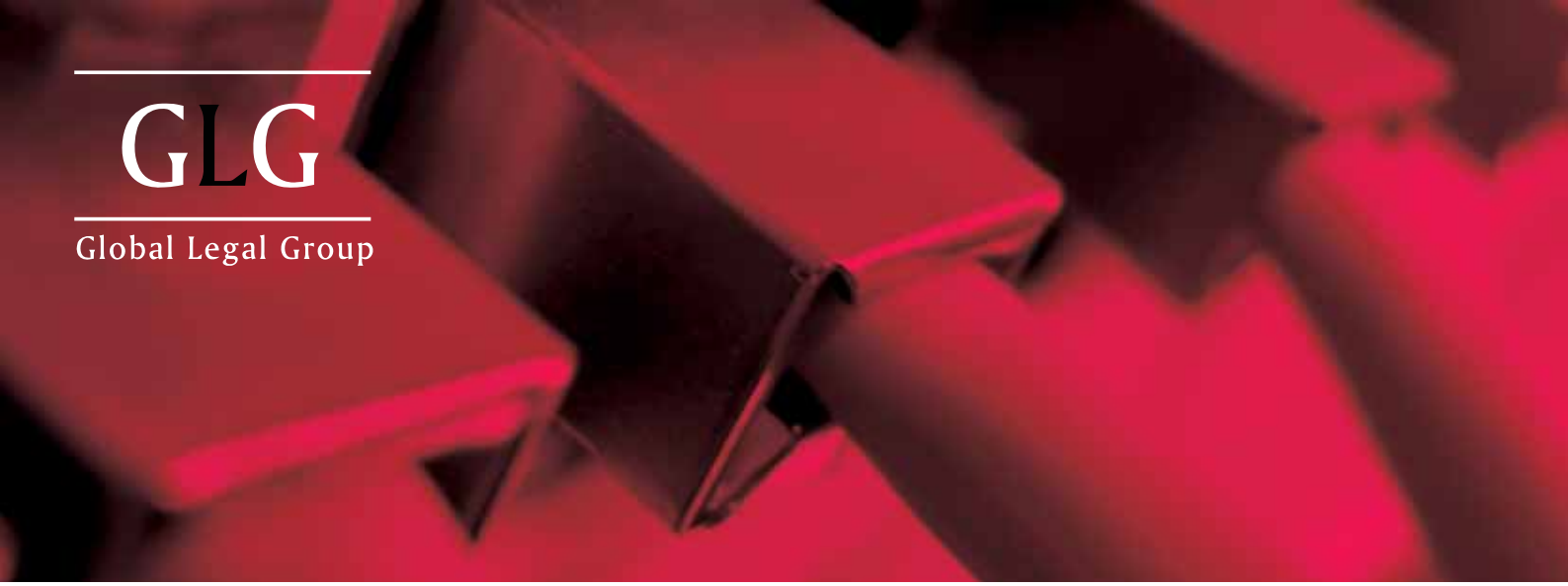

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The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2012

A practical cross-border insight into telecommunication laws and regulations

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Chapter 28

Thailand

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1 Framework

1.1 What are the overall policies and objectives for the electronic communications industry and have these been published in draft or final form? What legislation is relevant to telecommunications and radio frequencies?

Thailand is in the middle of a major transition in its regulation of the electronic communications industry. Several years ago, the business of electronic communications was the domain of the government, through its various state-owned enterprises. Since those days, Thailand has embarked on a regime of providing for healthy competition among many different providers, though there are still numerous issues to be overcome. One issue is the proper role for each of the major state-owned telecom operators, TOT and CAT. A related issue is how the existing telecom concessions granted by those entities will be handled in the modern system of licences and permits.

After the establishment of the National Telecommunications Commission (NTC), the NTC produced several master plans for the industry, laying out a roadmap for future development. Recently, a new unified regulator has been established — the National Broadcasting and Telecommunications Commission (NBTC). Moving forward, the NBTC will assume the NTC's responsibilities, including the production of a master plan.

The primary pieces of legislation relevant to telecommunications and radio frequencies are:

- The Radio Communication Act.
- The Telecommunications Business Operation Act.
- The Frequency Allocation Act.

There is a considerable body of administrative regulations and notifications promulgated under these laws.

1.2 Is Thailand a member of the World Trade Organisation? Has Thailand made commitments under the GATS/GATT regarding telecommunications and has Thailand adopted the WTO Basic Telecommunications Agreement?

