
A BILL FOR AN ACT

To further amend title 21 of the Code of the Federated States of Micronesia, as amended, by amending section 203 thereof, and by enacting a new chapter 4, for the purpose of permitting competition in telecommunications under certain circumstances, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Purpose. Section 203 of title 21 of the Code of
2 the Federated States of Micronesia currently grants to FSM
3 Telecommunications Corporation a monopoly in the providing of all
4 telecommunications services in the FSM, with the exception of
5 radio and television broadcasting. In the more than 20 years
6 since that law was enacted, telecommunications technology has
7 progressed dramatically. Cellular phones and internet service, in
8 particular, have changed how the people of the FSM communicate
9 with each other and with the outside world. Access to
10 sophisticated telecommunications technology has become essential
11 for many of the nation's businesses. The well-being of the
12 citizens of the FSM and the nation's economic development will be
13 promoted by the availability of affordable, high-quality
14 telecommunications services. Experience in other parts of the
15 world has shown that competition can cause telecommunications
16 providers to reduce the costs and improve the quality of the
17 services that they offer. The purpose of this act is to permit
18 competition in the providing of such services in the FSM to the

1 extent that it is consistent with the public interest. The
2 Secretary of the Department of Transportation, Communications and
3 Infrastructure is empowered to authorize such competition, but
4 only if technically feasible and compatible with the paramount
5 objective of making reliable, affordable telephone service
6 available to the people and businesses of the FSM.

7 Section 2. Section 203 of title 21 of the Code of the
8 Federated States of Micronesia is hereby amended to read as
9 follows:

10 "Section 203. Powers and responsibilities of the
11 Corporation.

12 The Corporation has the following powers and
13 responsibilities:

14 (1) subject to the provisions of chapter 4 of this
15 title, to operate as the sole provider of all
16 telecommunications services, except radio and television
17 broadcasting, within the Federated States of Micronesia
18 and between points in the Federated States of Micronesia
19 and points outside thereof;

20 (2) to operate and manage such services on the basis
21 of commercially accepted practices, treating all users
22 of telecommunications services on equitable terms in
23 accordance with its published tariffs, and requiring all
24 users to pay for the services provided;

25 (3) to plan for the expansion and improvement of

1 telecommunications facilities and services;

2 (4) to the extent practicable, to expand
3 telecommunications services to areas and communities in
4 the Federated States of Micronesia that are presently
5 unserved or poorly served and to improve the quality,
6 reliability, and variety of services available to all
7 users in a manner consistent with commercial
8 reasonableness and with promoting economic development,
9 the advancement of education and health care, and the
10 preservation of the cultural identity of the people of
11 the Federated States of Micronesia;

12 (5) to improve the telecommunications skills and
13 promote the telecommunications training of Micronesian
14 citizens who are employees of the Corporation;

15 (6) to establish, publish, and implement a structure
16 of tariffs and rates for telecommunications services
17 calculated to ensure that, to the extent practicable,
18 adequate and equitable charges are imposed for services
19 and that the tariff structure promotes the increased use
20 of telecommunications services;

21 (7) to invest all surplus revenues of the Corporation
22 in the expansion and improvement of telecommunications
23 facilities and services;

24 (8) to incur indebtedness for the purpose of expanding
25 and improving telecommunications facilities,

1 to the extent and on such terms as are deemed
2 commercially reasonable by the Corporation;

3 (9) to provide on a reimbursable basis emergency
4 telecommunications services to governments, individuals,
5 and entities in the Federated States of Micronesia; and

6 (10) to represent the Federated States of Micronesia
7 with regard to telecommunications matters in such
8 international organizations and fora in which the
9 Federated States of Micronesia is represented, subject
10 to the policy guidance of the Government of the
11 Federated States of Micronesia.",

12 Section 3. Title 21 of the Code of the Federated States of
13 Micronesia is hereby amended by enacting a new chapter 4 to be
14 entitled "Competition in Telecommunications".

15 Section 4. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by enacting a
17 new section 401 to read as follows:

18 "Section 401. Definitions.

19 For the purposes of this chapter and regulations adopted
20 hereunder, the following definitions shall apply unless
21 the context requires otherwise:

22 (1) 'Telecommunications' means the emission,
23 transmission or reception of signals, words, images,
24 sounds, data or intelligence of any nature by any wire,
25 cable, radio, optical or other electromagnetic means or

1 any similar technical means.

