

A BILL FOR AN ACT

To further amend sections 203, 205, 208 and 228 of title 21 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 11-26 and 17-03, and creating a new chapter 3, to create a body called the Federated States of Micronesia Telecommunication Regulation Authority (the "Authority"), setting for the powers, duties and prerogatives of the Authority in establishing the standards and guidelines in enhancing access to and affordability of telecommunication services in the Federated States of Micronesia, using the principles of liberalization, free and open competition, and customer-oriented approach, and for other purposes.

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

1 Section 1. Section 203 of Title 21 of the Code of the
2 Federated States of Micronesia, as amended, is hereby amended as
3 follows:

4 "Section 203. Powers and responsibilities of the
5 Corporation. The Corporation has the following powers
6 and responsibilities:

7 (1) to operate as [~~the sole~~] a provider of all
8 telecommunications services [~~, except radio and~~
9 ~~television broadcasting,~~] within the Federated States
10 of Micronesia and between points in the Federated
11 States of Micronesia and points outside thereof;

12 (2) to operate and manage such services on the basis
13 of commercially accepted practices, treating all users
14 of telecommunications services on equitable terms in
15 accordance with its published tariffs, and requiring
16 all users to pay for the services provided;

17 (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
20 use of telecommunications services;

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

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

1 to the extent and on such terms as are deemed
2 commercially reasonable by the Corporation; and
3 (9) to provide on a reimbursable basis emergency
4 telecommunications services to governments,
5 individuals, and entities in the Federated States of
6 Micronesia, ~~and~~

7 [~~(10) to represent the Federated States of Micronesia~~
8 ~~with regard to telecommunications matters in such~~
9 ~~international organizations and for a in which the~~
10 ~~Federated States of Micronesia is represented, subject~~
11 ~~to the policy guidance of the Government of the~~
12 ~~Federated States of Micronesia.]~~

13 Section 2. Section 205 of Title 21 of the Code of the
14 Federated States of Micronesia, as amended, is hereby amended as
15 follows:

16 "section 205. Legal capacity of the Corporation.

17 In performing the functions authorized under this
18 chapter or other law of the Federated States of
19 Micronesia, the Corporation shall have the capacity to
20 exercise all powers normally exercised by a
21 corporation, including, but not limited to, the
22 following:

23 (1) to adopt, alter, and use a corporate seal;

24 (2) to adopt and amend bylaws governing the conduct
25 of its business and the exercise of its powers;

1 (3) to sue and be sued in its corporate name;

2 (4) to acquire, in any lawful manner, real,
3 personal, or mixed property, either tangible or
4 intangible; to hold, maintain, use, and operate such
5 property; and to sell, lease, or otherwise dispose of
6 such property;

7 ~~[(5) to acquire and take over in any lawful manner~~
8 ~~the business, property, assets, and liabilities of any~~
9 ~~entity, including the Government of the Trust Territory~~
10 ~~of the Pacific Islands relating to communications,]~~

11 ~~[(6)]~~ (5) to borrow or raise any sum or sums of money
12 and to issue corporate bonds on such security and upon
13 such terms as may from time to time be deemed necessary
14 for the expansion and improvement of communications
15 facilities;

16 ~~[(7)]~~ (6) to retain and terminate the services of
17 employees, agents, attorneys, auditors, and independent
18 contractors upon such terms and conditions as it may
19 deem appropriate; and

20 ~~[(8)]~~ (7) to do all such other things as may be deemed
21 incidental to or conducive to the attainment of the
22 responsibilities of the Corporation.

23 Section 3. Section 208 of Title 21 of the Code of the
24 Federated States of Micronesia, as amended by Public Laws Nos.
25 11-26 and 17-03, is hereby deleted in its entirety.

1 ~~[The Corporation shall exist and operate solely for the~~
2 ~~benefit of the public and shall be exempt from any taxes or~~
3 ~~assessments except import taxes or assessments on any of its~~
4 ~~property, operations, or activities. Nothing herein shall be~~
5 ~~deemed to exempt employees and independent contractors of the~~
6 ~~Corporation from tax liability for services rendered to the~~
7 ~~Corporation; and the Corporation shall be liable for~~
8 ~~employers' contributions to the Social Security System of the~~
9 ~~Federated States of Micronesia in the manner provided by~~
10 ~~law.]~~

11 Section 4. Section 228 of Title 21 of the Code of the
12 Federated States of Micronesia, as amended, is hereby deleted in
13 its entirety:

14 ~~[The Board and the executive committee shall periodically~~
15 ~~consult with, and seek the advice of, interested members of~~
16 ~~the public in each respective State of the Federated States~~
17 ~~of Micronesia regarding the operation of telecommunications~~
18 ~~services. The Board and the executive committee shall~~
19 ~~endeavor to ensure that such consultations are done with~~
20 ~~persons broadly representative of the actual and potential~~
21 ~~users of the telecommunications system, including~~
22 ~~representatives of the medical and educational professions,~~
23 ~~civil aviation, maritime commerce, broadcasting, law~~
24 ~~enforcement, and business.]~~

25 Section 5. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 301 under chapter 3, to read as follows:

3 "Section 301. Short title. This Act may be cited as
4 the 'FSM Telecommunications Act of 2014'."

5 Section 6. Title 21 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a new
7 section 302 under chapter 3, to read as follows:

8 "Section 302. Definition. In this Act, unless the
9 context otherwise requires:

10 (a) 'access' means the provision of access to a
11 bottleneck facility by one licensee to another for the
12 purpose of the second licensee providing communications
13 services;

14 (b) 'Act' means the FSM Telecommunications Act of
15 2014, and where appropriate includes the rules and
16 regulation made pursuant to this Act;

17 (c) 'affiliate' means, in relation to any one
18 person, any other person directly or indirectly
19 controlling or controlled by or under the direct or
20 indirect common control with, such specified person;

21 (d) 'appeals panel' means the body constituted
22 from time to time pursuant to section 328;

23 (e) 'Authority' means the Office of the
24 Telecommunication Regulation Authority established under
25 section 304;

1 (f) 'bottleneck facility' means a communications
2 facility declared by the Authority to be essential for
3 the production of communications services which, for
4 technical reasons or due to economies of scope and scale
5 and the presence of sunk costs, cannot practicably be
6 duplicated by a potential competitor in a communications
7 market;

8 (g) 'communications' means the conveyance from
9 one device to another of any message by means of any
10 wire, radio, optical, electric, magnetic,
11 electromagnetic, or similar system;

