the licensee ceases to operate, the people of St Helena must continue to receive communication services.</p>	<p>In these circumstances, the necessary powers will be granted to the Governor, through the legislation, to assume control over the network.</p> <p>In the event that such an order is made compensation will be payable in respect of assets to which the order applies.</p> <p>The determination of the level of compensation payable for the assets must be subject to regulations.</p> <p>A licence for the provision of public electronic communication networks and, or, services, must contain provisions about managing the relationship between the Government and the licensee at the end of the licence period.</p>
<p>Appealing decisions of the Regulator</p> <p>Principles of good governance require that the delegation of responsibilities to an operationally independent regulator are accompanied by clear and defined accountability mechanisms.</p>	<p>Decisions made by the Regulator may have material impacts on society, consumers and service providers. These decisions need to be open to scrutiny and challenge by affected parties who consider that they have not been properly treated in accordance with the law.</p> <ul style="list-style-type: none"> • Appeals against decisions made by the Regulator will be made through the Magistrates Court. • The Court has administration mechanisms in place and it is unlikely that appeals falling under the communications legal and regulatory framework would require additional resources

1.1 Policy Rationale

The provision of communication networks and services is a key component to the social and economic development of St Helena. Like in similar markets where the high costs of start-up means there tends to be a one or two providers, the Government has a role to ensure that regulation is in place which ensures consumers are protected and have their needs met, and contain possible abuse of market power.

The current regulatory and statutory framework for telecommunications, as of the time of writing in 2020, is out of date and has remained largely unchanged for a number of years. Regulation is justified in order to achieve the optimum level and scope of services at appropriate prices for all consumers and to rebalance the asymmetry of information provision. The need for regulation depends on the ability for the market to create this situation for itself. In a monopoly environment regulation needs to ensure the monopolist behaves in accordance with public interests and does not misuse its monopoly position. The current legislation and regulatory framework do not provide sufficient mechanisms through which to protect consumers. In addition, the current framework has not kept pace with the rapid developments in technology and business models in the communications industry and is also affected by various gaps and inconsistencies. Inconsistencies and anomalies in the legislation need to be resolved in order to give clear guidance to parties wishing to enter and participate in the communications industry on St Helena.

The construction of the St Helena branch of the Equiano submarine cable will bring an opportunity for innovation in services and will pose new challenges for the regulation of

communications. The Government therefore considers that revising and updating the communications regulatory framework is in the interests of the development of communications on St Helena. This policy will form a statement setting out the principles to govern regulatory reform which will provide strong guidance and action for SHG, and also sets out what the public can expect from Government regarding regulation in the future.

To meet the target broadband speeds prescribed within the EDF funding milestones it is likely that significant infrastructure improvements will be required. Technologies have evolved that are more efficient, however, the size of the market in St Helena is such that this has not yet had sufficient impact on the cost of provision. Demand is also essential in improving production conditions and economies of scale; given the restrictions on connectivity, up to the arrival of the submarine cable, it will take time for user habits to change when greater connectivity is available. A policy for communication networks and services is needed to:

- Contain the potential for abuse of market power
- Foster competition, where possible
- Create a favourable investment climate to encourage private investment to improve public services. Investors need to be convinced that rules of the game under which they are investing can be relied upon.

A robust communications infrastructure provides a platform for SHG to deliver the Digital Strategy and supports the economy as a whole. Modern, adaptive and responsive regulation is key to encouraging market confidence, innovation and investment. Regulatory reform, along with clear principles for communication networks and services will be a powerful stimulus for change.

1.2 Existing Structures

1.2.1 Telecommunications Ordinance 1989

The Telecommunications Ordinance 1989 is the existing legislative basis upon which telecommunications, broadcasting and wireless telegraphy are licensed and regulated in St Helena. Under the terms of the Telecommunications Ordinance 1989 (“the Ordinance”) it is unlawful for telecommunications to be provided or operated without a licence granted by the Governor in Council. The Ordinance allows for the issue of an exclusive licence for the provision of all public telecommunication services and then provides for specific exemptions to this along with key provisions to be contained within the licence. Broadcasting is covered in brief in section 6 of the Ordinance and this is only in reference to the power granted to the Governor in Council to issue a broadcasting station licence.

Alongside the power to issue licences the Governor in Council also has the power to make regulations which have been enacted through the Wireless Telegraphy Regulations 1989 and the Telecommunications (Fees) Regulations 1990. The Wireless Telegraphy Regulations contain provisions prohibiting the establishment or use of any station for wireless telegraphy or installation or use of any apparatus for wireless telegraphy except under the authority of a licence granted by the Attorney General. The penalty for committing an offence against the provisions of the Regulations is a fine of £500.

The Telecommunications (Fees) Regulations 1990 specify the maximum price that can be charged for a wide range of telecommunication services, including broadband and mobile packages.

1.2.2 Licensing

Sure South Atlantic Ltd (“Sure”) was granted an exclusive licence (“the Licence”) by the Governor in Council to provide public telecommunication services in the territory of St Helena. The Licence term runs for 10 years from 1 January 2013 until 31 December 2022. The Electronic Communications Consultative Committee (“ECCC”) is established through the Licence and is the main tool for oversight of licence compliance. The ECCC has the remit to review telecommunication services as provided under the terms of the Licence and report on compliance of the Licensee within those terms. The ECCC also has an advisory role with a responsibility to advise Government on matters of policy, including pricing, in telecommunications.

Sure had also been issued with a broadcast station licence, under section 6(2) of the Ordinance. This licence authorises Sure to operate broadcasting stations under the terms and conditions contained within the schedule of the licence. The licence was issued on 1 January 2013 and ends on 31 December 2022. The licence is currently issued on an exclusive basis allowing Sure to operate as a re-broadcaster of broadcasts for the transmission of subscription TV within St Helena. The licence also provides for oversight of compliance through the ECCC.

The Wireless Telegraphy Regulations 1989 provide for the licensing of wireless telegraphy. The Registrar has issued a number of amateur radio station licences and ship station licences under these regulations. It is also anticipated that Permanent Earth Stations and Receive Only Earth Stations will initially be licenced through these Regulations.

1.3 Policy Scope

The Telecommunications Ordinance 1989 predominantly focuses on ‘telecommunication services’ which includes telephone, telex, telegraph, data, facsimile and leased circuit services, but not broadcasting. As noted above broadcasting is included to the extent of a licence to broadcast and use of the radio spectrum is provisioned for through the Wireless Telegraphy Regulations. This policy will have a broader scope to ensure that it is fit for purpose for the future. This policy will move away from the traditional view of telecommunications services to the broader scope of electronic communication networks and services (as defined in the Glossary).

The policy scope goes further than electronic communication services and networks. The provision of broadcasting services will be included, along with the electromagnetic spectrum used to provide these services (traditionally referred to as wireless telegraphy) through the licensing of radiocommunications.

1.3.1 Delineation of roles

There will be a clear delineation of roles between Government, regulatory oversight and licensees. SHG is responsible for setting the strategic policy direction for communication networks and services in St Helena, making the law and regulations required to implement the policy. The Government also has the responsibility for establishing appropriate structures within Government for the administration and oversight of the policy, legislation and regulatory framework. SHG will continue to have a role – as policy and law maker, a major consumer of communication services, hosting an independent regulator, and as the owner of the submarine branch line and Cable Landing Station (CLS).

Remedies, safeguards and monitoring are key pieces of the regulatory framework and with them SHG can influence the market through a number of regulatory tools. In order to achieve this there needs to be a clear role for the administration and enforcement of the policies set by SHG. This role will be undertaken by a Regulator, who will be responsible for

regulating, supervising, investigating and enforcing compliance with legal obligations and licence conditions.

Finally, licensed operators need to be free to make the commercial decisions required for operating an economically viable business within the legal and regulatory framework. The licence issued will set out the conditions by which the operator must abide but the licensee must be free to determine the most appropriate way in which to meet its obligations.

1.3.2 Delineation between service provision licensing and electromagnetic spectrum licensing

The scope of the policy as stated will enable the communications legislation and the licensing framework to clearly differentiate between the licensing for the provision of electronic communication network and services, broadcasting and the use of the electromagnetic spectrum to operate those services. An electronic communications service licence will be required by an operator in order to provide electronic communications services and networks. A broadcasting service licence will be required to provide broadcasting services. The electromagnetic spectrum required to operate those networks and services will be licensed separately through the licensing of radiocommunications.

1.3.3 Balancing ex ante and ex post regulation

The scope of the policy will include both ex ante and ex post provisions for the regulation of communication networks and services. This will optimise the balance between regulatory legislation and proactive agreement from licence holders. Ex ante regulation uses licence conditions and regulations to control market conditions and bases the justification for regulatory intervention in law. Ex post regulation generally deals with market behaviours after they arise on a firm evidence base, rather than anticipating behaviours in advance. Effective ex ante regulation requires the adoption of a predictable and adequate regulatory framework whilst ex post regulation requires good stakeholder relationships that encourages negotiation and consensus. The mechanisms that will be used, both ex ante and ex post, will be addressed through this policy.

1.3.4 Permanent Earth Stations and Receive Only Earth Stations

In 2020 SHG consulted on a policy for the licensing of Permanent Earth Stations (PES) and Receive Only Earth Stations (ROES). The policy set out in that document is not changed by this policy. The licensing of PES and ROES will fall within the scope of the policy provisions for the management of the electromagnetic spectrum with PES and ROES licenses being accommodated under the licensing of radiocommunications and the wider scope of the management of the electromagnetic spectrum. The list of frequency bands considered for the PES and ROES operations will be accommodated within the overall St Helena Frequency Allocation Table and the policy for managing the electromagnetic spectrum (see section 3.3.6).

2. Situational Analysis

The communications market within St Helena has a number of key characteristics that have shaped the direction of this policy. This section outlines those characteristics and the challenges and opportunities these present. This is by no means a comprehensive list, but instead seeks to highlight the key areas where policy intervention could improve outcomes.

2.1 Google Equiano Cable

SHG signed a contract with Google in December 2019 for the construction of a new submarine cable that will branch off the main Equiano cable running from Portugal to South Africa. This cable will provide a high-capacity gateway to the global internet for St Helena. The key objective of the cable project is to be an enabler for the provision of reliable, high-capacity bandwidth at affordable prices for the population of St Helena and to promote economic opportunities for The Island. The cable branch project has been funded by an EDF grant providing the capital investment required for the build of the cable branch. Recognising that effective market oversight, in particular price regulation and governance of communications operators, is key to ensuring the economic benefits of the cable investment SHG is committed to the establishment of an effective legal and regulatory framework through implementation of the Policy for Communication Networks and Services.

2.2 Population size and demographics

With a population of 4,500 demographics have a direct impact on the provision of communication services in St Helena. If the number of customers shrink the cost per customer grows because the fixed costs must be recovered from fewer customers. Through the Labour Market Strategy steps have been taken to reverse the trend of population decline¹ but the extent to which this is achieved will not have a sufficient impact on the challenges of economies of scale faced by the communications sector on St Helena in the next 10 years.