Thailand has been a member of the World Trade Organisation since 1 January 1995, and has made commitments under GATS regarding both value-added services and basic telecommunications.

1.3 How is the provision of electronic communications networks or services regulated? Is the provision of electronic communications networks or services open to competition in Thailand?

The provision of electronic communications networks and services are subject to regulation by the NBTC. The Ministry of Information and Communications Technology (MICT) (including the National Information Technology Committee and the National Electronics and Computer Technology Centre) also has a significant role in regulation. As a general matter, the sector is quite competitive, though it is more competitive at some levels than at others.

1.4 Which are the regulatory and competition law authorities? How are their roles differentiated? Are they independent from the government?

The primary regulatory bodies relevant to telecommunications are the new NBTC and the MICT. The NBTC has promulgated many regulations and imposed many licence conditions in order to ensure competition. In parallel with this body of regulation, the Trade Competition Commission (TCC) is the general competition regulator in Thailand and has the authority to enforce antitrust regulations and rules against unfair trade practices across many industries. While both the NBTC and the TCC are envisaged as independent bodies, the members of each are appointed by the government, and their function can be moderated by the government.

1.5 Are decisions of the national regulatory authority able to be appealed? To which court or body?

Decisions of the NBTC can be appealed within the organisation itself, subject to the Administrative Procedure Act B.E. 2539 (1996).

2 Authorisation

2.1 What types of general and individual authorisations are used in Thailand?

Primary authorisations take the form of licences, which are categorised as Type 1, Type 2, and Type 3. Each licence can have different endorsements, authorising the provision of different services.

1. **Type 1 Licence:** Type 1 licences are granted to

telecommunications operators that provide service without their own networks. These types of businesses have been deemed appropriate to be fully liberalised. These licences can be granted upon notification by an operator that intends to operate such business.

2. **Type 2 Licence:** Type 2 licences are granted to telecommunications operators that provide service either with or without their own networks, but only when the services are intended for use by a limited group of people, or have no significant impact on competition, public interest, and consumers.

3. **Type 3 Licence:** Type 3 licences are granted to telecommunications operators that provide service with their own networks, which is intended for use by the general public or may impact competition, public interest, or consumers.

2.2 Please summarise the main requirements of Thailand's general authorisation.

Individual authorisations — in the form of licences described in question 2.1 — are required to legally engage in any telecommunications business.

2.3 In relation to individual authorisations please identify their subject matter, duration and ability to be transferred or traded.

The subject matter of each form of individual authorisation is described in question 2.1.

Type 1 licences are valid for 5 years. Type 2 licences are valid for 15 to 25 years for operators with their own networks, or 5 years for those without their own networks. Type 3 licences are granted for periods of 15 to 25 years.

Licensees cannot freely transfer or sub-license the rights granted under their licences, nor can they transfer the rights and/or responsibilities to operate their networks, in part or in whole, to third parties, if such would affect the services provided. However, there is a process by which the NBTC can consider and approve such arrangements. Note, however, that some lines of business are reserved for Thai nationals, and thus could not be transferred to foreigners or firms that do not have a majority of Thai ownership. In addition, there are even stricter restrictions that apply to businesses operating with a wireless spectrum.

3 Public and Private Works

3.1 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

These issues are addressed in the Notification of the National Telecommunications Commission Re: Criteria and Procedures for Exercising Rights-of-Way in Erecting Poles, Laying Ducts or Cables, and Installing any Accessories for Providing Telecommunications Services. Depending on the type of easement required, a notice may be sufficient, or it may be necessary to negotiate an agreement. The regulation takes the general approach that such agreements should maintain equality, fairness, and impartiality.

3.2 Is there a specific planning or zoning regime that applies to the installation of telecommunications infrastructure?

Only certain areas of Thailand are subject to zoning regulations. Even where applicable, the zoning regulations do not set a regime that applies with specificity to the installation of telecommunications infrastructure.

3.3 Are there any rules requiring established operators to share their infrastructure, e.g. masts, sites, ducts or cables (i.e. dark fibre)? Are there any proposals to mandate 'passive access' to such basic infrastructure?

Infrastructure sharing is addressed in the Notification of the National Telecommunications Commission Re: Criteria and Procedures for Exercising Rights-of-Way in Erecting Poles, Laying Ducts or Cables, and Installing any Accessories for Providing Telecommunications Services.