12 (h) 'communications facility' means any
13 infrastructure, building, or switching equipment; any
14 submarine cable landing in the Federated States of
15 Micronesia, submarine cable landing station, or
16 satellite transmitting facility; any location, mast
17 site, tower, pole, trunk line, access line, duct or
18 other underground facility; or other passive equipment
19 that is used or is capable of being used for
20 communications or for any operation directly connected
21 with communications, but excluding customer equipment;

22 (i) 'communications market' means a market
23 determined by the Authority for communications services
24 or access;

25 (j) 'communications network' means a system that

1 uses electricity or electromagnetic energy for providing
2 communications services between network termination
3 points;

4 (k) 'communications service' means a service for
5 the transmission of communications by means of a
6 communications network;

7 (l) 'consumer' means a customer who contracts for
8 a communications service that is offered on standard
9 conditions that are of general application and not
10 negotiated individually;

11 (m) 'customer' means a person who contracts for a
12 communications service;

13 (n) 'customer equipment' means equipment
14 (including cabling) that is on the customer side of the
15 network termination point and intended to be connected
16 to a communications network;

17 (o) 'Department' means the Department of
18 Transportation, Communications & Infrastructure of the
19 Government;

20 (p) 'Dominant Service Provider' means in respect
21 of a communications market a licensee who, in the
22 opinion of the Authority:

23 (i) Receives 40% or more of the total gross
24 revenues of all service providers in that market; or

25 (ii) Has a position of economic strength or

1 controls a bottleneck facility in that market that
2 allows the licensee to behave independently of
3 competitors or potential competitors, consumers, or
4 customers;

5 (q) 'equipment' includes any appliance,
6 apparatus, device or accessory used or intended to be
7 used for communications purposes;

8 (r) 'exempt network' means a communications
9 network;

10 (i) Not used to provide any communications
11 service for which a charge is imposed;

12 (ii) Wholly within one property (including a
13 ship or aircraft) or a number of properties which
14 together comprise a campus;

15 (iii) Used only for a person's private or
16 internal requirements (including the requirements of an
17 organisation's staff, a related entity or a holding
18 company, subsidiary company or associated company); or

19 (iv) Covered by an exemption under subsection
20 330(1)(a);

21 (s) 'exempt service' means a communications
22 service:

23 (i) Provided only over an exempt network; or

24 (ii) Provided in circumstances covered by an
25 exemption under section 330(1)(a);

1 (t) 'Government' means the Government of the
2 Federated States of Micronesia;

3 (u) 'Inspector' means a person appointed or
4 designated by the Authority under section 376;

5 (v) 'interconnection' means the physical and
6 logical linking of communications networks of different
7 licensees in order to allow the customers of one
8 licensee to communicate with customers of the same or
9 another licensee, or to access the communications
10 services of another licensee;

11 (w) 'licence' means an operating or spectrum
12 licence issued to a person or class of persons under
13 this Act;

14 (x) 'licensee' means a person who holds or is
15 registered under a licence issued under this Act;

16 (y) 'market' means a market in the Federated
17 States of Micronesia for goods and services that, as a
18 matter of fact and commercial common sense, are
19 substitutable for them;

20 (z) 'message' means any sign, signal, writing,
21 image, sound, instruction, information, or intelligence
22 of any nature;

23 (aa) 'net revenue' means, in respect of any
24 service provider, the gross revenue received by the
25 service provider from the provision of communications

1 services and from interconnection and access, less the
2 sum of:

3 (i) The interconnection and access charges
4 paid by the service provider to another person in the
5 Federated States of Micronesia; and

6 (ii) Payments made by the service provider to
7 an unrelated person outside the Federated States of
8 Micronesia for the carriage of telecommunications
9 traffic originating in the Federated States of
10 Micronesia to destinations outside of FSM;

11 (ab) 'network termination point' means the point
12 determined by the technical rules for the purposes of
13 this Act or, in the absence of such rules:

14 (i) The first equipment socket in a private
15 residence;

16 (ii) The public network termination point on
17 the main distribution frame in a building;

18 (iii) A point agreed between the customer and
19 the owner of the communications facility to which that
20 customer is connected; or

21 (iv) The air side of the antenna at the
22 customer equipment, where such equipment is connected to
23 a network by means of radio communications;

24 (ac) 'Open Access Entity' means a corporation
25 established pursuant to section 389;

1 (ad) 'person' includes a public authority and any
2 association of persons, whether incorporated or not;

3 (ae) 'publish' means, where it relates to
4 publication of a document by the Authority, to publish
5 in accordance with section 322(2);

6 (af) 'President' means the President of the
7 Federated States of Micronesia;

8 (ag) 'radio communication' has the meaning
9 assigned to that term in the Federated States of
10 Micronesia Radio Communication Act of 1991, codified as
11 Chapter 1 Title 21 of the Code of the Federated States
12 of Micronesia;

13 (ah) 'radio frequency spectrum' means those radio
14 frequencies comprising channels for specific radio
15 transmission technologies usable in the Federated States
16 of Micronesia;

17 (ai) 'Secretary' means the Secretary of the
18 Department of Transportation, Communications &
19 Infrastructure;

20 (aj) 'sensitive information' has the meaning given
21 in section 322(5);

22 (ak) 'service provider' means a person who:

23 (i) Owns a communications network; or

24 (ii) Provides or is entitled to provide a

25 communications service under a licence or exemption; or

1 (iii) Has applied for a licence or exemption
2 under this Act;

3 (al) 'specified communications network' means a
4 communications network that includes a line or radio
5 communications link, or a series of lines or radio
6 communications links, between two fixed points,
7 including:

8 (i) Radio communications transmission links;

9 (ii) Cable transmission links; and

10 (iii) Cable access networks;

11 (am) 'universal access obligation' means an
12 obligation of a licensee to provide communications
13 services under a universal access policy in an eligible
14 geographic area under Section 361(1).

15 (an) 'universal access plan' has the meaning given
16 in section 367;

17 (ao) 'Universal Access Special Revolving Fund'
18 means the Universal Access Special Revolving Fund
19 established under section 365;

20 (ap) 'user' means any person using a
21 communications service, regardless of whether such a
22 person is contracted to acquire the service.

23 (aq) 'wholesale services' means services required
24 by a licensee in order to provide communications
25 services where such services are supplied or provided by

1 means of or by means that rely upon a bottleneck
2 facility."