The communication network and services on St Helena will already be operating well below minimum efficient scale due to market size. This makes the aspiration to reduce prices to the levels seen in larger states a challenging one and can only be a realistic goal if infrastructure costs are significantly reduced or market size significantly increased. It is recognised internationally that in these conditions a single network operator is in a better position to dimension and plan the construction of the network (technical efficiency) and to avoid duplications of investments and excess capacity. Thereby economies of scale can be fully utilised to the benefit of all customers. In addition a single network operator can better ensure compatibility of all parts of the network, and technical and administrative costs related to network integration and interconnection can be minimised. This policy has to recognise this challenge and ensure the appropriate tools are in place to mitigate the impact of this both on end-users and service providers where possible.

2.3 Household income

Relatively low wages limit the disposable income available to local workers. In 2017-18, the median annual income of full-time employees on St Helena was £8,500.² The median annual income is a significant consideration when looking at the affordability of communications services on St Helena. Currently average phone costs, but not internet provision, are taken into account within the Government's Minimum Income Standard shopping basket, which sets the Basic Island Pension rate and Income Related Benefit rate.

¹ <https://www.Sthelena.gov.sh/wp-content/uploads/2019/12/Labour-Market-Strategy-2020-2035.pdf> p13

² <https://www.Sthelena.gov.sh/wp-content/uploads/2019/12/Labour-Market-Strategy-2020-2035.pdf> p37

2.4 Geography and terrain

St Helena is an Island of 47 square miles. This has implications for the distribution of communications, the development of Earth Stations and the spectrum available to do this. A limited land mass has implications for spectrum use increasing the potential for harmful interference having a negative impact on electronic communication services. The remote nature of St Helena also brings challenges with the cost of importation of communications apparatus and the mountainous and rocky terrain means that line of site technologies will be less effective and increases the costs and challenges of building fixed and mobile networks.

The combined effects of population size and geography result in a communications market that is characterised by high fixed costs of international bandwidth and infrastructure costs. Internationally, the electronic communications sector is generally known for being capital intensive, this is more so in a small nation such as St Helena and has a considerable bearing on the affordability of end user communication services.

2.5 Information asymmetry

Information asymmetry can be a particular issue in a monopoly market. The communications provider knows more about its abilities, effort and the market than the Government. Asymmetric information between SHG and the communications provider increases the decision costs and has been a feature of the policy landscape that needs to be addressed through this policy. A lack of good information regarding demand and cost conditions means that appropriate performance enhancing incentives and penalties cannot be determined and agreed.

2.6 Technology development and change

Globally there is a growing demand for broadband and mobile internet access with an increasing dominance of internet and mobile applications in modern life. This demand is not just for content but is now spreading to essential security features such as multi factor authentication which relies on internet and mobile network connectivity³. According to the Digital Strategy 'St Helena has some of the slowest and most expensive broadband in the world.' The anticipated submarine fibre optic cable is expected to increase connectivity across St Helena, opening a new world of opportunities for the whole population. Internationally Governments are facing challenges as to how to ensure legislation, licensing and regulation encourage, rather than limit, technology development. Traditional telecommunications network operators are also facing challenges, including decreasing revenues and greater competition from companies that run 'over the top' of the internet and compete directly, or indirectly, with their service offerings.

³ Multifactor authentication is an authentication method which grants access to a user only after successfully presenting two or more pieces of evidence (or factors) to an authentication mechanism.

3. Communication networks and services policy statement

3.1 Primary objective

The primary objective of a regulatory framework is to enable participants to invest, innovate and deliver services to the community for the long-term benefit of end users (consumers). A clear and transparent objective within legislation becomes a guiding principle that underpins all decisions. The primary objective of this policy and the overarching principle for electronic communication networks and services in St Helena is:

To enable the development of electronic communication services, for the long-term benefit of end users through promoting consumer welfare, creating opportunities for investment and ensuring high quality, sustainable and reliable electronic communications infrastructure. To develop a partnership between SHG and the public communications networks and services provider which works towards achieving strategic sustainable economic and social goals.

3.2 Priority issues to be addressed through the policy

Analysis of the existing structures has identified the following priority issues that need to be addressed through this policy:

- A legal and regulatory framework that supports the objectives of the Digital Strategy and the growth of digital connectivity;
- A legal and regulatory framework that can support a modern system of licensing communications on St Helena;
- A regulatory framework that contains the tools to shape the communications market in the best interests of end users now and in the future;
- A framework which enables economic growth and enterprise, encourages location of earth stations and data centres, encourages multiple cables to be landed in the future and encourages digital nomads to locate in St Helena;
- A regulatory framework that doesn't just deal with the problems today but can tackle the regulatory questions of tomorrow;
- A predictable regulatory framework that encourages effective investment in physical communications infrastructure;
- Introduction of suitable policy interventions that address issues that would normally be resolved through competition;
- Re-balance the information asymmetry with clear information provisions that can be applied to all licensees with clear consequences if that information isn't provided.

3.3 Overarching principles for the Communications Ordinance

A new Communications Ordinance needs to be developed and in place by the end of 2022 with the target set for completion of this work by the end of 2021. This Ordinance will be transparent, consistent and comprehensible. Accessible laws are necessary to ensure compliance and achieve the policy objective for electronic communications in St Helena. The policy principles in this section promote predictability, fairness and public confidence. This policy will provide the basis upon which the Communications Ordinance will be developed and will enshrine the following principles:

- The regulatory framework in St Helena needs a balance of ex ante and ex post regulation.
- The same regulatory principles should be applied regardless of technology with the legislation and regulations encapsulating the principle of technology neutrality.
- Terminology has to be consistent and clearly defined.

- A regulator role should be established that is operationally independent of SHG but hosted and paid for through SHG.
- The five principles of good regulation will be applied to regulatory actions meaning that regulation will be proportionate, consistent, accountable, transparent and targeted only where needed.

Throughout this section reference will be made to a Communications Regulator (“the Regulator”). More detail as to how this role will be established can found in section 3.3.9.

3.3.1 Public Consultation

Where SHG undertakes public consultation on matters relating to communication networks and services the SHG consultation policy will be followed⁴. The Regulator will refer to the SHG consultation policy and will follow it, where appropriate, to provide consistency in approach. However, the Regulator needs to be able to move away from the SHG consultation process where that approach does not provide the Regulator with the necessary scope and flexibility to address specific matters.

The Regulator will comply with the following procedure whenever there is specific reference in legislation to the public consultation procedure for the purpose of adopting a measure which has a significant impact on the market for electronic communications networks or electronic communications services. Before adopting a measure the Regulator will:

- a) Publish a notification of the proposed measure;
- b) Provide reasons for the proposed measure;
- c) Set out the effect of the proposed measure; and
- d) Invite interested parties, including users and consumers, to make representations on the proposed measure within a specified period.

In order to assist with public engagement the Regulator will establish a single online information point through which all on-going consultations can be accessed.

Question 1: Do you agree with the approach on the Regulator’s requirements for public engagement outlined here?

3.3.2 Information provision

The effectiveness of regulation, and the decisions made to control market behaviours can be severely undermined by the absence of information; the objective of information provisions within legislation is to address this asymmetry.

The Regulator shall have the power, through primary legislation, to require the provision of documents and information under any areas where the Regulator has statutory responsibilities. In addition to the power to request information the Regulator will have the necessary powers to enforce non-compliance with an information request, and or impose a penalty should information not be forthcoming in response to a request. There will be some circumstances where SHG will need information to inform its strategic policy role. In these instances SHG will be able to request information under the same terms.

Information that the Regulator should be able to request includes but is not restricted to:

1. Information concerning future network or service developments that could have an impact on the services made available to end-users – whether this be service end-users or those accessing wholesale services

⁴ <https://www.sainthelena.gov.sh/wp-content/uploads/2012/08/SHG-Consultation-Policy-Sept-2017.pdf>

2. Where the person is a monopoly provider information on accounting data on the retail services provided.

In the request for information the reasons will be given in order to justify the requirement for information including a statement as to under which statutory functions the request has been made.

An information request notice must provide details as to how the information should be provided and to what timescales and the penalties for not meeting the provisions. SHG does recognise that providing information can represent a burden on the operations of a service provider. As such, the Regulator and SHG will ensure that all requests for information are proportionate to the public benefit of compliance and the service provider will be expected to have the necessary resource to comply with all such reasonable and proportionate requests.

Confidentiality of Commercially Sensitive Information

As business information can have a great commercial value and significant importance for the company concerned, its uncontrolled disclosure might potentially lead to serious consequences. Licensees should be confident that when commercially sensitive information is shared with the Regulator, or SHG, the confidentiality of this information will be protected. This is particularly relevant where there is a responsibility on the Regulator to publish information; in cases where publication is required the Regulator will have regard to the need to preserve commercial confidentiality and will only publish the detail that it considers to be appropriate to publish.

When sharing information licensees will be expected to mark the elements that are commercially confidential and provide explanation as to why that information is deemed to be commercially confidential and not for wider distribution. Any external expert working with the Regulator will sign a confidentiality agreement that will ensure that the Regulator can share information that is necessary to carry out the full remit of duties but continues to protect commercially sensitive information. There will be specific obligations and restrictions imposed on the Regulator when in receipt of information that is agreed to be commercially confidential information with consequences for any breach of confidentiality.

SHG, the Regulator, any officers employed by the Regulator, agents and consultants will not disclose confidential information without the written consent of the party who has provided the information. Information shall be considered to be “confidential” where:

- (a) the information is not already in the public domain;
- (b) the provider of information has requested in writing to the Regulator that it keep the information confidential;
- (c) the provider of the information has shown to the satisfaction of the Regulator that disclosure of the Confidential information is reasonably likely to result in a significant adverse effect on such person or the communications market because—
 - (i) of the commercially confidential nature of the information;
 - (ii) there is a risk of reprisals from another person if the information or its source is disclosed; or
 - (iii) the provider of the information is subject to an obligation to keep the information confidential.

The Regulator may also designate information confidential where the information relates to deliberations of the Regulator, relates to matters of national security, public order or the defence of St Helena. Details of Critical National Infrastructure cannot be withheld from SHG on the basis of confidentiality, but SHG may deem the information to be sufficiently sensitive to preclude onward distribution. It should of course also be the case that the non-disclosure of confidential information is waived in connection with the investigation of any offence, for the purposes of any proceedings, in connection with any appeal proceedings and by requirement of an order of court.

Question 2: Do you agree with the proposed rules on Confidentiality of Commercially Sensitive Information? If not, why not?

Failure to respond to an information request

SHG and the Regulator will be empowered to impose suitable penalties as a result of a failure to provide information when requested through secondary regulations (see Approach to Enforcement 3.3.10). This is to enshrine in law the importance of an open and transparent relationship between SHG, the Regulator and licensees (of any type). In those regulations a penalty will be put in place that directly addresses a failure to provide information. This penalty will be set by the Regulator and must be appropriate, and proportionate to the importance of the information or documents requested. The total amount of the penalty must be an amount not exceeding £125,000, or £1,000 per day. The penalty will be payable to the Regulator and if not paid, within the period fixed for repaying it recoverable as a civil debt due to the Regulator.