2 (2) 'Telecommunication services' means services or
3 facility access, provided to the public for a fee, to
4 enable or facilitate telecommunications, including,
5 without limitation, local and long distance telephone
6 service, mobile phone service, internet service and
7 wireless communication service.

8 (3) 'The Secretary' means the Secretary of the
9 Department of Transportation, Communications and
10 Infrastructure of the Federated States of Micronesia.

11 (4) 'FSM Telecom' means the Telecommunications
12 Corporation of the Federated States of Micronesia,
13 established pursuant to chapter 2 of this title.

14 (5) 'Person' means any natural or legal person,
15 including, without limitation, any sole proprietorship,
16 partnership or corporation.

17 (6) 'Telecommunications permit' means a permit, issued
18 by the Secretary, permitting a person to provide
19 telecommunications services within the Federated States
20 of Micronesia or to a person located therein.

21 (7) 'Permit holder' means the person identified in a
22 telecommunications permit as having authority to provide
23 telecommunications services under the permit."

24 Section 5. Title 21 of the Code of the Federated States of Micronesia

25 "Section 402. Telecommunication Permits.

1 (1) With the exception of FSM Telecom, no person may
2 offer or provide telecommunications services within the
3 Federated States of Micronesia, or between points within
4 the Federated States of Micronesia and points outside
5 thereof, except pursuant to a valid telecommunications
6 permit.

7 (2) Upon application, the Secretary may issue a
8 telecommunications permit authorizing the person named
9 therein to provide such telecommunications services as
10 are specifically described in the permit, provided that,

11 (a) No permit may be issued except upon a finding
12 by the Secretary that such issuance is in the public
13 interest;

14 (b) No permit may be issued that would authorize
15 any person to provide basic telephone service between
16 points within the Federated States of Micronesia; and

17 (c) No permit may be issued for a period of
18 longer than five years, but a permit may be renewed by
19 the Secretary for additional terms of five years or less
20 upon a finding that such renewal is in the public
21 interest.

22 (3) In determining whether the issuance of a
23 telecommunications permit is in the public interest, the
24 Secretary shall consider the following factors:

25 (a) The financial and technical capability of the

1 applicant to provide, for the term of the permit, the
2 telecommunications services that it proposes to provide;

3 (b) The effect that the issuance of the permit is
4 likely to have on the extent, quality and cost of
5 telecommunications services available to persons within
6 the Federated States of Micronesia;

7 (c) If the applicant proposes to provide
8 telecommunication services in competition with services
9 already provided by FSM Telecom, whether such
10 competition is economically and technically feasible in
11 the Federated States of Micronesia on a sustained basis;

12 (d) If the applicant proposes to provide
13 telecommunication services in competition with FSM
14 Telecom, the effect, if any, that such competition is
15 likely to have on the financial viability of FSM Telecom
16 and the ability of FSM Telecom to provide quality,
17 affordable telecommunications services other than those
18 to be offered by the applicant;

19 (e) The effect, if any, that the issuance of the
20 permit is likely to have with respect to the economic,
21 health, educational and social needs of the nation; and

22 (f) Such other considerations as the Secretary
23 may deem to bear on the best interests of the nation.

24 (4) If the Secretary determines that a
25 telecommunications permit should be issued, he may, in

1 the permit, place such conditions or limits on the
2 telecommunications services to be provided as are
3 consistent with this chapter and the best interests of
4 the nation.

5 (5) Every telecommunications permit shall clearly
6 identify the person authorized to provide
7 telecommunications services under the authority of the
8 permit."

9 Section 6. Title 21 of the Code of the Federated States of
10 Micronesia is hereby amended by the enactment of a new section 403
11 to read as follows:

12 "Section 403. Regulations.

13 The Secretary shall promulgate such regulations as may
14 be necessary to implement this chapter, including,
15 without limitation, regulations identifying the
16 information to be provided to the Secretary by
17 applicants for telecommunications permits, and
18 specifying application fees and fees for the issuance of
19 telecommunications permits."

20 Section 7. Title 21 of the Code of the Federated States of
21 Micronesia is hereby amended by enacting a new section 404 to read
22 as follows:

23 "Section 404. Revocation and Suspension of Permits.