3 Section 7. Title 21 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by adding a new
5 section 303 under chapter 3, to read as follows:

6 "Section 303. General objectives

7 (1) The objectives of this Act are:

8 (a) Providing transparent, technologically and
9 competitively neutral regulation, which focuses on
10 promoting the long-term interests of users;

11 (b) Providing regulation that is proportionate to
12 the objectives set forth in this Act, non-discriminatory
13 in nature, and promotes reliance on market forces to the
14 greatest extent reasonable in the circumstances;

15 (c) Providing conditions for effective
16 competition among service providers in the Federated
17 States of Micronesia and encouraging efficient and
18 sustainable investment in and use of communications
19 networks and services;

20 (d) Providing a licensing regime which promotes
21 entry of new licensees and which fosters investment and
22 innovation in communications networks and the supply of
23 communications services;

24 (e) Providing efficient use of communications
25 facilities and providing for cost-based interconnection

1 and access on an equitable and non-discriminatory basis
2 for operators of communications networks, to promote
3 end-to-end connectivity of separate communications
4 networks;

5 (f) Protecting the interests of consumers and
6 regulating prices;

7 (g) Promoting the development of communications
8 in the Federated States of Micronesia, as far as
9 practicable in accordance with recognised international
10 standards and practices;

11 (h) Promoting the effective and efficient use of
12 the radio frequency spectrum, numbers, rights of way,
13 and other finite resources;

14 (i) Extending access to communications services
15 to all persons in the Federated States of Micronesia, to
16 the greatest extent reasonable in the circumstances; and

17 (j) Promoting the appropriate use of
18 communications networks and communications services."

19 Section 8. Title 21 of the Code of the Federated States of
20 Micronesia, as amended, is hereby further amended by adding a new
21 section 304 under chapter 3, to read as follows:

22 "Section 304. Establishment of the Authority.

23 (1) There is hereby established the 'Office of the
24 Telecommunication Regulation Authority' with the
25 functions and powers set out in this Act.

1 (2) The Authority shall consist of a Chief Executive
2 and two members, all appointed by the President.

3 (3) Except as set out in section 317(3), the Authority
4 shall act independently from the Government and the
5 Secretary in performing its functions and duties and
6 exercising its powers under this Act."

7 Section 9. Title 21 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by adding a new
9 section 305 under chapter 3, to read as follows:

10 "Section 305. Functions and powers of the Authority.
11 For the purpose of achieving the objectives referred to
12 in section 303, the Authority shall:

13 (a) Issue licences and supervise and enforce
14 compliance with this Act and the conditions of licences;

15 (b) Regulate access to and the sharing of
16 communications facilities and interconnection of certain
17 communications networks of licensees where such matters
18 are not agreed to by the licensees;

19 (c) Monitor and enforce compliance with
20 competition requirements and determine when industry
21 consolidation is permissible;

22 (d) Regulate the protection of consumers, the
23 charges levied by licensees for communications networks,
24 and the communications services and attributes of
25 communications services;

1 (e) Specify the technical standards and
2 procedures for interconnection, the operation of
3 communications networks, and the provision of
4 communications services;

5 (f) Regulate types and characteristics of
6 communications equipment which may be connected to a
7 communications network;

8 (g) Monitor and report on the development and
9 performance of the communications sector in supplying
10 services and the contribution of the communications
11 sector to the overall development of the Federated
12 States of Micronesia;

13 (h) Monitor the quality of services provided by
14 licensees and ensure that licensees conform to standards
15 specified by the Authority;

16 (i) Manage the radio frequency spectrum required
17 to provide communications services, including numbering
18 and electronic addressing, and where practicable assist
19 licensees in obtaining access to land for communications
20 networks;

21 (j) Administer universal service arrangements for
22 the supply of communications services throughout the
23 Federated States of Micronesia;

24 (k) Give effect to policies approved by the
25 Authority or the President;

1 (l) Where required by the Secretary, represent
2 the Government in international conferences or
3 international and other organisations concerned with
4 communications;

5 (m) Advise the Government on policies and
6 legislative measures in respect of communications;

7 (n) Undertake consultations on matters relating
8 to communications;

9 (o) Take enforcement action under this Act;

10 (p) Make rules and regulations as provided for
11 under this Act; and

12 (q) Perform such other functions as are
13 consistent with this Act."

14 Section 10. Title 21 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by adding a new
16 section 306 under chapter 3, to read as follows:

17 "Section 306. Appointment and removal of members.

18 (1) All the members of the Authority (including the
19 Chief Executive who shall be appointed as such) shall be
20 appointed by the President, from among persons appearing
21 to him to be qualified for the office for a term of 4
22 years. The President may renew the term of appointment
23 of a member for up to two additional terms of four years
24 each.

25 (2) The terms of appointment of a member shall be

1 issued by the President and shall include with
2 appropriate modifications an obligation to comply with
3 such ethics rules comparable to those applicable to
4 employees of the Public Service System from time to
5 time.

6 (3) The President shall not appoint a person as Chief
7 Executive under subsection (1) unless in the opinion of
8 the President the person:

9 (a) Has demonstrated experience of not less than
10 10 years in the fields of economics, law, finance,
11 business, engineering or public administration in
12 relation to the communications sector; and

13 (b) Is not disqualified for appointment under
14 subsection (5).

15 (4) There shall be no requirement that the Chief
16 Executive is a citizen of the Federated States of
17 Micronesia, but preference may be given in the
18 evaluation of candidates for the position to citizens of
19 the Federated States of Micronesia where such persons
20 are otherwise qualified under subsection (2).

21 (5) The President shall not appoint a person as an
22 additional member under subsection (1) unless in the
23 opinion of the President the person:

24 (a) Has demonstrated experience in the fields of
25 economics, law, finance, business, engineering or public

1 administration in relation to the communications sector;

2 and

3 (b) Is not disqualified for appointment under
4 subsection (6).

5 (6) A person shall be disqualified from becoming or
6 remaining a member of the Authority if that person:

7 (a) Is found or declared to suffer from mental or
8 physical incapacity;

9 (b) Is or has been convicted of a criminal
10 offense involving dishonesty or corruption, or where the
11 penalty includes imprisonment for one year or longer;

12 (c) Is or has been declared bankrupt or
13 insolvent;

14 (d) Holds an elected office in the Federated
15 States of Micronesia national or state government;

16 (e) In the case of the Chief Executive, is a
17 staff member or officer of a department or agency of the
18 Government; or

19 (f) Holds a direct or indirect financial or other
20 interest in any service provider other than through a
21 fund over which the person has no control or influence.