The level of penalty will be set higher for an exclusive licensee in order to address the specific challenges of information asymmetry between a monopoly licensee and Regulator. For an exclusive licence holder the amount of the penalty may not exceed £625,000 or 10% of the licensee's annual turnover⁵, whichever is lower. If after the imposition of a penalty the information requested continues not to be forthcoming the Regulator will be able to apply to the Court for an order to provide the information.

3.3.3 St Helena Submarine Cable Branch Policy

The St Helena Submarine Cable Branch ("the Branch") of the Equiano is considered to be a strategic national asset and part of the Critical National Infrastructure. Recognising the critical developmental importance of international fibre connectivity to St Helena the submarine cable branch and Cable Landing Station (CLS) will be owned, and remain owned, by SHG. A Public Communications Networks and Services licensee will be the CLS operator, unless agreed otherwise.

SHG owns two fibre pairs on the Branch and will be responsible for reaching agreement for capacity on the main Equiano cable (the Trunk) for capacity to South Africa and to Portugal; SHG will be responsible for purchasing the IRU⁶ for this capacity. Given the strategic importance of international connectivity it is imperative that SHG is responsible for the purchasing of international connectivity and the onward provision of this to a licenced service provider. It is also essential that there is capacity running in both directions from the Branch to South Africa and Portugal to ensure the resilience of communications on the Trunk.

⁵ Annual turnover is calculated as the licensee's annual turnover for the year preceding the year in which the penalty was imposed and based on the business turnover in respect to the business covered by the licence.

⁶ Indefeasible Rights of Use

The objectives are:

- To maximise the cable projects long-term benefits for the people of St Helena while minimising Government's costs and exposure to risk.
- To ensure the cable project is implemented as quickly and efficiently as possible and in line with timescales set in the commercial agreement with Google.
- To promote competition within the communications sector by requiring the service provider to provide capacity on the cable, as well as cable station interconnection and colocation services, to all customers on a non-discriminatory basis and at a reasonable price, subject to Governmental regulation and oversight.
- To ensure that the cable bandwidth is fully leveraged to provide affordable, reliable, high-speed, high quality electronic communication services to residential, business, governmental and non-governmental consumers.
- To dimension St Helena's long term bandwidth and reliability requirements in a scalable manner that will not incur unnecessary costs in the event that demand forecasts are not fully realised.
- To prevent the capacity wholesale provider (the "service provider") from controlling essential infrastructure and the technological advantages in such a way as to deny access to the submarine cable, or any future cable connection, or refusal to supply capacity on the international submarine cable.

St Helena would welcome development of a hub for fibre optic cables travelling across the South Atlantic. The landing of any future fibre optic cables will be facilitated by SHG and the CLS operator, as well as any licensees.

Question 3: Do you agree that the landing of any future fibre optic cables should be facilitated by SHG, the Cable Landing Station operator, and licensees? If not, why not?

3.3.3.1 Cable Landing Licence

No person shall land or operate, in St Helena, any submarine cable directly or indirectly connecting St Helena with any foreign country, unless a written licence to land or operate such a cable has been issued by SHG. The requirement for a licence is waived if the cable is owned by SHG. The Cable Landing Licence will be granted based upon certain licence terms and conditions including payment of the requisite licence fee and the necessary safety and security considerations having been met. Nothing in this policy exempts a holder of a Cable Landing Licence from the necessary planning permissions that would be required between the beach landing site and the CLS if construction/land development is required.

The licence will clearly state whether the Licensee is authorised to connect the submarine cable to any other Electronic Communications Network operated under a licence on St Helena. The Cable Landing Licence does not grant any rights to the provision of public electronic communication networks or services to the people of St Helena. This can only be granted through a separate public electronic communications networks and services licence (see section 3.3.4.1).

When applying for a Cable Landing Licence the applicant will need to evidence adherence to the relevant standards outlined by the ITU, and or specified by SHG at the time of application.

Question 4: Do you agree that any new Cable intended to be landed on St Helena should need to be granted a licence? If not, why not?

3.3.3.2 Equiano Cable Landing Station

In order to meet the policy objectives the CLS connecting the Equiano cable will be identified as an Open Access site. Contractual provisions agreed with Google as part of the cable contract will be protected but provisions will also be in place which will allow for the landing of any additional cables in the future, with agreement from SHG. Licensed Permanent Earth Station Operators should also have the right to establish terrestrial fibre and microwave connectivity to the CLS.

Question 5: Do you agree that the Cable Landing Station operator should take the lead in facilitating the connection of the Earth Stations situated on St Helena to the Cable Landing Station? If not, why not?

Open Access encapsulates the principles of transparency, equal access, non-discrimination and cost orientated pricing. Open access means that there will be rights of interconnection and co-location within the CLS and cost-orientated pricing through regulatory oversight of pricing. Open Access will be protected through ex ante regulations including specific licence conditions and access/interconnection regulations which support the principles of open access. Regulations will be put in place to ensure efficient, transparent and non-discriminatory access to essential facilities, including landing facilities, for the submarine cable at the CLS to ensure the growth of the electronic communications sector.

3.3.3.3 Wholesale Access Price Regulation on the Equiano Branch

The Equiano Branch and associated CLS is owned by SHG as such any services provided through this Branch and the CLS must be in the public interest. It is in the public interest for SHG to regulate the wholesale access price. Wholesale access price regulation is focused on the price of wholesale capacity on the international submarine cable (both the Branch and the Trunk), with a separate charge to cover the costs of co-location within the CLS.

Forms of price regulation for the CLS could include -

- Price approval – the service provider takes the lead in setting prices and seeks approval for the prices set
- Specification of the price – prices are set by the Regulator
- Price cap formula – guided by the Regulator

Having considered the options SHG will enable the service provider to take the lead in setting wholesale capacity prices based on recovering their costs and charges from SHG but a cap will be put in place in order to provide those who need to access wholesale connectivity (such as Permanent Earth Station Operators) the confidence that prices cannot increase to unreasonable levels. The Service Provider will be expected to set prices using the principle of cost based pricing and any cap will be set at a level that will enable the CLS operator to recover the costs of -

- Its investment in the international submarine cable capacity through the IRU
- The maintenance of the CLS site and building
- All of the constituent equipment

The costs that are included, when setting the cap, must be efficiently incurred and prices will recover costs over the lifetime of the assets. Periodic reviews of CLS charges should be undertaken at intervals that will not pose a burden to the parties involved but should ensure the best outcomes for end users. It is necessary to gather a considerable volume of information from the service provider in order to arrive at an actual cost. The Regulator will require access to the necessary skills to ensure that the information provided is accurate and complete.

As SHG will be maintaining ownership of the submarine cable branch SHG will be responsible for the repair of any cable damage or cuts and also the annual submarine cable operation and management charges. The service provider will be expected to pay an annual - service charge to use the Branch capacity and the CLS facility for the duration of their contract with SHG. An agreement will be reached between SHG and the service provider on a revenue share from the sale of wholesale capacity.

3.3.3.4 Future Submarine Cable Landings and Cable Landing Stations

SHG recognises that at the time of writing this policy one submarine cable and one CLS are planned and funded by SHG. There may be other cables wishing to land in St Helena, those cables may want to interconnect with the CLS that is provided through the Equiano project and this eventuality has been covered by this policy. A time may come when more than one CLS is present on St Helena. SHG will review this policy and dependent on interest from submarine cable operators will consider whether a separate policy is required covering any future additional cable landing stations that are not SHG owned and how these will be licenced.

3.3.4 Licensing of electronic communication services and networks

The activities of electronic communication networks (ECNs) and electronic communication services (ECSs) will be authorised through a licensing framework. SHG has considered three types of licensing regime – individual operator licences; general authorisations (also referred to as class licences) and no licence requirements (i.e. open entry). Whilst internationally there is a trend towards liberalisation and general authorisations through class licensing and general conditions the market in St Helena is not yet mature enough to be able to support this. The licensing framework is not intended to be a barrier to participation but one that can support growth of electronic communication networks and services in such a way that is beneficial to the development of the Island as a whole.

The licence is intended to provide all stakeholders, including consumers, competitors and the government with a clear understanding of what the operator is, and is not, permitted to do. Licences provide certainty for investors, and with it the confidence needed to commit the investment required to upgrade the infrastructure. The licensing process will be integral to the development of the electronic communications market in St Helena. SHG objectives for the licensing of electronic communication services and networks are:

- **Regulatory certainty** – By clearly defining the rights and obligations of the operator and the Regulator, a licence can increase confidence in the regulatory regime. Regulatory certainty is a critical element of the licensing process.
- **Regulating market structure** – a key aspect of regulation is the determination of market structure and, in particular, the number of operators licensed to provide electronic communication services
- **Regulating provision of an essential public service** – controls are required to ensure services are provided in the public interest. Licensing will be an important tool to exercise the right level of control.
- **Development of the network infrastructure and expansion of services** – licensing will assist in the development of electronic communications on St Helena through the inclusion of network roll-out and service coverage obligations, where relevant. SHG recognises that licences are an important tool for expanding infrastructure investment and promoting universal service.
- **Consumer protection** – An objective of SHG in the licensing process is to ensure consumer protections are included.

The types of electronic communication activities that will be subject to legal and regulatory requirements will include:

- Ownership or operation of an electronic communications network;
- Ownership or operation of an electronic communications network used for the provision of electronic communication services to, or for, the public in return for a fee
- The provision of electronic communication services to the public in return for a fee
- Importation of electronic communications apparatus

Each of these categories will require a licence; in most cases this will be an individual licence. Individual licences will ensure that terms and conditions can be applied by SHG that are relevant to the specific network or service. Provision will also be made in legislation for the issue of class licences with general terms and conditions attached. Initially class licenses will be aimed at private networks, but as the market matures the legislation will enable the use of class licences for general network and service authorisations.

The Regulator will be responsible for the issue of licences for the ownership and operation of electronic communication networks that are not serving the population of St Helena. Due to the size of the St Helena communications market the Governor in Council, will be responsible for the issue of any licence for the provision of public electronic communications networks and services. In the event that a clear case is made for the issue of an exclusive licence the responsibility will also fall to the Governor in Council.

A licence issued by the Regulator may –

- a) Apply in relation to all or any specified part of the territory of St Helena;
- b) Be non-exclusive;
- c) Be granted on terms and conditions, including that it will not be used for the provision of public communication services; and
- d) Include authorisation to construct and operate an electronic communications network (fixed, mobile, international) and to use this network for electronic communication services on the basis that is not for the provision of a public service.

Whether the licence has been issued by the Governor in Council or the Regulator, the revoking of a licence will be the sole responsibility of the Regulator. This is to protect licence holders from any political interference that may influence the environment within which a licence may need to be revoked. In the case of a licence for the provision of public services and networks the Regulator will have to obtain leave from the Supreme Court in order to revoke a licence. This recognises the importance of the public provision of electronic communication services and the need to ensure continuity of services. Revocation of a licence of this kind cannot be undertaken lightly and should therefore only be undertaken with authorisation from the Supreme Court.

3.3.4.1 Licensing of Public ECNs and ECSs

The business opportunity to offer electronic communication services to the public of St Helena is a privilege that SHG will continue to exercise control over, in the public interest. A public ECN or ECS licence will be issued by the Governor in Council. Once issued it will then become the responsibility of the Regulator to provide oversight of licence compliance through the regulatory tools made available through the legislation and licence terms. A core condition of any licence issued for the provision of public electronic communications services and networks will be to enable and facilitate the development of St Helena as a hub for Permanent Earth Stations providing the necessary interconnection of the licensee's network with any other licensed network.