24 The Secretary may suspend or revoke the
25 telecommunications permit of any person that the

1 Secretary finds to have (1) provided false or misleading
2 information when applying for a permit or the renewal of
3 a permit, (2) violated any law of the Federated States
4 of Micronesia or of any state thereof in the course of
5 its telecommunication services business, (3) violated
6 any term, limit or condition of the permit, including
7 any limitation on the telecommunication services that
8 may be provided under the authority of the permit, or
9 (4) abandoned the permit. For the purposes of this
10 section, a telecommunications permit holder may be
11 deemed to have abandoned its permit if it does not
12 provide services, as authorized by the permit, for any
13 period of twelve consecutive months during the term of
14 the permit. The Secretary may also revoke a permit
15 pursuant to section 405(3) of this chapter."

16 Section 8. Title 21 of the Code of the Federated States of
17 Micronesia is hereby amended by enacting a new section 405 to read
18 as follows:

19 "Section 405. Non-Transferability.

20 (1) No person may provide telecommunication services
21 under the authority of a telecommunications permit
22 issued pursuant to this chapter except for the permit
23 holder.

24 (2) No permit may be sold, transferred or assigned by
25 the permit holder to any other person without the

1 written approval of the Secretary. The Secretary shall
2 approve the sale, transfer or assignment unless he finds
3 that it is not in the public interest. The permit
4 holder shall provide to the Secretary such information
5 with respect to the sale, transfer or assignment as may
6 be requested by the Secretary.

7 (3) Any permit holder which is not a natural person
8 shall advise the Secretary within ten days of the
9 occurrence of any change of control of the permit
10 holder. For the purposes of this section, a 'change of
11 control' shall be deemed to have occurred upon (a) the
12 sale or liquidation of the permit holder, (b) a sale of
13 all or substantially all of the assets of the permit
14 holder, or (c) a change, through one or more related or
15 unrelated transactions, in the beneficial ownership of
16 thirty percent or more of the permit holder, as it
17 existed at the time of application for the
18 telecommunications permit, as evidenced by ownership of
19 the stock of the permit holder, partnership shares, or
20 other pertinent measure of ownership. The permit holder
21 shall provide the Secretary with such information as the
22 Secretary may request with respect to the change of
23 control. Following a change of control, the Secretary
24 may modify or revoke the telecommunications permit upon
25 a finding that such action is in the public interest.

1 In considering whether to modify or revoke the permit,
2 the Secretary shall take into account the factors set
3 forth in section 402 of this title and the effect, if
4 any, upon customers of the permit holder if the permit
5 were to be modified or revoked. The Secretary may
6 revoke or suspend a telecommunications permit upon a
7 finding that the permit holder has failed to report a
8 change of control as required in this section."

9 Section 9. Title 21 of the Code of the Federated States of
10 Micronesia is hereby amended by enacting a new section 406 to
11 read as follows:

12 "Section 406. Facilities Access.

13 The Secretary may order FSM Telecom to provide, to a
14 permit holder, such access to FSM Telecom facilities and
15 services as may be necessary to enable the permit holder
16 to provide telecommunications services authorized by a
17 telecommunications permit, provided that FSM Telecom
18 shall not be so ordered (1) if such access is not
19 technically feasible, or (2) if access cannot be
20 provided without substantially impairing FSM Telecom's
21 ability to provide telecommunications services to its
22 customers. If FSM Telecom is required, under this
23 section, to provide a permit holder with access to FSM
24 Telecom facilities or services, it shall do so on
25 commercially reasonable terms. FSM Telecom may charge

1 the permit holder an access fee, sufficient to cover its
2 reasonable costs, if any, of providing such access,
3 including a reasonable contribution to the capital cost
4 of the assets employed in providing access, and a
5 reasonable profit."

6 Section 10. Title 21 of the Code of the Federated States of
7 Micronesia is hereby amended by enacting a new section 407 to
8 read as follows:

9 "Section 407. Grievances.

10 Any person adversely affected or aggrieved by any action
11 of the Secretary under this chapter may seek review
12 under the provisions of chapter 1 of title 17 of the
13 Code of the Federated States of Micronesia."

14 Section 11. This act shall become law upon approval by the
15 President of the Federated States of Micronesia or upon its
16 becoming law without such approval.

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18 Date: 9/20/05

Introduced by: /s/ Moses A. Nelson

Moses A. Nelson

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