22 (7) The President may remove a member who is
23 disqualified under subsection (6), or has committed a
24 serious breach of the terms of appointment as such
25 member.

1 (8) A member may resign from the Authority upon one
2 month's written notice to the President, or such shorter
3 time as the President and the member may agree in
4 writing.

5 (9) If any member of the Authority dies or ceases to
6 hold office before the expiration of the term for which
7 he was appointed, the term of office of his successor
8 shall be so fixed as to expire at the end of the first-
9 mentioned term.

10 (10) The President may appoint a person as Acting Chief
11 Executive of the Authority on an interim basis for up to
12 no more than six months where the Chief Executive has
13 not yet been appointed, or has ceased to hold office and
14 a replacement has not been appointed, or during a period
15 of temporary absence or incapacity.

16 (11) Any Acting Chief Executive appointed under
17 subsection (10) shall during his period of appointment
18 have and exercise all the powers of the Chief
19 Executive."

20 Section 11. Title 21 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by adding a new
22 section 307 under chapter 3, to read as follows:

23 "Section 307. Remuneration of members.

24 The Authority shall pay to each of its members, in
25 respect of his office as such, remuneration and/or

1 allowances as prescribed by the terms of appointment of
2 such member issued by the President, and in determining
3 the remuneration and allowances to be paid under this
4 section, different provisions may be made as regards the
5 Chief Executive and the other members but not as between
6 the other members."

7 Section 12. Title 21 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by adding a new
9 section 308 under chapter 3, to read as follows:

10 "Section 308. Incorporation and legal capacity of the
11 Authority.

12 (1) The Authority shall be a body corporate with
13 perpetual succession and a common seal.

14 (2) The Authority may sue and be sued in its corporate
15 name, may enter into contracts, and may acquire,
16 purchase, take, hold and enjoy property of every
17 description. The Authority may convey, assign,
18 surrender, yield up, charge, mortgage, lease, demise,
19 reassign, transfer or otherwise dispose of or deal with
20 any property or any interest therein vested in the
21 Authority upon such terms as it sees fit.

22 (3) The Authority may act notwithstanding a vacancy
23 among its members other than the Chief Executive."

24 Section 13. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 309 under chapter 3, to read as follows:

2 "Section 309. Procedure of the Authority.

3 (1) Where no additional members have been appointed,
4 the Chief Executive shall exercise all the functions and
5 powers of the Authority.

6 (2) Where additional members have been appointed, the
7 functions and powers of the Authority shall, subject to
8 section 311, be exercised by a quorum comprising the
9 Chief Executive and one other member. Each member of
10 the Authority including the Chief Executive shall have
11 one vote and a simple majority of votes shall be
12 required to dispose of any item of business. In the
13 event of a tie, the Chief Executive shall cast an
14 additional deciding vote.

15 (3) Except as provided in subsections (1) and (2), the
16 Authority shall determine its own procedure as the
17 Authority shall consider is necessary for the equitable
18 and transparent exercise of its powers or for the
19 effective administration of the Authority."

20 Section 14. Title 21 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by adding a new
22 section 310 under chapter 3, to read as follows:

23 "Section 310. Duty of members to disclose conflicts of
24 interest.

25 (1) A member of the Authority who is in any way

1 directly or indirectly interested in a matter before the
2 Authority shall, as soon as possible after the relevant
3 circumstances have come to his knowledge, disclose the
4 nature of his interest to the Authority. If the Chief
5 Executive is the sole member, the Chief Executive shall
6 disclose the nature of his interest to the President.

7 (2) Any disclosure made under subsection (1) shall be
8 recorded:

9 (a) In the minutes of the next meeting of the
10 Authority where there are additional members; and

11 (b) By the Chief Executive confirming in writing
12 to the President the nature of his conflict of interest
13 where the Chief Executive is the sole member.

14 (3) The disclosing member:

15 (a) Shall not take part after the disclosure in
16 any deliberation or decision of the Authority with
17 respect to that matter; and

18 (b) Shall be disregarded for the purpose of
19 constituting a quorum of the Authority for any such
20 deliberation or decision."

21 Section 15. Title 21 of the Code of the Federated States of
22 Micronesia, as amended, is hereby further amended by adding a new
23 section 311 under chapter 3, to read as follows:

24 "Section 311. Chief Executive.

25 The Chief Executive shall be:

1 (a) Primarily responsible for the execution of
2 the policies, and the implementation of the decisions,
3 of the Authority;

4 (b) Primarily responsible for the supervision and
5 day-to-day management of the affairs of the Authority
6 and its staff; and

7 (c) The head of the staff of the Authority."

8 Section 16. Title 21 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended by adding a new
10 section 312 under chapter 3, to read as follows:

11 "Section 312. Delegation by Chief Executive.
12 The Chief Executive may, in writing, delegate any of his
13 powers and functions in his capacity as Chief Executive
14 to any of the staff of the Authority, except this power
15 of delegation."

16 Section 17. Title 21 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by adding a new
18 section 313 under chapter 3, to read as follows:

19 "Section 313. Employees of the Authority.

20 (1) The Authority may employ such persons necessary
21 for the efficient performance of its functions and
22 powers as the Chief Executive may determine.

23 (2) The terms of employment shall include an
24 obligation to comply with ethics rules adopted by the
25 Authority that shall be comparable with appropriate

1 modifications to those applicable to employees of the
2 Public Service System from time to time.

3 (3) Except as provided in subsection (2), the
4 employees of the Authority shall be exempt from the
5 Public Service System."

6 Section 18. Title 21 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by adding a new
8 section 314 under chapter 3, to read as follows:

9 "Section 314. Authentication of Authority's seal.
10 The Chief Executive shall by signature authenticate the
11 application of the seal of the Authority."

12 Section 19. Title 21 of the Code of the Federated States of
13 Micronesia, as amended, is hereby further amended by adding a new
14 section 315 under chapter 3, to read as follows:

15 "Section 315. Presumption of authenticity of documents
16 issued by the Authority.
17 Any document purporting to be an instrument issued by
18 the Authority and sealed as aforesaid or signed on
19 behalf of the Authority or by the Chief Executive on
20 behalf of the Authority shall be received in evidence
21 and shall be deemed to be such an instrument without
22 further proof unless the contrary is shown."