The notification obligates licensees to enter into agreements in order to lay lines or to install equipment in, on, or along the poles, ducts, or facilities owned by other licensees, when they are used for similar such purposes. These agreements must maintain equality, fairness, and impartiality. In addition, the NBTC has the authority to require a use of a common agreement. Except for certain prescribed reasons, the licensees that own the infrastructure may not refuse to enter into such agreements and are entitled to compensation.

Acceptable reasons for refusing an agreement include a lack of capacity, safety standards, system reliability, engineering reasons, or any other reasons that may be prescribed by the NBTC. When refusing an agreement, a licensee must clearly notify the requesting licensee as to the reasons for the refusal, including details and supporting documentation.

4 Access and Interconnection

4.1 How is network-to-network interconnection and access mandated?

There are several regulations on network interconnection and access. The primary regulation is the Notification of the National Telecommunications Commission Re: Telecommunications Network Access and Interconnection B.E. 2549 (2006).

Essentially, licensees operating their own telecommunications networks must:

1. Permit other licensees to interconnect with their networks.
2. Permit other licensees to access their telecommunications networks as a means to access their networks.
3. Provide transit services to other licensees through their telecommunications networks.
4. Provide roaming services to other telecommunications service providers.
5. Offer and provide unbundled network services and essential facilities of their own networks, to permit other licensees' access or interconnection with their networks.
6. Permit other licensees to access and employ technical specifications on their telecommunications network access, interfaces, and protocols or necessary technology for interoperability, in order to facilitate access or interconnection with their networks.

However, licensees with their own telecommunications networks may refuse to permit other licensees access to their network, if their

existing telecommunications networks are insufficient to accommodate other licensees. In addition, access may also be refused if there are technical difficulties in access, which may cause interference in or otherwise obstruct the telecommunications business.

4.2 How are interconnection or access disputes resolved?

Parties may apply to the Dispute Resolution Committee of the NBTC. Detailed procedures are set in the Notification of the National Telecommunications Commission Re: Telecommunications Network Access and Interconnection B.E. 2549 (2006).

4.3 Which operators are required to publish their standard interconnection contracts and/or prices?

Licensees with their own telecommunications network are required to provide Reference Access Offers and Reference Interconnection Offers, with respect to access or interconnection by other licensees.

Licensees must also prepare information on the calculation of charges for network access, interconnection, and unbundled components. This information is submitted at the time of licence application, and is subject to consideration by the NBTC.

4.4 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

Standards and pricing methodologies are set by the NBTC in the Notification of the National Telecommunications Commission Re: Standards for Calculation of Interconnection Charges.

4.5 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

Reasonable access or interconnection charges are calculated only for each network element used in providing the given service. Other expenses not directly relating thereto are not included in the calculation. If licensees do not base their calculation of remuneration rates on costs of unbundled network access or interconnection or if the NBTC considers that the charges are unreasonable or excessive, the NBTC has the authority to order such licensees to formulate steps and plans for restructuring their charges, and to submit them for the NBTC's approval, on a case-by-case basis, within a specified period of time. The NBTC has the authority to regulate each step of the procedure, and/or to determine network access or interconnection charges that it deems appropriate.

4.6 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks?

Subject to certain exceptions, a licensee that owns its own network has the duty to allow internet service licensees to access or interconnect with its network, in accordance with the Telecommunications Business Act B.E. 2544 (2001) and related regulations.

Access may only be refused in the following situations:

1. The network to which access or interconnection is requested is insufficient.
2. Interconnection or access causes technical problems resulting in interference with or obstruction of telecommunications service.
3. The NBTC issues a notification terminating a relevant licence.
4. Other situations that may be announced by the NBTC.

The regulations require that charges for access or interconnection be reasonable and fair for both parties, and mandate equitable treatment for all those requesting access or interconnection. The same Reference Interconnection Offer and Reference Access Offer requirements, as described in question 4.3, are also applicable.

4.7 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

According to the Notification of the National Telecommunications Commission Re: Telecommunications Network Access and Interconnection B.E. 2549 (2006), licensees with their own telecommunications networks must provide unbundling network elements and interconnection according to the criteria, conditions, and procedures prescribed by the NBTC.

The NBTC has the authority to prescribe, by announcement, the particular network elements that it deems necessary for provision of network access and interconnection, and that licensees must make available on an unbundled basis. The regulations provide a general listing of 'necessary' network elements, but the NBTC has the authority appoint a subcommittee to deliberate in greater detail.