The detail of the public ECN and ECS licence terms and conditions will be subject to a negotiated agreement between SHG and the licensee. However, there are certain core terms that will be reflected in that agreement that will cover the following areas:

- A universal service access obligation with an obligation to supply
- Payment of a licence fee
- Key Performance Indicators
- Technical standards and requirements including appropriate measures to safeguard the safety and security of the network and services
- Consumer protection obligations including establishment and maintenance of information systems that are adequate to support customer billing and directory inquiry services.
- Quality of Service
- Confidentiality of subscribers information and communications
- Matters of national interest
- Continuity of public telephone network including uninterrupted access to Emergency Services.

A licence for the provision of public electronic communication networks and services will be issued for a minimum period of 10 years. This is to ensure that the licensee has sufficient certainty to invest in the network infrastructure across the life of the licence with a reasonable return on this investment. The licence terms will set the licence period and clearly provide for a notification period of termination. For the avoidance of doubt the licence has to either be revoked or terminated, there will be no mechanism for the licence to simply expire.

Question 6: Do you agree that the provisions of public electronic communication networks and services should be issued for a minimum period of 10 years? If not why not?

SHG is realistic about the extent to which competition can be supported in St Helena, given the infrastructure developments that are required to support the Digital Strategy. Given the size of the electronic communications market in St Helena and the points already covered in this policy SHG will consider the issue of an exclusive licence for the provision of public electronic communications network and services if there are compelling reasons to do so, and it is in the best interests of end users. Issuing an exclusive licence for the operation of terrestrial public communication services is of such strategic importance to St Helena that in these circumstances the issue of the licence, and the agreement of licence terms and conditions will be the responsibility of the Governor in Council. A decision on whether to issue an exclusive licence would take into account the following factors:

- Size of market and sustainability of competition – both with regards the operation of the communications network and the provision of subscriber services,
- Level of capital investment required to meet the EDF milestones and whether this is achievable in a competitive market
- Impact of economies of scale and whether there is scope for the market to support more than one operator.
- Feasibility of achieving the Universal Service Obligation in a competitive environment where the higher costs of providing services to the harder to reach customers may not be offset by the number of customers in more accessible areas i.e. will there be sufficient cross subsidy of expensive-to-serve customers with those least expensive-to-serve customers.

- Impact on customer pricing
- Impact on digital innovation

Question 7: Do you agree that the factors outlined here are sufficient enough to decide whether an exclusive licence for the provision of public electronic communications network and services should be issued or not? If not, why not?

In the event that the Governor in Council determines that it is necessary to issue an exclusive basis, the exclusivity could cover the following services:

- Public fixed voice services, including national and international
- Public mobile voice, text and data services
- Public fixed broadband services
- Public mobile broadband services
- Leased lines⁷ for the provision of subscriber services

3.3.4.2 Over the Top services

The primary intention of SHG policy in this area is to ensure that consumers in St Helena can access the full range of Over the Top (“OTT”)⁸ services that are on offer globally and exercise consumer choice over the services used. The secondary intention is to ensure that the existence of an exclusive licence, should such a licence be issued, does not stifle the digital industry within St Helena and can support the development of locally based OTT services. This has to be balanced with the potential for OTT services to have a negative impact on the business model of public electronic communication service licensees. With this in mind the Regulator will be responsible for monitoring regulatory developments internationally with regards to the policy of open access for OTT services and will advise, Governor in Council as and when appropriate, as to whether a change in the open access policy for OTT services is required.

The providers of OTT voice services that have the possibility of connecting incoming or outgoing calls to the Publicly Available Telephone Service (“PATS”) over the internet may be partially responsible for the conveyance of the signal. This type of service can be provided without the agreement of the public communications network licensee.

An exclusive licence which could be issued by SHG for the provision of public electronic communication services is not intended to prevent users from freely accessing the full range of OTT services that are available on the open market. OTT services operating independently of the Internet access provider in control or distribution of the service will not be subject to regulation but international practice will be reviewed periodically to assess whether a change to this policy should be considered. The regulator is required to monitor this and report periodically and report to Governor in Council.

3.3.4.3 Private Networks

Private networks have been an area of ambiguity under the Telecommunications Ordinance 1989 and associated licensing. Through this policy SHG is seeking to clarify the position on private networks. A private network is any connection within a specified personal network where restrictions are in place to promote a secured environment. This type of network can

⁷ Premium internet connectivity which usually provides dedicated business services

⁸ The term OTT does not refer to a particular type of service but to a method of provision, namely provision over the public Internet. The provision generally occurs independent of the Internet access provider in control or distribution of the service.

be configured in such a way that devices outside the network cannot access it. Only a selected set of devices can access this type of network depending on the settings encoded in the network routers and access points.

SHG firmly believes that nothing in the licensing framework should prevent private users (this includes residential and business subscribers) from connecting computers, and other devices, within a business, whether that business is on a single site or multiple sites within St Helena.

SHG wants to ensure that the licensing framework does not stifle innovation and business development. A private network will enable a business to connect multiple sites of the same business. The intention is to ensure that a computer network used for data transmission between different personal devices can operate in St Helena, primarily to enable businesses to set up internal networks that enables the business to operate efficiently across multiple sites (within St Helena).

Private networks will be generally authorised to operate (through a class licence), that is they do not need to apply for any specific permission to do so but must comply with any General Conditions that may be drawn up and enforced by the Regulator under the legal framework.

Private networks are intended to operate independently of the public electronic communications network but may access the public network, for example through a leased line, for connectivity to publicly available electronic communication services. However, the exemption from licensing is dependent on the private network not being operated for an electronic communications service business or otherwise for direct commercial gain (except as an indirect and incidental part of a person's business that does not involve the provision of electronic communication services). For the avoidance of doubt, this would allow hoteliers, restaurants, cafes and bars to give 'complimentary' WIFI access to customers who have purchased goods or services from that business.

It is essential that modern technologies, such as smart electricity meters, and the networks they require to operate, aren't prohibited from use. Such technologies can be operated on the basis that they are operating within a private network – over a network fully owned by the provider of the smart meters – for example.

In the event that an exclusive licence is issued for the provision of public electronic communication networks and services the use of private networks will be protected. In addition the exclusive licence holder will be obligated to provide services in such a way, and at such a price, that does not stifle the use of innovative technologies for the improvement of the wider economy.

It should be noted that whilst private networks will be covered by a Class Licence they may not be exempt from the requirement to hold a radio communications licence for use of the spectrum (see section 3.3.6 – Electromagnetic Spectrum).

Question 8: Do you agree that private users should be allowed to connect computers, and other devices, within a business, whether that business is on a single site or multiple sites within St Helena, without the requirement of a licence nor permission from the public communications networks and services licence holder/s?

3.3.5 Consumer Safeguards

SHG has identified consumer safeguards as a key issue that has to be addressed through this policy. Consumer safeguards will be enshrined into primary legislation and incorporated into licence terms and conditions for the providers of public electronic communication

networks and services. These consumer safeguards will be the tools used by the Regulator to monitor performance, and encourage or enforce improvements in service quality where necessary.

3.3.5.1 Universal Service Access

SHG seeks to ensure that the people of St Helena have access to fixed broadband and fixed telephone services irrespective of their geographical location on St Helena and at a price that does not prohibit access. It is anticipated that this can only be achieved on St Helena through mandatory service obligations placed on licenced providers of public communication services. Telephone and internet services need to be provided on St Helena:

- at affordable rates;
- of good quality and acceptable standards
- available or accessible regardless of where people are located

In the circumstances where there is an exclusive provider of public electronic communications services the licensee would be designated as the provider of Universal Service and meet its Universal Service Obligation (USO), agreed as part of licence provision.

3.3.5.2 Price Controls

In the absence of competitive pressures price controls can ensure that licensed provider(s) of public electronic communication networks and services attempt to improve operational processes and value for money for consumers; thus price controls act as a proxy for competition. The main objectives of price controls are to protect consumers against the possibility of high price increases in services by putting in place a ceiling on prices for regulated services. At the same time the price controls enable the communications provider to have returns no lower than those associated with a firm of comparable size operating under similar risks in a competitive setting.

In summary price controls will:

- represent good value for consumers
- allow the exclusive licensee to earn returns that are fair,
- properly reflect the risks faced in operating communication services on St Helena
- remain simple by focusing on items of greatest value to consumers.
- be set at a default period of 4 years

Primary legislation will allow for the setting of price controls but will not specify the nature of these controls, that will be specified in the licence conditions and be subject to negotiation.

Price controls will:

- be outcome based,
- give the licensee strong incentives for investment; and
- seek to improve efficiency whilst protecting end users.
- be designed in such a way as to impose the least burden necessary to achieve this purpose.

When agreeing price controls SHG recognises that due to the scale of the market higher tariffs than those enjoyed in larger jurisdictions may be a necessary enabling factor for investment. However, end-user pricing has to be at a level that is affordable and doesn't prevent access to communication services. This is an essential requirement for the EDF

milestones and release of EDF funds. Rate of return (cost based)⁹ regulation has substantial negative effects on innovation and significant consumer harm. This goes against the principles of this policy and will therefore not be used as a method of controlling prices.

Price controls will be set at a default period of 4 years; this reflects the challenge in forecasting developments on both the supply and demand sides. A fixed period of 4 years balances the certainty required for the provider whilst recognising that usage patterns are likely to change significantly during this timeframe. The Regulator will be responsible for reviewing the price controls and agreeing new controls. The Licence will specify the nature and timescales of this review process.

Traditional price cap (price-based) regulation, where prices are allowed to rise by means of a formula¹⁰ do not take quality of service into account. Should a price cap be deemed to be the most appropriate mechanism for price controls it will incorporate quality concerns directly into it, making the price or revenue allowed directly dependent on quality delivered. If quality increases the provider will be allowed to raise its prices, recouping some of the cost of increased quality directly from consumers, who had benefitted, and a degradation of quality would similarly be reflected in lower allowed prices. This type of price control mechanism takes time to negotiate and places a significant burden of administration and cost on both the Regulator and communications provider.

Before implementing a price cap of this nature SHG will first seek to arrive at a negotiated agreement which will include fixed pricing for a minimum initial period of four years, and quality of service levels agreed separately. A breach of quality of service would have no bearing on price but would be a matter of enforcement action.

Question 9: Do you believe that a price cap formula should be set to ensure value for money for consumers? If so what factors should be taken into account when setting a price cap?

3.3.5.3 Consumer Protection

Licensees will be obliged to establish consumer complaints-handling procedures. The Regulator will receive and investigate consumer complaints that are not resolved by the licensee's complaints procedure. Not only does there need to be a complaints resolution procedure but it needs to be visible for consumers. There will be a general prohibition against any conduct by a licensee that is misleading or deceptive or likely to mislead or deceive. There will also be an obligation for licensees to provide services that meet certain minimum standards of quality and reliability (see section on Quality of Service) which may be prescribed in the licence but may also be prescribed, from time to time, by the Regulator, and pay compensation to consumers should a breach of these standards occur.