23 Section 20. Title 21 of the Code of the Federated States of
24 Micronesia, as amended, is hereby further amended by adding a new
25 section 316 under chapter 3, to read as follows:

1 "Section 316. Protection of members of the Authority.
2 No personal liability shall attach to any member or
3 staff of the Authority in respect of anything done or
4 permitted in good faith under the provisions of this
5 Act."

6 Section 21. Title 21 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by adding a new
8 section 317 under chapter 3, to read as follows:

9 "Section 317. Government policies and international
10 conventions.

11 (1) The Secretary shall:

12 (a) Before recommending to the President any
13 general policy in relation to communications, consult
14 with the Authority, licensees and other interested
15 persons and allow a reasonable period for consultation;
16 and

17 (b) Upon the President making such a policy,
18 notify the Authority in writing.

19 (2) The Authority shall publish policies notified to
20 it under subsection (1).

21 (3) The Authority shall:

22 (a) Give effect to a Government policy notified
23 under subsection (1) to the extent possible consistent
24 with this Act; and

25 (b) Have regard to obligations under any convention to

1 which the Federated States of Micronesia is a party.

2 (4) The Secretary shall have no power to direct the
3 Authority in respect of the performance of its functions
4 and powers under this Act."

5 Section 22. Title 21 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a new
7 section 318 under chapter 3, to read as follows:

8 "Section 318. Exemption from income tax, customs duty
9 and import levy.

10 Notwithstanding the provisions of any other Act, the
11 income of the Authority shall be exempt from payment of
12 income tax, and the Authority shall not be liable for
13 the payment of customs duty and import levy, or any
14 other tax having a similar effect."

15 Section 23. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by adding a new
17 section 319 under chapter 3, to read as follows:

18 "Section 319. Annual reports, accounts and audit.

19 (1) The Authority shall be funded on an annual basis
20 by licence fees and other fees it is entitled to charge
21 under this Act, from grants and donations, and from
22 moneys appropriated by Congress.

23 (2) Notwithstanding the provisions of any other Act,
24 charges and fees payable to the Authority pursuant to
25 this Act shall be payable to the Authority's nominated

1 bank account.

2 (3) Charges and fees payable to the Authority under
3 this Act constitute a debt, which may be recovered by
4 the Authority in a court of competent jurisdiction.

5 (4) The Authority shall by:

6 (a) 30 September of each year, submit its annual
7 budget for the following financial year and forecasts
8 for the following two financial years to the President;

9 (b) 31 March of each year, cause its accounts for
10 the previous financial year to be audited by the Public
11 Auditor;

12 (c) 30 June of each year, submit to the President
13 and publish the audited accounts and an annual report on
14 its activities for the previous financial year; and

15 (d) 30 June of each year, submit to the President
16 a report on all significant matters relating to the
17 performance and efficiency of the communications sector,
18 with particular reference to the:

19 (i) Adequacy and quality of services; and

20 (ii) Contribution of the communications
21 sector to economic development in the Federated States
22 of Micronesia.

23 (5) The annual report of the Authority shall include:

24 (a) A list of the licenses issued under this Act
25 and then in force;

1 (b) A list of the interconnection and access
2 agreements then in force;

3 (c) A summary of any material litigation
4 involving the Authority;

5 (d) A description of the activities carried out
6 during the year in respect of the universal access plan.

7 (6) The Authority shall transfer to the Universal
8 Access Special Revolving Fund any monies that it
9 receives under this Act in excess of its approved budget
10 and forecast funding needs, unless the Secretary directs
11 the Authority to retain such excess in anticipation of
12 future expenditure."

13 Section 24. Title 21 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by adding a new
15 section 320 under chapter 3, to read as follows:

16 "Section 320. Efficiency audit.

17 (1) The President may at any time direct the Public
18 Auditor to undertake an efficiency audit of the
19 Authority.

20 (2) On being directed to undertake an efficiency
21 audit, the Public Auditor shall within three months:

22 (a) Review the Authority's annual budget for the
23 current fiscal year and the Authority's forecasts for
24 the following two fiscal years;

25 (b) Assess whether the budget and forecasts are

1 reasonable having regard to the Authority's functions
2 under this Act; and

3 (c) Provide a report to the Authority and the
4 President outlining these findings and, if practicable,
5 recommend changes to the Authority's budget and
6 forecasts.

7 (3) The Public Auditor may delegate its responsibility
8 to undertake the efficiency audit to a suitably
9 qualified auditing firm.

10 (4) The Authority shall fully cooperate in the conduct
11 of the efficiency audit by providing assistance
12 including giving access to and full disclosure of
13 documents and financial records of the Authority to the
14 auditor.

15 (5) If a report under subsection (2) concludes that
16 the Authority's budget or forecasts are not reasonable
17 having regard to the functions of the Authority under
18 this Act, the Authority shall provide views on that
19 conclusion to the President within three months. The
20 President shall, after considering the views of the
21 Authority and the Public Auditor, either affirm the
22 Authority's budget and forecasts or direct the Authority
23 to modify the budget or forecasts and the Authority
24 shall promptly comply with such direction."

25 Section 25. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 321 under chapter 3, to read as follows:

3 "Section 321. Consultation.

4 (1) The Authority shall carry out such consultations
5 as are required by this Act. The Authority may also
6 carry out such other consultations with interested
7 persons as it deems appropriate in the circumstances.

8 (2) Where this Act requires the Authority to conduct a
9 consultation, the Chief Executive shall publish a
10 written notice specifying:

11 (a) The power which the Authority intends to
12 exercise;

13 (b) The way in which the Authority intends to
14 exercise that power; and

15 (c) The reasons for the intended exercise of that
16 power.

17 (3) Where this Act requires the Authority to conduct
18 consultation with a particular person, the Chief
19 Executive shall also provide the written notice
20 specified in subsection (2) to that person.

21 (4) A person shall be entitled to provide a submission
22 to the Authority in response to a notice published under
23 subsection (2). The due date to lodge such a submission
24 shall be 14 days from the date of the notice or such
25 longer period as the Authority may specify in the

1 notice.

2 (5) The Authority shall take into account any
3 submission it receives under subsection (4) by the due
4 date. The Authority is not prohibited from taking into
5 account a submission it receives after the due date.

6 (6) Subject to section 322, the Authority shall make
7 publicly available a copy of any submission it receives
8 under subsection (4).