The initial listing includes:

1. local subscriber loops;
2. local switch and transmission equipment;
3. local trunks;
4. toll switching and transmission equipment;
5. long distance trunks;
6. international switching and transmission equipment;
7. network interface equipment;
8. directory equipment and services; and
9. network signaling equipment.

Unless the NBTC requires otherwise, charges for unbundled elements shall be as the parties negotiate and agree by contract, but they need to be calculated on the basis of actual costs.

4.8 Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

At the moment, these offerings are quite limited. For now, they would be subject to regulation in the same way as other telecommunications services.

5 Price and Consumer Regulation

5.1 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

The Notification of the National Telecommunications Commission Re: Maximum Rate of Service fee and Advance Service Fee

Collection in Telecommunications Business B.E. 2549 (2006), sets out criteria for determining maximum pricing for certain services.

5.2 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

The NBTC requires licensees to offer services in compliance with standards set by the NBTC. These standards address technical issues, service contracts, tariffs, service charges, as well as protection of consumer rights in the areas of personal data, privacy, and freedom of communication via telecommunication networks. The standards are meant to provide services on a fair and equitable basis for both the licensee and users. During the implementation of these standards, the NBTC (or its predecessor) issued several notifications concerning the protection of service users, which have been published in the Royal Government Gazette in order to become effective under various laws. This includes procedures for receiving and considering user complaints, the establishment of the Telecommunications Consumer Protection Institute, and the 1200 Call Centre, which were implemented to protect the rights of consumers and to enhance their bargaining power and awareness in these areas.

In addition, the NBTC also requires that licensees establish separate call centres to settle disputes and pursue solutions to user complaints at no additional charge. These centres have been established by operators providing fixed-line, mobile, internet, and payphone services. Thus, service users with issues relating to false tariffs, charges inconsistent with actual usage, services inconsistent with advertisements, or those who wish to terminate their contracts due to poor quality of services or 'unfair' treatment, can now seek assistance in this way.

Following the receipt of a complaint, there is an escalation process for pursuing resolution within particular deadlines.

6 Numbering

6.1 How are telephone numbers and network identifying codes allocated and by whom?

Telephone numbers and special codes are allocated by the NBTC, in accordance with regulations promulgated for this purpose.

6.2 Are there any special rules which govern the use of telephone numbers?

There are multiple regulations governing the use of telephone numbers, including:

1. the Notification of the NTC on Criteria for Use of International Access Numbers with Service Codes;
2. the Notification of the NTC on Additional Temporary Criteria for Telecommunication Numbering Allocation (No. 2) and Alteration in Telecommunication Numbers for Mobile Telephone Service from 9 Digits to 10 Digits;
3. the Notification of the NTC on Telecommunications Numbering Plan;
4. the Notification of the NTC on Temporary Criteria for Telecommunication Numbering Allocation; and
5. the Notification of the NTC on Criteria for the Assignment and Permission of Special Telecommunications Numbers.

6.3 How are telephone numbers made available for network use and how are such numbers activated for use by customers?

Telephone numbers are allocated to providers by the NBTC, pursuant to regulations. Providers may then assign them to their customers.

6.4 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile)?

The rules for porting are addressed in the Notification of the National Telecommunications Commission Re: Criteria for Mobile Number Portability. The basic approach is that service users have the right to mobile number portability, and service providers are prohibited from taking any action that obstructs or impedes the porting of mobile numbers to other service providers. The notification contains significant additional detail.

7 Submarine Cables

7.1 What are the main rules governing the bringing into Thailand's territorial waters, and the landing, of submarine cables? Are there any special authorisations required or fees to be paid with respect to submarine cables?

The main rules for submarine cables are stipulated in the Notification of the National Telecommunications Commission Re: Liberalisation of International Private Leased Circuit (IPLC) with Own Network. The notification states that one must submit an application for a licence to operate an international private leased circuit, in accordance with the Notifications of the National Telecommunications Commission regarding Criteria and Procedures for Granting Type 2 or Type 3 Telecommunication Business Licences.

8 Radio Frequency Spectrum

8.1 Is the use of radio frequency spectrum specifically regulated and if so, by which authority?

The use of radio frequency spectrum is specifically regulated, and the NBTC is the primary regulator.