A fundamental part of consumer trust in communication services is the privacy of users' communications. There will be a requirement for the licensee(s) to protect consumers' privacy (subject to lawful interception pursuant to a warrant) along with a requirement to protect the confidentiality of users' personal information. There will be a requirement that this

⁹ Rate of return (cost based) regulation allows tariffs to rise based on a predetermined rate of return. Prices are adjusted to keep the rate of return on capital at a consistent level

¹⁰ Price cap (price-based) regulation where prices are allowed to rise by means of a formula which allows increases in the tariff by the increase in retail price index (RPI) adjusted by an efficiency factor 'X' and expressed as $RPI - X$. The value of 'X' has to be negotiated along with the services to be covered and regularly reviewed to re-set the value of 'X' should that be required.

personal information be stored on St Helena and only upon permission can this data be removed from St Helena.

The licensee will be required by law to put in place a Consumer Code of Conduct. This Code, and the detail of the consumer protections contained within it, will be subject to the approval of the Regulator prior to publication and any amendment will also be subject to approval in order to ensure that any amendments improve consumer protections rather than deteriorate the position of consumers.

In summary the key objectives for the role of the Regulator in consumer protections are to:

- Prescribe guidelines that will set acceptable standards of conduct by licensees in respect of consumers; and
- Protect the rights of consumers in the electronic communications sector.

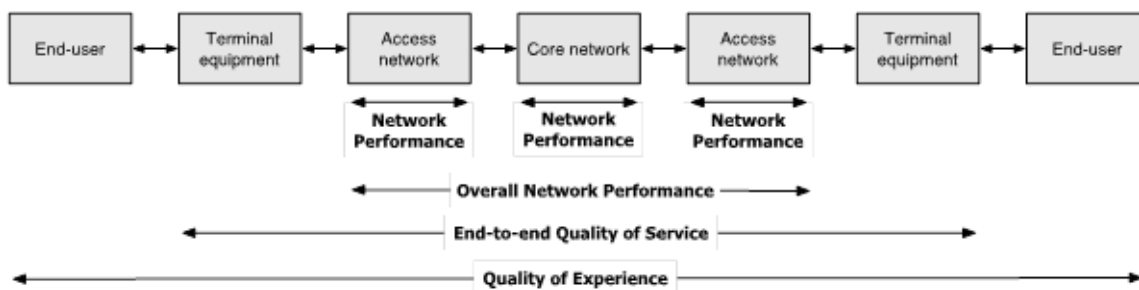
Certain key consumer protections may also be negotiated by SHG and contained within the licence terms and conditions.

Question 10: SHG intends to protect consumers from bad service through regulation of licensee’s activity. What do you think should be in a Consumer Code of Conduct?

3.3.5.4 Quality of Service

Quality of Service (QoS) consists of a set of parameters related to the performance of traffic on a communications network. Quality standards generally include, but are not limited to, requirements related to service availability, access delay, call completion rates, fault incidence and time to repair.

The diagram below is adapted from ITU-T Recommendation E.804 (02/2014), cl.1.2 and shows the relationship between different performance measures. Quality of Service is specifically focused on the quality of service between terminal equipment.



QoS is measured from the point of view of the end user but does not directly involve the user in the process in order to provide objective measurement. Typically QoS measurements depend on typical characteristics of the network. Quality of Experience (QoE) is the overall performance of the communications network involving users in the process of measurement. QoE assessment is more subjective because it is influenced by the experience and the level of expectations of users of the service. Customer satisfaction is one of the driving factors for QoE and will be addressed separately.

An important function of the Regulator is ensuring that communication services provided to consumers are of an appropriate quality. Many other jurisdictions have QoS targets implemented by their national regulator. The adoption of quality of service measurements and targets in St Helena could have a number of potential benefits:

- **Captive customers** – Customers have limited choices in service provider in St Helena. Without QoS regulation dominant operators have fewer incentives than

parties in a competitive market to maintain high quality of service. Where dominant operators have their prices capped there is a risk that QoS could be allowed to deteriorate as an alternative to price increases.

- **Quality information** - Good quality, transparent, and published information on performance can provide an incentive for improvement. Regulators, therefore, often require licensed operators to report their delivery performance so as to inform consumer choice, improve consumers' ability to assess the value for money of the services they are buying and ensure quality of service is maintained or improved.
- **Uniform service provision** – For non-competitive services there is an obligation to provide the same levels of service across the network. Without checks on quality of service, there is no ability on the part of the regulator (or the general public) to assess whether service quality is consistent.
- **Management incentives** – Publishing information about activities should incentivise providers to improve their service offers. A quality of service system, which is run independently, where results are available publicly, and comparable between operators, encourages a sharpening of operational and customer-facing activities. There shall be a requirement for the regulator to publish QoS results that have been independently verified.

Within the context of St Helena, Quality of Service regulation aims to:

- Enable consumers to better understand the QoS provided by the licensee and inform service usage and consumer feedback on services;
- Provide the Regulator with objective points of reference for assessing the QoS provided by the licensee;
- Maintain or improve quality of service
- Focus service and network providers to deliver high quality services to customers
- Alert the Regulator to issues of concern to customers or on which they may need to develop new policies; and
- Provide reassurance to customers that the service they receive is of a certain standard.

It is on this basis that SHG considers there to be sufficient justification to monitor and target quality of service in St Helena. When establishing a QoS regime SHG will take the following factors in to consideration:

- The relationship of quality of service to its costs and its value to the customer
- Identifying areas to be covered
- Identifying information sources
- Establishing a balance between outcomes (i.e. quality of service parameters), outputs (i.e. quality of service measurements) and inputs (measured quality of service performance submitted by service providers)
- Establishing criteria for the reliability and verifiability of the information available;
- Assessment of the costs of providing and processing the information; and
- Identifying performance indicators that are available for public disclosure.

In addressing matters of quality SHG will look to keep regulatory initiatives proportionate so as not to unduly increase consumer prices. The quality measures set will draw on the SMART principles; they will be Specific, Measurable, Actionable, Relevant and Timely

Performance enhancing incentives and penalties will be incorporated into the regulatory framework and will address issues such as:

- Level of availability (reliability of supply/% availability)
- Restoring supply after unplanned interruption
- Speed of communications – level of download and upload speeds
- Contention ratios
- Response time for consumer faults and complaints
- Levels of service security (cyber security regime)
- Ongoing monitoring and reporting

Information on QoS should not purely be for the Regulator, consumers have practical concerns relating to the quality of web browsing, the time to download files, information on lost connections and how frequently these can be expected, and latency. These practical concerns need to be addressed in the QoS regime.

To support implementation of QoS monitoring relevant obligations will be contained within licence conditions as well as in primary legislation.

The licence will state that *“The Licensee shall comply with any direction issued by the Regulator from time to time, regarding any quality of service indicators and measurement methods and shall, as and when required, supply to the Regulator, in a form specified by the Regulator, the results of its measurements of actual performance against quality of service indicators and measurements specified, and the Regulator may publish or require publication of such information as it considers appropriate”*.

The licensee will be required to set out their minimum service levels in respect of each service offered, any exceptions to these, and compensation or refunds they offer where service levels are not met. This will be further supported by a Code of Practice (see section 3.3.5.3 - Consumer Protection).

Measuring Quality of Service

QoS is generally measured and reported in three ways:

Key Quality Indicators (KQI): These indicators gauge QoS and make the results comparable across time periods and carriers (where there is more than one). KQIs can relate to both customer service and technological issues. Unsuccessful call ratios, supply times for initial connection, response times for operator services and bill accuracy are among the indicators most regularly adopted by many regulatory authorities internationally. KQIs require data to be gathered during a specified, recurrent period.

Question 11: Key Quality Indicators measure quality of service. What do you believe to be Key Quality Indicators for the Public Communications and Networks Policy Licensee?

Live testing: Another way of measuring quality of service is through live testing. This is used across the globe by both regulators and operators but because of the costs, it can only cover a representative sample of services and end-users. For broadband connection tests, access to customers' line is essential. The objective of this method is to present data regarding the quality of a given service at a particular moment in time over a specified period.

Consumer survey: Consumer surveys can effectively pinpoint the weakest elements of service quality, providing operators with feedback. Consumer surveys can also be compared with KQI data and can be used to determine whether a weakness identified by consumers

also falls into a low scoring KQI and can better inform the Regulator as to whether action is required.

In principle, all three testing could be of value to the Regulator for measuring QoS in St Helena. However, some smaller nations, such as the Falkland Islands and Cayman Islands, have found the cost of dedicated facilities with special software (live testing) to be cost prohibitive. The Regulator will need to make an assessment of cost balanced against outcome to determine which measurement methods should be used.

Publication of statistics

A culture of compliance is important to protect consumer rights. Ofcom, for example, requires the UK operators to submit the full details of customer complaints, separated into three categories: fixed line telephony, fixed broadband and mobile telephony. This type of complaint reporting is replicated across other jurisdictions. SHG believes that publication of provider-specific complaints and faults data may act as an incentive for providers to improve performance. Licensees will be required to provide a quarterly summary of faults and complaints data. The data will give the Regulator an overview of the complaints system, the extent to which it is being used and whether the associated response times are being met. Complaints data reporting will be tailored to the licensee's complaints process.

Faults data will also be collected from licensees and published; this data will include the total number of faults reported including separation of whether these are residential or business, service areas where faults are reported (i.e. internet, mobile), originating source of the fault (i.e. service provider equipment or customer equipment) and resolution time. The legal framework will put in place a requirement for licensee's to report complaints and faults data to the Regulator in the format specified by the Regulator.

Setting the detail of QoS regime

In this policy SHG has set the outline for the framework for QoS regulation. Specific QoS parameters and targets will not be set through this policy. Initial agreement on Quality of Service will be agreed in the licence issued to the public network and service provider, subject to expert technical input during the licence negotiation. The Regulator also has to have sufficient powers to not only undertake enforcement action, should there be any breaches, but also work with the provider to establish any additional provisions or reporting mechanisms that may be necessary. These would be implementable either through voluntary agreement between the Regulator and provider or through the Regulator issuing a direction

Failure to meet prescribed targets

Compensation should be increased incrementally if targets are not met within a reasonable period. So for example, if a fixed line which requires an engineer's visit is not installed by the operator within a specified number of working days, the proposal would involve a 'ratcheting-up' effect, whereby the daily compensation payments doubles, and then trebles after specified time periods. This ensures the operator has the greatest incentive to address quality of service failures.

3.3.6 Broadcasting services

Broadcasting services will be incorporated into the primary legislation with the Regulator responsible for broadcast service licensing, whether this be terrestrial broadcasting, re-broadcasting or satellite broadcast reception services. However, the Regulator will not take

on any role for the oversight of broadcasting content and codes for locally produced broadcasting content.

A licence will be required for the provision of broadcasting, or re-broadcasting, services in St Helena. This will be separate to the requirement for a licence for electromagnetic spectrum required for the broadcasting station. Upon application the Regulator may approve, and grant a broadcasting or re-broadcasting licence. The licence can be granted for such a period and on such conditions and subject to the payment of such fees as the Regulator may think fit and may be prescribed in regulations made by the Governor in Council. In the absence of a Regulator, SHG will assume responsibility for the issue of broadcast service licences.