9 (7) The Authority shall, before making a final
10 decision:

11 (a) Publish a draft decision; and

12 (b) Provide a copy of such draft decision to
13 every person who has made a submission under subsection
14 (4), where required by this Act, or where the Authority
15 otherwise considers it appropriate.

16 (8) If the Authority issues a draft decision,
17 subsections (2) to (6) shall apply to the draft
18 decision, as if references to the written notice
19 provided under subsection (2) were references to the
20 draft decision.

21 (9) After making a final decision, the Authority shall
22 promptly;

23 (a) Publish that decision; and

24 (b) Provide a copy of such decision to every
25 person who has made a submission under subsection (4)."

1 Section 26. Title 21 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by adding a new
3 section 322 under chapter 3, to read as follows:

4 "Section 322. Publication and use of information

5 (1) Subject to subsection (3), the Authority shall
6 publish:

7 (a) All rules or other instruments made under
8 this Act;

9 (b) All licences and exemptions issued under this
10 Act; and

11 (c) Such other documents it is required to
12 publish under this Act.

13 (2) Where the Authority is required to publish a
14 document, the Authority:

15 (a) Shall publish the document on its website;
16 and

17 (b) May publish the document in such other manner
18 as the Authority considers appropriate.

19 (3) Subject to subsections (8) and (9), neither the
20 Authority nor any agent of the Authority shall knowingly
21 publish or disclose sensitive information to any person,
22 knowingly allow sensitive information to be disclosed to
23 any person, or use sensitive information for personal
24 advantage. A breach of this prohibition by a member or
25 employee of the Authority shall be a breach of the terms

1 of appointment or employment of that person.

2 (4) Subsection (3) shall also apply to a person who
3 publishes, discloses or uses sensitive information after
4 ceasing to be a member, employee or agent of the
5 Authority.

6 (5) Subject to subsection (8), 'sensitive information'
7 means information:

8 (a) Submitted to the Authority by a person;

9 (b) Not already in the public domain;

10 (c) Designated as confidential or proprietary by
11 that person because:

12 (i) The person has a legal obligation to
13 keep the information confidential;

14 (ii) The information is commercially
15 sensitive to the person;

16 (iii) Disclosure would compromise effective
17 competition in a communications market; or

18 (iv) Disclosure would create a risk to a
19 person's safety or national security.

20 (6) The Authority may, by notice given to the person
21 supplying information under subsection (5) within 7 days
22 of the information being submitted, determine that the
23 information and any data derived from that information
24 is not confidential or proprietary and as of the date of
25 such notice that information shall not be 'sensitive

1 information'.

2 (7) Where information is provided to the Authority
3 voluntarily, upon receipt of a notice issued under
4 subsection (6) the submitter may within 3 days of
5 receipt by notice to the Authority withdraw the
6 information, in which case:

7 (a) The Authority shall not have regard to the
8 information; and

9 (b) Subsections (3) and (4) shall apply as if the
10 information were sensitive information.

11 (8) Sensitive information does not include the terms
12 of an interconnection and access agreement, including
13 prices for interconnection and access services.

14 (9) The Authority may aggregate sensitive information
15 in such a manner that the identity of the provider of
16 the information is not readily apparent and:

17 (a) Publish such information in reports
18 concerning the state of a communications market in the
19 Federated States of Micronesia;

20 (b) Provide such information to other persons for
21 the purposes of research or the preparation and
22 publication of reports for non-commercial purposes
23 concerning communications markets including such markets
24 in the Federated States of Micronesia.

25 (10) The Authority may in the course of taking any

1 action or making any decision in regard to an
2 interconnection or access dispute supply any sensitive
3 information provided by a party to that dispute to
4 representatives of another party to the dispute where
5 the Authority is satisfied that the confidentiality of
6 the information is protected by legal privilege or that
7 other steps have been taken to ensure that the use of
8 that information is restricted to the proper conduct of
9 the dispute."

10 Section 27. Title 21 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by adding a new
12 section 323 under chapter 3, to read as follows:

13 "Section 323. Service of notices.

14 Unless otherwise expressly provided in this Act, any
15 document required or authorised by this Act to be
16 provided to or served on any person, may be provided or
17 served on the person concerned by:

18 (a) Delivering it to the person or to some adult
19 member or employee of that person's family at the
20 person's last known residence;

21 (b) Leaving it at that person's usual or last
22 known residence or place of business in a cover
23 addressed to the person;

24 (c) Attaching it to some conspicuous part of that
25 person's last known residence:

1 (d) Sending it by registered post addressed to
2 that person at that person's usual or last known
3 residence or place of business;

4 (e) Where the person is a body corporate;

5 (i) Delivering it to the secretary or other
6 similar officer of the body corporate at its registered
7 or principal office; or

8 (ii) Sending it by registered post addressed
9 to the body corporate at its registered or principal
10 office."

11 Section 28. Title 21 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by adding a new
13 section 324 under chapter 3, to read as follows:

14 "Section 324. Delegation of powers to other regulatory
15 bodies.

16 (1) Where, in the opinion of the Secretary and after
17 consultation with the Authority, a regional or sub-
18 regional regulatory body has been established with the
19 capacity to efficiently perform any of the functions of
20 the Authority described in section 305(e), (f) or (g),
21 the Secretary may by notice to the Authority authorize
22 the Authority to delegate to that body on such terms as
23 the Authority shall think fit all or any of those
24 functions.

25 (b) Any decisions or actions of a regional or sub-

1 regional regulatory body taken in accordance with a
2 delegation under subsection (1) shall have full force
3 and effect in the Federated States of Micronesia as a
4 decision or action of the Authority."

5 Section 29. Title 21 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a new
7 section 325 under chapter 3, to read as follows:

8 "Section 325. Review options.

9 (1) Any person affected by a determination, decision
10 or order of the Authority under this Act may apply:

11 (a) For reconsideration of the determination,
12 decision or order under section 326;

13 (b) For a review by way of appeal under section
14 328; or

15 (c) To the Supreme Court of the Federated States
16 of Micronesia on the basis of an error of law.

17 (2) Notwithstanding subsection (1), a person may not
18 apply to the Supreme Court in respect of a
19 determination, decision, or order of the Authority:

20 (a) If the person has not applied for
21 reconsideration of the determination, decision or order
22 under section 326;

23 (b) If the person has applied for reconsideration
24 and the Authority has not yet made a decision as to
25 whether to reconsider the determination, decision or

1 order; or

2 (c) If the person has not applied for a review of
3 a decision by the appeals panel; or

4 (d) If the person has applied for a review and
5 the appeals panel has not yet made a decision on that
6 application.