8.2 How is the use of radio frequency spectrum authorised in Thailand? What procedures are used to allocated spectrum between candidates – i.e. spectrum auctions, comparative 'beauty parades', etc.?

Radio frequency spectrum is allocated pursuant to the 2010 Frequency Allocation Act. It provides for the NBTC to consider and grant permits for use of frequency waves by tender, according to procedures, means, terms, and conditions the NBTC may set. It also provides that money obtained from the tender, after deductions for certain costs and expenses, shall vest in the state.

The application to obtain a permit to use frequency waves is deemed to be an application for the operation of a telecommunication business, pursuant to the Telecommunications Business Operation Act. When the NBTC grants a permit to use particular frequency waves, it is deemed that a telecommunications business licence is also granted. This permit would also

automatically include approval to possess and use radio-communication equipment to establish radio communication stations, but only as specified in the application.

8.3 Are distinctions made between mobile, fixed and satellite usage in the grant of spectrum rights?

Spectrum is assigned for particular categories of usage.

8.4 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?

Satellite communication business is regulated as a telecommunications service and requires a Type 3 licence.

8.5 Can the use of spectrum be made licence-exempt? If so, under what conditions?

A licence is always necessary to operate a telecommunications business using spectrum.

8.6 If license or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

In a spectrum auction, fees would be determined according to the terms of the auction. However, the NBTC also has the power to prescribe periodic fees applicable to each licensee. These must be based on cost-effective supervision by the NBTC, and may not exceed 2% of the licensee's revenue, before expenses. Such fees vest in the NBTC.

8.7 Are spectrum licences able to be traded or sub-licensed and if so on what conditions?

According to Section 46 of the 2010 Frequency Allocation Act, a permit to use frequency waves for telecommunication business is the exclusive right of the permit holder and is not transferable. The holder of a permit to use particular frequencies for telecommunication business must operate the business by itself. The permit holder cannot assign business management, in whole or in part, to someone else, or authorise other persons to operate the business on its behalf.

9 Data Retention and Interception

9.1 Are operators obliged to retain any call data? If so who is obliged to retain what and for how long? How are data protection (privacy rules) applicable specifically to telecommunications implemented in Thailand?

Licensed telecommunications service providers must retain certain personal data of telecommunications users, including the facts and details concerning each service user by which the service user can be identified, service usage data, telecommunication numbers, and descriptions of individual usage. Licensees must keep personal data of their service users for the last three months and in the event that the service is terminated, to retain this data for three months following the date of termination of the service. "In the case of necessity", the service provider may be required to retain the data for longer than three months after termination of service, but not longer than two years.

9.2 Are operators obliged to maintain call interception (wire-tap) capabilities?

Telecommunications licensees are not under licence conditions to build their networks in a manner that enables interception or provides back doors. There is already a regulatory framework in place by which such conditions could be imposed, if such a policy decision were made.

9.3 What is the process for authorities obtaining access to retained call data and/or intercepting calls? Who can obtain access and what controls are in place?

This is addressed in three sources of law, namely the Computer Crimes Act, the Special Investigation Act, and the Emergency Decree.

Computer Crimes Act

The Computer Crimes Act sets certain obligations with respect to *service providers*. It empowers competent officers of the MICT to send enquiry letters, summon concerned persons for interrogation, and to request statements, documents, computer data, computer traffic data, and evidence from service providers. Such officers can also order service providers to hand over certain data pertaining to users, which service providers are obligated to keep under the law.

In addition, officers can take certain further actions, but only with a court order. This includes copying computer data or computer traffic data, ordering a service provider to hand over computer data, computer traffic data, or devices, examining and accessing computer systems, computer data, computer traffic data, or devices, decrypting communications, ordering a service provider to decrypt communications, ordering a service provider to assist with decryption, and seizing/attaching computer systems, as necessary. Ministerial regulations promulgated there under set out the specific requirements that each service provider is required to meet. The Computer Crimes Act distinguishes between content data and non-content data.

Generally, a court order is not required to access or obtain non-content data. The competent officer is already authorised to request such data from service providers or other relevant persons.

Special Investigation Act

In general, the Special Investigation Act applies to alleged criminal violations of certain laws that are unusually complex, relevant to national interests, involve influential people or certain government officials, or cases otherwise selected by the Special Case Board. With respect to data interception or access, the Special Investigation Act requires Special Investigation Officials to obtain a court order prior to access and acquisition of any documents or information (including content and non-content data) in transmission through various means of communications that have been or may be used to commit a special case offence.