A broadcasting licence (including re-broadcasting) will not be issued on exclusive terms i.e. a licence won't prevent another licence being granted. Any licensee offering a subscriber service must ensure that transmissions are not in breach of copyright and must not knowingly enable subscribers to receive any transmission which is obscene or inciting racial hatred.

A person who provides a (re)broadcasting service without a licence commits an offence and is liable to a fine and on conviction of that offence the court may, if it sees fit order that all or any of the apparatus used by him for the purpose of (re)broadcasting should be forfeit to the Crown.

3.3.7 Management of the Electromagnetic Spectrum

The electro-magnetic spectrum ("spectrum") is a medium by which information may be transmitted wirelessly over distances ranging from a few metres to thousands of kilometres. It is a valuable national resource underpinning important economic, social and communications activities. The radio frequency spectrum is divided into different bands which are used by a variety of communications services including – broadcasting, mobile, satellite, public safety and two-way radio. Spectrum is also fundamental in the day-to-day operation of emergency services and defence forces and it is a vital input to many other services including important scientific applications.

However, spectrum is a finite natural resource with competing uses and users so it must be managed effectively, and efficiently used. Effective management of the radio frequency spectrum, through the issuing of radiocommunication licences is essential to the growth of communications in St Helena. There is now an expectation across the world that communication and broadcasting services are available, free of interference and properly managed.

It is the intention of SHG that the legislative framework:

- Confirms that ownership of the spectrum vests in the Government,
- That the Regulator is responsible for managing and controlling the electro-magnetic spectrum through the issue of Radiocommunication Licences; and
- The duties of the Regulator in carrying out spectrum functions.

Legislation is required to introduce a statutory basis for spectrum management and the licensing of radiocommunications in St Helena. It is the responsibility of SHG to develop spectrum policies that conform to the international treaty obligations of the ITU Radio Regulations whilst meeting national spectrum needs. Responsibility for the management of the electro-magnetic spectrum will be delegated to the Regulator. The Regulator will be given the statutory responsibility to develop and implement a framework for the management of the spectrum that is proportionate to the scale and needs of St Helena and incorporates

the strategic direction already identified through policies such as the Licensing of Permanent Earth Stations and Receive Only Earth Stations.

The same regulatory principles and objectives for electronic communication services will apply to management of the spectrum, management of the spectrum will be undertaken in the interests of end users. The responsibilities of the Regulator for spectrum management will include:

- Preparing, consulting on, publishing and maintaining a National Frequency Allocation table;
- Prescribing, and issuing, the categories of radiocommunication licences that will give users the necessary permissions to transmit signals over the specified spectrum;
- Receiving and responding to reports of harmful interference, and resolution of complaints by means of mediation, appointment of an arbitrator, or making an appropriate order or direction;
- Establishing effective liaison on spectrum matters with other countries and international organisations, the Police and emergency services on St Helena, any military, defence or security services authorised to operate on St Helena and radio and television broadcasters on St Helena (should that be applicable);
- Reviewing Radiocommunication licence fees and advising the Governor in Council on the making of regulations for radiocommunication licence fees, and exemptions from licensing.

Interference free operation of radiocommunications systems across international borders is achieved through the implementation of the ITU Radio Regulations and Regional Agreements, and the efficient and timely update of these instruments. The Radio Regulations, which have the status of an international intergovernmental treaty, provide a framework for the use of the radio frequency spectrum and satellite orbits. To keep pace with the fast development of technologies and the consequent convergence of services and technologies, the Radio Regulations are revised every three to four years at the World Radiocommunication Conference. The UK, through OFCOM represents the British Overseas Territories at the WRC. Provisions for the licensing of radiocommunications (previously referred to as wireless telegraphy) are covered by the ITU Radio Regulations Article 18.

“18.1 1) No transmitting station may be established or operated by a private person or by any enterprise without a licence issued in an appropriate form and in conformity with the provisions of these Regulations by or on behalf of the government of the country to which the station in question is subject.”

SHG wants to ensure, through the delegation of spectrum management and radiocommunications licences to an operationally independent Regulator, that international obligations for the licensing of radiocommunications are being met in St Helena.

For the avoidance of doubt the Wireless Telegraphy Regulations 1989 will be repealed and the requirements for the licensing of radiocommunications will be entered into primary legislation. Any use of the electromagnetic spectrum that was previously licenced under the Wireless Telegraphy Regulations will be licenced under the new provisions for the licensing of radiocommunications. Secondary regulations will be necessary for the procedures to be followed when licensing radiocommunications and any exemptions to the requirement for a radiocommunications licence. Both the provisions for the primary legislation and secondary regulations will have to ensure they are fully cognisant of the policy already in place for the licensing of Permanent Earth Stations and Receive Only Earth Stations and will ensure that can continue as intended through the new legislative and regulatory framework. Any licences

already issued under the Wireless Telegraphy Regulations will be protected and converted into Radiocommunication Licences under the new legislation.

Radiocommunications apparatus and installations are, in many cases vital to the communications networks of St Helena. Given the importance of these installations it will be an offence to unlawfully destroy any radiocommunications apparatus or installation. It will also be an offence to obstruct or prevent the sending, conveyance, delivery or receipt of any message or signal by radiocommunications. These offences, upon conviction is liable to imprisonment for up to 10 years (this recognises the nature of St Helena communications as Critical National Infrastructure) and, or a fine up to £125,000. Anyone carrying out any activity requiring a radiocommunications licence without a licence is guilty of an offence is liable on conviction to a fine not exceeding £125,000.

3.3.7.1 Equipment Standards

Internationally there is a recognised need to regulate equipment standards. However, SHG does not believe it is necessary, or proportionate for the Government nor the Regulator, to regulate equipment standards, apart from where a specific policy need is identified for action such as have been identified through the Permanent Earth Station Licensing Policy. However, given the impact that non-conformity of communications equipment can have the legislation will contain the ability for the Governor in Council to regulate equipment standards should it become necessary. In the event that equipment standards are required the standards set will be those that already have a recognised process in place for accreditation such as equipment type approved in the USA (FCC) and Europe (CE).

3.3.8 Establishing a Regulator

SHG has considered various forms of regulatory oversight for electronic communication networks and services, broadcasting and radiocommunications in St Helena. By the end of 2021 SHG will establish an operationally independent regulator that sits within the wider framework of SHG in terms of budget and salary. The Regulator will have responsibility solely for the communications industry and will be known as the St Helena Communications Regulator (“the Regulator”). This will provide for a Regulator who cannot be unduly influenced by political decisions (thus given the stability required for confidence in investment) whilst taking advantage of the SHG structures for matters such as IT support, office space and legislative drafting. Being operationally independent but within SHG is a model that takes account of the scope of regulation within St Helena and the size of the budget available for regulation.

Regulatory decision making requires multidisciplinary skills. Specific types of regulatory decisions require qualified economists, engineers, lawyers, accountants and financial analysts. Many other decisions benefit from having a wide range of different professional skills and perspectives. SHG accepts that one person cannot incorporate all the necessary skills sets of a larger regulatory authority. As such budget will be made available to the Regulator for external expertise, where this is required.

The Regulator will be established through legislation and will be accountable to the Governor in Council, accountability mechanisms will be included in legislation such as reporting annually to Executive Council and the Legislative Committee. These reporting mechanisms maintain appropriate Government oversight without direct interference. Whilst the Regulator will be accountable to the Governor in Council the Regulator will be free to administer and enforce the applicable legislation independently from Government.

For employment purposes the Regulator will report directly to the Attorney General; this is to ensure the operational independence of the Regulator. In the event that the role of the

Regulator is vacant it will then fall to the Attorney General to provide oversight until such a time as the role has been filled.

Question 12: Do you agree that a Regulator should be established with responsibility solely for the communications industry and that they should be operationally independent but within SHG? If not, why not?

3.3.8.1 Functions of the Regulator

A Regulator is there to implement and monitor the rules that are put in place through legislative and licensing frameworks. The Regulator will not be a consumer complaints authority; this is not a regulatory function. If a service user has a complaint these have to be dealt with by the service provider – they are the ones in the best position to fix faults and resolve complaints if services are not provided in an appropriate manner. The Regulator can, however, be there when the service provider and consumer cannot reach a resolution or if the service provider isn't operating an appropriate complaints process. The Regulator has a role and duty to identify and respond to conduct which is unlawful and potentially harmful to consumer interests. Within this there is a clear role for the regulator in arbitration and dispute resolution. This function has to be supported by defined investigation and enforcement powers to address the consumer issues in question.

Alongside encouraging and promoting compliance the Regulator has a key role in enabling change to happen that is consistent with the wider public policy objectives of SHG. A key regulatory function is to establish communication pathways with the licensees and maintain them with a commitment to early dialogue.

The general functions of the Regulator shall be:

- Promoting public understanding of the policy and law for which it has responsibility
- Regulating, supervising and enforcing compliance with the conditions placed on a licensee for the provision of an electronic communications network or service and, where applicable, specific obligations that might be placed on the licensee.
- Promoting voluntary compliance with regulation and licence conditions
- Investigating breaches in legislation relating to the provision of electronic communications and enforcing compliance with regulations, where necessary
- Make recommendations to the Governor in Council for amendments to both primary and secondary legislation
- Give information and advice to the Governor in Council on matters concerning electronic communications
- Manage the electromagnetic spectrum through the issue and oversight of Radiocommunication Licenses.

The Regulator will be able to investigate any potential breaches and infringements and will be able to impose penalties and compensation. The Regulator will have investigative powers which will include the power to require production of documents, to require persons to attend and answer questions and to enter premises. To protect the Regulator's operational independence it will be an offence to obstruct the Regulator or a person authorised by the Regulator in the exercise of the Regulator's functions under the law or under a licence. Given the importance of the Regulator's independence a person guilty of obstructing the Regulator is liable on conviction to a fine.

3.3.8.2 Specific powers of the Regulator

Within the legal framework the Regulator will need to be designated with specific powers in order to undertake the functions stated above. These will include:

- Anything the Regulator considers necessary or desirable for the purpose of pursuing the objective of regulating for the benefit or end users.
- Exercising the powers of the Regulator under the relevant primary and secondary legislation
- Issuing or approving codes of practice, directions, decisions, statements, instructions, notifications, and technical rules and standards
- Publish and maintain registers or lists
- Conduct inquiries, compliance investigations and hearings
- Require the provision of documents and information
- Publish the results of action taken
- Make awards of compensation (in accordance with the relevant law) in respect of loss or damage suffered by consumers, and make provision for the enforcement of penalties.
- Appoint an Alternative Dispute Resolution scheme, if necessary.

3.3.8.3 Regulatory governance and accountability

The principles of good regulation are that regulatory action will be:

- Proportionate
- Consistent
- Accountable
- Transparent
- Targeted only where needed

The benefit of taking a principled approach to regulation is that legislation can contain a wide range of potential regulatory. The Regulator will have the flexibility (or independence) to decide which of the tools are necessary and apply them using the five stated principles.