7 (3) Unless the Supreme Court otherwise orders, the
8 filing of an application under subsection (1) (c) does
9 not prevent the determination, decision or order from
10 having full force and effect."

11 Section 30. Title 21 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by adding a new
13 section 326 under chapter 3, to read as follows:

14 "Section 326. Reconsideration of determinations,
15 decisions or orders.

16 (1) Any person directly affected by a determination,
17 decision or order of the Authority may apply to the
18 Authority for reconsideration within 14 days of the
19 determination, decision, or order of which review is
20 sought.

21 (2) An application under subsection (1) must specify:

22 (a) The determination, decision or order of the
23 Authority to which the application relates;

24 (b) The reasons for which the reconsideration is
25 sought; and

1 (c) The action sought on reconsideration.

2 (3) The Authority shall, within 20 days from receipt
3 of an application under subsection (1), consider the
4 application and notify the applicant as to whether the
5 determination, decision or order will be reconsidered.

6 (4) If, 20 days after the filing of an application for
7 reconsideration, the applicant has not received a
8 response to the application, the Authority shall be
9 deemed to have affirmed the determination, decision or
10 order in respect of which the application for
11 reconsideration was made.

12 (5) If the Authority determines to reconsider the
13 determination, decision or order, it shall comply with
14 the same procedures (such as consultation and
15 preparation of a draft decision) to be complied with
16 when the determination, decision or order was first
17 made."

18 Section 31. Title 21 of the Code of the Federated States of
19 Micronesia, as amended, is hereby further amended by adding a new
20 section 327 under chapter 3, to read as follows:

21 "Section 327. Appointment of experts.

22 (1) The Secretary shall establish a register of
23 experts who shall be available to act as members of an
24 appeals panel constituted under section 328. In
25 establishing and maintaining the register, the Secretary

1 shall consult with the Authority and with all service
2 providers.

3 (2) The Authority or any service provider may from
4 time to time nominate additional persons for inclusion
5 in the register. Such additional person or persons
6 shall be added to the register unless there is an
7 objection either from the Authority or any service
8 provider.

9 (3) The register of experts shall comprise at all
10 times at least three persons who collectively have
11 commercial, technical and legal expertise in the field
12 of communications.

13 (4) A person may be included in the register only if
14 the person:

15 (a) Meets the eligibility criteria to be
16 appointed a member of the Authority; or

17 (b) Has at least 10 years international
18 experience in the regulation of communications markets;
19 and

20 (c) Is not a member, officer, employee, agent or
21 consultant of the Authority and has not been such a
22 person for at least 12 months.

23 (5) The Secretary shall remove a person from the
24 register of experts if the person no longer meets the
25 criteria for appointment under subsection (4).

1 (6) The Authority shall act as the secretariat for the
2 appeals panel and shall publish the membership of the
3 register of experts."

4 Section 32. Title 21 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a new
6 section 328 under chapter 3, to read as follows:

7 "Section 328. Appeals.

8 (1) Any person may apply to the secretariat of the
9 appeals panel for a review of a decision of the
10 Authority where expressly permitted by this Act.

11 (2) An application under subsection (1) must:

12 (a) Specify the decision to which the application
13 relates;

14 (b) Specify the reasons why the review is sought
15 and the outcome sought from the appeals panel; and

16 (c) Be submitted to the secretariat within 14
17 days of publication of the decision or after that period
18 with the consent of the secretariat.

19 (3) On receipt of a valid and complete application for
20 review under subsection (1), the secretariat shall
21 select from the register not less than two persons whom
22 the secretariat considers are suitably qualified to form
23 the appeals panel. The secretariat shall notify the
24 parties to the decision appealed against, including the
25 Authority, of those names and invite the parties to

1 agree on the person or persons from amongst those names
2 to be chosen to form the appeals panel.

3 (4) Should the parties to the decision appealed
4 against be unable to agree within 5 working days of the
5 delivery of the list, the secretariat may either
6 nominate an additional name or names from the register,
7 in which case the parties shall have a further 5 working
8 days to agree on the composition of the appeals panel,
9 or may choose the members of the appeal panel from
10 amongst the persons nominated by the secretariat.

11 (5) If more than one member is appointed to the
12 appeals panel, the secretariat shall designate one
13 member of the panel as the Chair whose opinion shall
14 determine the appeal in the event of a tie.

15 (6) The appeals panel:

16 (a) Shall give a copy of the application for
17 review to persons affected by the decision under review
18 and any other person who made a submission to the
19 Authority in a consultation relating to the decision
20 under review, and invite such persons to make
21 submissions;

22 (b) May determine an application on the papers or
23 convene a hearing in person or by teleconference or
24 other means that permits all those participating to
25 communicate with each other simultaneously and

1 instantaneously; and

2 (c) In all other matters, may determine its own
3 procedures as it sees fit, provided that such procedures
4 do not give one person affected by the decision an
5 advantage over any other person affected by the
6 decision.

7 (7) An appeal shall be by way of rehearing on the
8 evidence before the Authority. The appeals panel:

9 (a) Shall take into account information submitted
10 by a party to the appeal that updates the information
11 previously provided to the Authority; and

12 (b) May, in exceptional circumstances, take into
13 account new information submitted by a party to the
14 appeal.

15 (8) The appeals panel may stay the operation of the
16 decision while considering the application.

17 (9) The appeals panel shall:

18 (a) Affirm the decision under review;

19 (b) Vary the decision under review;

20 (c) Set aside the decision under review and make
21 their own decision, which shall be treated as a decision
22 of the Authority; or

23 (d) Refer the matter back to the Authority for
24 reconsideration in such respects as the panel shall
25 specify and the Authority shall comply with any such

1 direction.

2 (10) The appeals panel shall give a copy of its
3 decision and the reasons for the decision to each person
4 affected by the decision and the Authority.

5 (11) The Authority shall publish a decision of the
6 appeals panel given to it under subsection (9).

7 (12) The costs of the appeals panel in conducting the
8 review shall be borne by the person making the
9 application for review. That person shall on filing the
10 application for review promptly pay to the secretariat
11 such amount or amounts by way of pre-payment of such
12 costs as the secretariat shall reasonably determine.