Emergency Decree

The Emergency Decree expands investigative powers usable in the event of an emergency declaration made by the Prime Minister. This law gives broad powers to the Prime Minister to act in virtually any way necessary to maintain public order or otherwise maintain control in emergency situations. In such an event, the Prime Minister can authorise a competent official to issue an order to inspect any means of communication, or issue a notification prohibiting any act or instructing the doing of anything necessary to maintain the security of the state, the safety of the country, and/or the safety of the people. This is sufficiently broad to include interception of or access to data, as deemed necessary.

10 The Internet

10.1 Are conveyance services over the internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the internet at a wholesale (i.e. peering or transit) and/or retail (i.e. broadband access) level? Are internet service providers subject to telecommunications regulation?

Internet access providers (both wholesale and retail) are subject to regulation by the NBTC. The MICT (including the National Information Technology Committee and the National Electronics and Computer Technology Centre) also has a significant role.

10.2 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

According to the Computer Crime Act, any service provider *intentionally supporting or consenting to an offence* within a computer system under their control is subject to the same penalty as that imposed upon the person committing the offence.

10.3 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

Counter-infringement measures have been considered by a committee that has been established by the MICT. Specifically, the committee has proposed adding the word "copies" to Section 9 of the Computer Crimes Act so as to expand the section to cover the crime of copying IP owners' data on websites, and thus to provide for application of the penalties provided in that section of the Act. The committee has also advocated for amending Section 20 of the Act, to provide for the blocking of infringing websites. It would also like to see the Act amended to clearly state that officers charged with enforcing the Computer Crimes Act also have the power to block the distribution of computer data relevant to such offences.

10.4 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any 'net neutrality' requirements?

According to the Notification of the National Telecommunications Commission Re: Criteria and Procedures for Internet Service Licence Applications, licensees have the general obligation to operate their telecommunications network services and provide services to service users and interconnection users on a non-discriminatory basis.

10.5 How are 'voice over IP' services regulated?

VOIP services are regulated as an Internet Service, under multiple notifications. These include the Notification of the National Telecommunications Commission Re: Provision of Voice over Internet Protocol (VoIP) Service Using Telephone Numbers, the Notification of the National Telecommunications Commission Re: Voice over Internet Protocol (VoIP) Service, and the Notification of the National Telecommunications Commission Re: Service Standard for Voice over Internet Protocol (or Internet Telephony).

10.6 Are there any rules to prevent, restrict or otherwise govern internet or email communications, in particular, marketing and advertising communications?

Thailand does not have an anti-spam law, though there have been calls to enact one.

11 USO

11.1 Is there a concept of universal service obligation; if so how is this defined, regulated and funded?

In the Notification of the National Telecommunications Commission Re: Criteria and Procedure for the Provision of Universal Basic Telecommunications and Social Services, the regulator sets out certain universal service goals for licensees to achieve. Funding is provided by licensees remitting 4% of their revenues to the Universal Service Obligation Fund. This system is further expanded in the Notification of the National Telecommunications Commission Re: Criteria, Procedures and Conditions for the Provision of Universal Basic Telecommunications and Social Services (No. 2).

12 Foreign Ownership Rules

12.1 Are there any rules restricting direct or indirect foreign ownership interests in electronic communications companies whether in fixed, mobile, satellite or other wireless operations?

According to the Foreign Business Act, Type 2 and Type 3 licences are unavailable to entities considered "foreign". However, Type 1 licences are available to both Thai and foreign entities. This effectively limits foreign ownership to less than 50%, in companies that offer telecommunications service through operation of their own telecommunications infrastructure. However, resellers can be wholly foreign-owned.

13 Future Plans

13.1 Are there any imminent and significant changes to the legal and regulatory regime for electronic communications?

The Frequency Allocation Act was enacted late last year. This resulted in the formation of the new unified regulator, the NBTC, which had been anticipated for some time. Though telecommunications operators were previously regulated by the NTC, broadcasters had been operating for many years without an official regulator. The existence of a new regulator promises to bring significant changes. Among the challenges confronting it is organisation of the auction for spectrum to operate 3G services, and related to this is continued discussion as to what is to become of the existing concessions by which mobile services are now provided. A larger issue is working with stakeholders in determining the future roles of TOT and CAT, in an even more competitive market.

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