Proportionate

The Regulator will intervene only when necessary. Remedies will be appropriate to the risk posed, and costs identified and minimised.

Any burden or restriction imposed on a person, business or activity is proportionate to the benefits that are expected as a result. To judge this, the costs to all parties must be taken into account. A proportionate approach means the Regulator should avoid imposing unnecessary regulatory burdens through their regulatory activities. The Regulator should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.

The OECD provides a regulatory checklist that should assist with ensuring mechanisms and actions are proportionate.

- Is the problem correctly defined?
- Is Government action justified?
- Is regulation the best form of Government action?
- Is there a legal basis for regulation?
- What is the appropriate level (or levels) of Government to take action?
- Do the benefits of regulation justify the cost?
- Is the distribution of effects across society transparent?

- Is the regulation clear, consistent, comprehensible and accessible to users?
- Have all interested parties had the opportunity to present their views?
- How will compliance be achieved?

SHG will use this checklist during the drafting of new communications legislation and when considering any necessary policy interventions.

Consistent

Rules and standards must be joined up and implemented fairly

The Regulator will ensure consistent and predictable application of the rules. There will be consistency of implementation, consistency of consultation, consistency in decision making processes and regulatory delivery. Consistency provides a regulatory environment in which businesses have the confidence to invest and grow and consumers are protected.

Accountable

The Regulator must be able to justify decisions and be subject to public scrutiny.

The Regulatory Framework should incorporate the necessary checks and balances of accountability within the system. SHG is accountable for the design of a good regulatory framework and incorporating it into law. The Regulator is then responsible for the operational implementation of regulation, within the law, and should be accountable for their decisions and any discretion that they are able to exercise. Where the performance of the Regulator is limited by the acts that empower them, or the design of the regulatory framework, the Government has accountability for the decisions that led to that situation. The procedures of accountability need to be able to identify this co-responsibility in practice with the legislative framework identifying these areas of responsibility.

In St Helena overall Government accountability for the policy direction would be held by the Governor in Council, under the remit of the Economic Development Committee, with the Regulator then having responsibility for the day to day implementation and operation.

Transparent

The Regulator will be open, and keep regulatory processes simple and user-friendly.

Transparency is required at all levels within the legal and regulatory framework to illustrate how decisions are made and how they are applied.

In practice transparency includes standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; controls on administrative discretion; and implementation and appeals processes that are predictable and consistent. The Regulator should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply and assist consumers understand the purpose of regulation and the steps being taken to achieve the desired outcomes.

It should also be recognised that in a St Helena provisions for the transparency of information may not need to be as detailed and complex as in other larger nations. Certain requirements for the publication of information, for example, may place an undue burden on the Regulator, where an email might suffice. SHG will ensure provisions for transparency are incorporated within the legislative framework in some of the following ways, although this is not an exhaustive list provisions for transparency should include:

- The requirement for consultation, particularly when matters are in the public interest;
- Information provision requirements to ensure that, when necessary, the Regulator has the power to request information from licensees and such requests can be enforced where necessary;
- Requirements for the Regulator to publish an annual report ensuring transparency in the role of the Regulator; and
- Transparency in financial accounting for certain categories of licensee.

Targeted, only where needed

Regulation will be focused on the problem and aims to minimise side effects

Targeted regulation is an essential mechanism through which to contain the costs of regulation and manage the limited human resource available to undertake regulatory actions. The Regulator will need to adopt risk and evidence based protocols which help target action where it's needed and help to ensure the achievement of measurable outcomes. The Regulator will target poor performance that has the most significant impact on end users and encourage compliance through the promotion of best practice and behavioural change.

3.3.9 Fees

The costs of developing, implementing and enforcing regulation varies relatively little with the size of the market being regulated. SHG recognises that the costs incurred through the new regulatory framework are unlikely to be fully recovered through a cost recovery licence fee system. The fee system will seek to ensure that each licensee is contributing a proportionate share of the regulatory costs having regard to all the circumstances (including the benefits to the licensee and the resources and other circumstances of the fee payer). In determining and charging fees the Governor in Council, and the Regulator, must have regard to the objective of this policy (see section 3.1) and must ensure transparency, objectivity, proportionality and non-discrimination.

The Governor in Council will have the power to make fees regulations. These regulations may require the payment of fees in respect of an application for, or the issue, renewal or maintenance of a licence. The regulations will specify the amount of fee and make provision about timing, manner of payment and any other matters in relation to the fee. Fee regulations will specifically make provision for fees in the following licensing categories:

- Cable Landing Licence
- All categories that fall within Electronic Communications Networks and Services (including public provision)
- Broadcast service licences
- Radiocommunications Licences including but not limited to Permanent Earth Stations, Receive Only Earth Stations and any other category of spectrum use such as amateur radio licences.

Fees regulations may also make provisions for exemptions, waivers and reductions or may make provision for specific purposes. A fee charged may be calculated, and set, at an annual amount or as a proportion of a business' turnover in respect of activities provided in accordance with a specific licence. To ensure the future flexibility of the fees regime there will also be a provision that allows for any other appropriate method of setting a fee.

Fees will be collected and administered by the Regulator, whether they are regulatory fees or those set by the Governor in Council, and shall be paid into the consolidated fund. A fee

which is due and unpaid is recoverable as a debt to the Regulator. It will be an offence to do anything permitted by a licence without payment of the fee. A person who is guilty of an offence is liable on conviction to imprisonment and, or, a fine. An unpaid fee may result in the revocation of a licence.

3.3.10 Approach to Enforcement

The Regulator will need to be able to take timely, effective enforcement action for non-compliance with licence provisions (across all licensing categories). This is best achieved through secondary regulations which will be enabled through the primary legislation.

Enforcement regulations will:

- Operate for decisions made by the Regulator in relation to breaches of Regulator instruments as well as compensating consumers
- Provide coherent, sufficiently flexible process that is appropriate for St Helena, and make provision:
 - For notice to be given of intent to impose a penalty or compensation award;
 - For the form and content of orders
 - Set a maximum penalty (or different maximums for different licence categories)
- Reflect international best practice that will ensure consistency in handling
- Allow for fair and reasonable compensation should that be required.
- Enable the Regulator to order a person to undertake specific actions, or to cease specific actions, necessary to remedy a violation of the law or of a determination, order, direction or licence issued under it.

The Regulator will have the necessary powers to undertake compliance investigations. The Regulator will be able to investigate an actual, alleged or suspected contravention of legal provisions under the relevant legislation or a licence. For the purposes of an investigation the Regulator may require the provision of information or documents. The Regulator will also have the power to enter premises and inspect, copy and retain documents in accordance with a warrant issued by the Court. In these circumstances the Regulator will be able to seek the assistance of the police force in the execution of such a warrant.

The policy on how the Regulator will approach enforcement, penalties and compensation will be drafted by the regulator and agreed by Economic Development Committee and where relevant Governor in Council. It will be the responsibility of the Regulator to work with stakeholders to draft an appropriate approach based on the regulations once they are in force and then be consistent in the application of this approach.

3.3.11 Interception and Surveillance

An electronic communications service licence must, by law, include provisions requiring the licensee to maintain capabilities to retain subscriber details, call and data records (including records for mobile services, fixed line services, broadband user authentication records and mobile short message content). The Governor acting in his or her discretion may require (a “retention notice”) a licensee to retain electronic communications data. Such a notice can only be made if it is in the public interest and it is proportionate to the purpose for which it is required. For these purposes “public interest grounds” are:

- The interests of national security
- Prevention or detection of crime
- Prevention of disorder
- National security in relation to economic well-being

- Public safety
- Public health
- Collection or administration of taxes and other money payable to the Government
- Preventing or reducing deaths or injuries as a result of a public emergency
- Any other matter specified for the purposes set by the Governor in Council by regulations.

A retention notice cannot require the retention of information for more than 24 months.

The Chief Magistrate acting in his or her discretion or a court may issue a warrant authorising or requiring a person to take specified steps to intercept an electronic communication or class of communications and disclose the intercepted material.

3.3.12 War, emergencies and resilience of communications

The legislation will specify that the Governor, acting in his or her discretion, considers it necessary in the interests of defence, public safety or public order, may take any steps the Governor considers appropriate to assume control over any network or services provided under, or in accordance, with a licence or law.

To ensure the resilience of international connectivity SHG will buy international capacity in both directions on the Equiano cable trunk. This ensures that should there be cable damage or a break on either side of the branch unit (for example from the Branch Unit to Portugal) there will still be the resilience of communications in the other direction (in this example from the Branch Unit to South Africa). The service provider will be obliged to have mechanisms in place to enable international communications to operate in both directions on the trunk.

In the event of an adverse event on the Equiano cable branch there will be a period of deterioration in services on St Helena, the service provider will be obligated to ensure the continuity of emergency communication services. As part of the licence agreement the service provider will be obligated to agree in partnership with SHG a contingency plan that will be implemented in the event of a cable break. This contingency plan will be reviewed with SHG every three years to ensure it still fit for purpose.

Given that the electronic communications network is constitutes Critical National Infrastructure the licensed provider of public communications networks and services will be expected to work with SHG as part of a multi-layered strategy to protect consumers on St Helena from cyber-attacks and other threats and will be obliged to report to SHG on any malicious activity that degrades, or threatens, the integrity of the national communications infrastructure.

3.3.13 Numbering plan and domain name

Telephone numbers (both fixed line and mobile) are a finite resource which SHG considers should be managed in the best interests of end-users in St Helena. There is already a national numbering plan in place, this is how service users are allocated with phone numbers. SHG considers it necessary to make provision for a National Numbering Plan in law. The Regulator will have delegated responsibility for the National Numbering Plan and will ensure that there is sufficient supply of numbers for expected usage and that the plan complies with relevant international standards.

In circumstances where there is more than one provider of public telephone and mobile phone services the Regulator will:

- be responsible for allocating number ranges to licensed operators; and

- Determine any rules regarding the assignment and use of numbers including any obligations on operators to use numbers allocated to them efficiently and in accordance with any rules

SHG also recognises the .sh domain as a national asset, as such provision needs to be made in law for the appropriate management of the .sh domain. SHG will continue to oversee the management of the domain until such a time as a Regulator is in post, the Regulator will then take delegated responsibility for oversight of the domain.

3.3.14 Public Service Acquisition and Control

The legal and regulatory framework must ensure that the people of St Helena can continue to receive communications in the event of that a licence for the provision of public electronic network and services is revoked, is terminated at the end of the agreed licence period without a replacement licence being agreed, or if the licensee ceases to operate. SHG believes it is essential that, in these circumstances, the necessary powers are granted to the Governor to assume control over the network. In the event that such an order is made compensation will be payable in respect of assets to which the order applies based upon the book value of those assets.

Perhaps most significantly, from a management perspective, under legislation, a licence for the provision of public electronic communication networks and, or, services, must contain provisions about managing the relationship between the Government and the licensee at the end of the licence period, whether this be as a result of a licence being revoked or the licence is terminated. In order to protect service users and ensure the continuity of service provision, there will be detailed provisions covering the exit of the licensee and transfer of services. These provisions must include a requirement for an exit plan. The exit plan must address and facilitate the transition of the services from the Licensee to the Government, or a replacement licensee, in order to ensure that there is no disruption in the supply of services and no deterioration in the quality of the delivery of those services. The Exit Plan will detail how the transferrable assets, transferrable contracts and transferrable data will be transferred over to the replacement licensee or SHG. There will also be provisions for calculating any compensation payable if the Government steps in before a licence terminates. This is considerable improvement on the old licensing regime, which allowed for uncertainty at the critical time of licence expiry.

3.3.15 Appealing decisions of the Regulator

The arrangements for appeals need to be based on sound legal principles, operate efficiently and ensure that appeals are dealt with justly and at a proportionate cost. The principles of dealing with cases justly and proportionately, include:

- Ensuring, so far as is possible, that the parties are on an equal footing;
- Saving expense;
- Dealing with the case in ways which are proportionate –
 - To the amount of money involved;
 - To the importance of the case;
 - To the complexity of the issues; and
 - To the financial position of each party;
- Ensuring that it is dealt with expeditiously and fairly.

In addition to the accountability required under general principles of good governance the St Helena Constitution (s10(10)) includes a right for every person to a fair hearing within a reasonable timeframe before an independent or impartial court or other authority for determining the existence or extent of their civil rights and obligations.

Overall the appeals process needs to be effective, proportionate, agile and transparent. This can be most adequately achieved through referring all appeals to the courts. The process for bringing a claim before the civil courts is well established with information available to those seeking to bring a claim. The Magistrates Court has an established role in tribunals and there is existing legislation that covers such issues as the establishment of appeals and the process for further appeals. The Court has administration mechanisms in place and it is unlikely that appeals falling under the communications legal and regulatory framework would require additional resources in the Courts and Tribunals Service.

Question 13: Do you agree that the Magistrates Court should deal with appeals on the decisions made by the Regulator?

Question 14 – Do you have any other comments on the Draft Policy and its annexes?

4. Measuring Success

The Communication Networks and Services Policy has identified that change is needed. A collaborative approach will be essential across stakeholders to deliver this. A summary of top level programmatic targets have been provided for policy implementation. This includes a range of activities that SHG considers essential to implement the policy. The Economic Development Committee (EDC) will review progress towards achievement of targets every 6 months in the first two years following approval of the policy, this will then move to annually. Ongoing horizon scanning will be needed to identify new and emerging issues during the implementation phase which may require re-prioritisation of target actions.

Summary of top level programmatic targets for policy implementation.

		Target
Governance	Enable the development of electronic communication services, for the long term benefit of end users through promoting consumer welfare, creating opportunities for investment and ensuring high quality, sustainable and reliable electronic communications infrastructure.	Stakeholders will be given the opportunity to feedback on the policy to help inform and refine the principles during Q2 2020
		Commence drafting of primary and secondary legislation Q3 2020
		Inclusion of offences within the primary legislation including damage to infrastructure, improperly obtaining and disclosing information, and false statements along with appropriate criminal penalties and fines.
		Completion of the legislative process for a new Communications Ordinance with the new Ordinance commenced by the end of Q4 2021
		Nominated provider to submit investment case for infrastructure development including a detailed review of the costs and implications for end user service provision.
		Key provisions to be incorporated into a new licence for provision of public electronic network and communication services with specification of KPIs, KQIs and quality of service provisions.
		Agreement of price control mechanisms and licence fee prior to licence issue
		Fees Regulations finalised and passed
		Universal Service Access Obligations confirmed and included as licence terms.
		Issue of licence for provision of public electronic communication network and services by end of Q4 2021
		SHG to ensure that the processes in place through the Magistrates Courts enable the appeal of decisions made by the Regulator with any necessary amendments made to procedures to accommodate this.
	Establish an Operationally	SHG budget resources secured to enable recruitment of a Regulator Q3 2021

	Independent Regulator	Recruitment and appointment of the Communications Regulator by Q1 2022
		Initial grant of budget by SHG to the Regulator for immediate regulatory activities
Consumer Safeguards	Initial focus for Communications Regulator	Regulator to forecast budget requirements and make submissions to SHG
		Identifying independent technical expertise to support the work of the Regulator
		Development of an online repository of information relating to communications regulation
		Specification and publication of Regulator's approach to enforcement and criteria for issuing penalty and compensation orders
		Negotiate and approve appropriate Consumer Code of Practice for publication by licensed public service provider
		Assess and review any KPI compliance by date prescribed in the relevant licence
		Implement quarterly reporting on complaints and fault statistics
Oversight of national assets	Oversight of the electromagnetic spectrum	Publication of the St Helena National Frequency Allocation Table
		Issue Radiocommunication licences for the use of spectrum by public electronic communication network and service providers
		Ensure a process is in place in legislation that supports the licensing of PES and ROES as per the agreed policy on licensing of PES and ROES

Glossary

The definitions included in this glossary are intended as a guide to the intentions of SHG. These definitions may be amended through the legislative drafting process once a full legal assessment has been undertaken.

Term	Meaning
Assets	All assets and rights required to provide any of the Services in accordance with the licence that is subject to public service acquisition and control, including without limitation network, equipment and any historic billing data but excludes any assets belonging to SHG.
Broadcast	The transmission, relaying or distribution by electronic communications network of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not.
Cable Branch	Branch means (i) the Wet Plant; (ii) the Land Cable; and (iii) the Equipment, in each case to be provided by the Supplier pursuant to the Branch Supply Contract, excluding the Branching Unit, the ROADM and the BU Stub. The Branch does not include the Cable Landing Station or Terminal Facilities.
Cable Landing Station	Where the submarine network interconnects to the inland terrestrial network typically via a backhaul network into the operators inland Point-of-Presence.
Critical National Infrastructure	Those facilities, systems, sites, information, people, networks and processes, necessary for a country to function and upon which daily life depends.
Domain Name	A name allocated under the global name system assigned to St Helena according to the two-letter code in the International Standard ISO 3166-1 (Codes for Representation of Names of Countries and their Subdivision), and includes any second or subsequent level domain.
Electronic Communication Network	(a) A transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals– (i) apparatus comprised in the system; (ii) apparatus used for the switching or routing of the signals, including network elements which are not active; and (iii) software and stored data
Electronic Communication Services	Services normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting. Electronic Communication Services do not include information society services (ISS)
Information	Includes accounts, estimates and projections and any document.

Information Society Services	ISS is any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service.
Over- the-Top (OTT)	Content, a service or an application that is provided to the end user over the public Internet.
Public electronic communications network	An electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public. A public electronic communications network is any transmitter or transmission system (plus associated equipment, software and stored data) used to convey electronic signals (including sounds, images or data of any description). This could be a wired or a wireless network – for example, a network of phone cables or a mobile phone network. It does not include private or restricted networks, only networks used by service providers who have members of the public as customers.
Public electronic communications service	Any electronic communications service that is provided so as to be available for use by members of the public to send or receive electronic signals (including, sounds, images or data of any description). This does not include a content service that provides or edits the actual content of signals – for example, a broadcast service or an online news service.
Technology Neutrality	The same regulatory principles should apply regardless of the technology used.
Radiocommunication	The emitting or receiving over paths which are not provided by any material substance constructed or arranged for that purpose, of electromagnetic energy which either — (a) serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received by any person or not) or for the actuation or control of machinery or apparatus; or (b) is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any object or of any objects of any class; and references to stations for radiocommunications and apparatus for radiocommunications or radiocommunications apparatus shall be construed as references to stations and apparatus for the emitting or receiving of such electromagnetic energy.
Transferrable Assets	Those of the Assets which are capable to enable SHG or a replacement licensee to perform the services and which are capable of legal transfer to the Replacement licensee.
Universal Service	A minimum set of services defined by SHG, of a specified quality which are available to all users regardless of their location and at an affordable price.

Appendix 1: EDF Milestones

Table 2: European Development Fund (EDF'11) Milestones

Intervention logic	Indicator
Enhanced connectivity and accessibility to St Helena will support the delivery of the Island's 10 Year Plan and digital strategy	St Helena signs a contract to improve connectivity through the preferred solution
Due to its isolation and demographic improved telemedicine is a key strategic priority for St Helena	Telemedicine policy to be developed
Supporting disabled people and children with Special Educational Needs is a key strategic priority for St Helena	Disability, speech and language and SEN policies developed
Securing an appropriate landing location is key to the successful landing of a submarine cable	On-Island survey work to be completed and reported upon
Conduct a desk top marine survey of the cable route is required to successfully deliver the sub marine cable to St Helena	Desk top survey is completed by vendor
To enable the entire Island population to benefit from increased connectivity, training and support needs to be provided	SHG, jointly with Enterprise St Helena ¹¹ , will launch "St Helena Connected", to provide a programme of training and seminars open to the whole community to enable the population to take advantage of increased connectivity
St Helena is committed to improving services for disabled people and people with Special Educational Needs	All relevant staff delivering health, social care and education to receive training in use of recording systems and medical referrals, especially diagnostics and disability/SEN
Improved business climate, economic growth and job creation through improved connectivity	Enterprise St Helena to develop and deliver training opportunities to 10 businesses.
The sub marine cable starts to be laid thus signalling increased capacity to the world and reducing isolation	Sub marine cable laying has commenced and is progressing to St Helena
Delivering increased speed and capacity of telecommunications to St Helena will have a substantial positive impact on the local population as well as on tourists	Commencement of delivery of the preferred solution
A marine survey is required to ensure all risks where possible are mitigated for the successful delivery of the sub marine cable	Marine survey commences

¹¹ Enterprise St Helena is the Economic Development Agency for SHG.

Intervention logic	Indicator
Increased use of telemedicine; improved medical diagnostics, particularly for the elderly, through remote consultation made possible by increased bandwidth	By means of extending the use of telemedicine, the number of medical cases requiring off-Island referral will be reduced
Substantially enhanced possibilities for using Internet for school and education purposes	SHG to adopt a policy guaranteeing that all school-age children can access free Internet at school sites at certain times
Improved social care policy is to be adopted and implemented, using online case management system, in line with modern good practice	St Helena to have a fully-operational case management system for social care and the police
To support the disabled and people with Special Educational Needs it is proven that improved technology can have a dramatically positive impact on their lives and their outcomes	All disabled people and people with a Special Educational Need to be offered an assessment and to have individual care plans ¹² developed, based on their specific needs.
The sub marine cable is installed (landed in St Helena)	Sub marine cable has arrived and is being linked to the on island network
Reduction in overseas referrals for health diagnostics and treatment will enable people to remain close to their families while receiving medical interventions. Increased Internet bandwidth will enable access to modern procedures, not currently available on the Island	More people will be able to access remote diagnostics in a timely manner, and the need for overseas referrals will reduce.
To enable disabled people and people with a Special Educational Need to reach their true potential and to gain further independence, specialist technology provided through an assessed care plan ¹² can be transformational.	All disabled people and people with a Special Educational Need who have been assessed are receiving a bespoke care plan, making the best possible use of new technology
Improved connectivity of households and businesses will have a substantial positive impact on all socio-economic conditions on the Island	Islanders and tourists are able to access faster Internet speeds

¹² Care plans are individually-assessed programmes of support for individuals with additional needs, and are delivered by health, social care and education services.