13 (13) The appeals panel may make a costs order in
14 exceptional circumstances where it considers that a
15 person other than the applicant for review has
16 materially contributed to an increase in the amount of
17 the costs of the review and if such order is made, costs
18 will be apportioned between that person and the
19 applicant.

20 (14) A decision of the appeals panel is final and
21 binding, subject to section 325(1)(c)."

22 Section 33. Title 21 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by adding a new
24 section 329 under chapter 3, to read as follows:

25 "Section 329. Licence for communications network or

1 service.

2 (1) Subject to subsections (5) and (6), no person may,
3 in the FSM or between any place in the FSM and any place
4 outside the FSM, except in accordance with an operating
5 licence issued under this Act:

6 (a) Own or operate a specified communications
7 network; or

8 (b) Provide a communications service.

9 (2) The Authority may issue the following types of
10 operating licences pursuant to the requirements of the
11 licensing rules:

12 (a) An individual licence, to authorise the
13 ownership or operation of any specified communications
14 network and the provision of any communications service;
15 and

16 (b) A class licence, to authorise the provision
17 of any communications service.

18 (3) The Authority shall issue an individual licence to
19 a specified person for a specified period but not
20 exceeding 20 years.

21 (4) A class licence shall:

22 (a) Be issued by the Authority setting out:

23 (i) The terms and conditions of the licence;
24 and

25 (ii) Any applicable eligibility criteria; and

1 (b) Come into force with respect to any person
2 upon registration by that person under section
3 331(1) (b) .

4 (5) No licence shall be required under subsection (1)
5 to own or operate an exempt network or to provide an
6 exempt service, subject to compliance with any
7 conditions set out in the licensing rules.

8 (6) No licence shall be required for the ownership of
9 a specified communications network where the operator of
10 that specified communications network has been issued
11 with the required licence.

12 (7) Operating licences shall not specify or restrict
13 the technology or network type to be used by the
14 licensee to provide communications services."

15 Section 34. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by adding a new
17 section 330 under chapter 3, to read as follows:

18 "Section 330. Licensing rules for communications
19 networks or services.

20 (1) The Authority may make licensing rules specifying:

21 (a) Additional exempt services and exempt
22 networks and conditions attaching to such exemption;

23 (b) The process for submitting an individual
24 licence application or application for registration,
25 including the intended timeframe for the Authority to

1 process an application:

2 (c) The eligibility criteria for individual
3 licences and registration under class licences;

4 (d) A fair and transparent method or methods of
5 selecting applicants in circumstances where applications
6 for licences may exceed the restrictions set out in
7 subsection (2); and

8 (e) General licence conditions which apply to all
9 operating licences.

10 (2) The licensing rules may set out restrictions or
11 limitations on the issuance or scope of licences
12 necessary to give effect to the objectives of this Act,
13 including promoting competitive communications markets."

14 Section 35. Title 21 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by adding a new
16 section 331 under chapter 3, to read as follows:

17 "Section 331. Obtaining a licence for communications
18 networks or services.

19 (1) Any person may in accordance with the licensing
20 rules apply to the Authority:

21 (a) For an individual licence; or

22 (b) For registration under a class licence.

23 (2) The Authority shall promptly issue an individual
24 licence to an applicant provided that:

25 (a) The applicant's application complies with the

1 licensing rules;

2 (b) The applicant pays any applicable application
3 fee to the Authority;

4 (c) The applicant meets the eligibility criteria
5 for the licence; and

6 (d) The licence is not of a type that is
7 restricted in number.

8 (3) An applicant for an individual licence may combine
9 that application with an application for a radio
10 frequency spectrum licence. In such case, the Authority
11 shall progress the two applications in concert and issue
12 the licences together or under such arrangement as the
13 Authority and the applicant agree.

14 (4) The Authority must provide reasons for any refusal
15 to issue an individual licence to an applicant.

16 (5) The Authority shall promptly register an applicant
17 under a class licence provided that:

18 (a) The application for registration complies
19 with the licensing rules; and

20 (b) The applicant meets the eligibility criteria
21 for the licence.

22 (6) The Authority shall maintain and publish a
23 register of licensees and licences. The entry in the
24 register shall be the authoritative record of the status
25 of any licence.

1 (7) Any restrictions under other laws concerning
2 foreign investment in the Federated States of Micronesia
3 shall not apply to carrying on the business of owning or
4 operating a communications network or providing a
5 communications service by a licensee.

6 (8) Except as set out in this section, an operating
7 licence shall not discharge the licensee from any
8 obligation to obtain any other licences, permits or
9 approvals required by law."

10 Section 36. Title 21 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by adding a new
12 section 332 under chapter 3, to read as follows:

13 "Section 332. Spectrum Licensing Authority.

14 (1) The Authority shall have sole responsibility in
15 licensing the use and allocating and assigning the radio
16 frequency spectrum for the provision of communications
17 services in the Federated States of Micronesia.

18 (2) No person may use radio frequencies in a manner
19 that is inconsistent with an allocation and assignment
20 of radio frequencies by the Authority under this
21 section.

22 (3) In performing its functions and duties and
23 exercising its powers under this section, the Authority
24 shall ensure that radio frequency spectrum is managed
25 and used in a manner that:

1 (a) Is open, non-discriminatory, competitively
2 neutral, objective and transparent;

3 (b) Is consistent with any applicable
4 international treaties, commitments, recommendations or
5 standards legally binding on the Federated States of
6 Micronesia; and

7 (c) Is economically efficient and permits
8 evolution to new technologies and services."

9 Section 37. Title 21 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by adding a new
11 section 333 under chapter 3, to read as follows:

12 "Section 333. Spectrum licensing rules.

13 (1) The Authority may make spectrum licensing rules
14 relating to the use of radio frequency spectrum for the
15 provision of communications services specifying:

16 (a) The types of spectrum licences that may be
17 issued in relation to spectrum blocks or particular
18 frequencies;

19 (b) The technical requirements that apply to the
20 use of parts of the radio frequency spectrum or
21 particular spectrum licensees;

22 (c) The parts of the radio frequency spectrum for
23 which a spectrum licence may only be issued following a
24 request for applications published by the Authority;

25 (d) The process for submitting an application for

1 a spectrum licence including the intended timeframe for
2 the Authority to process an application;
3 (e) The eligibility criteria for a spectrum
4 licence;
5 (f) A fair and transparent method or methods of
6 selecting applicants in circumstances where applications
7 for spectrum licences exceed the available spectrum,
8 which may include a competitive tender;
9 (g) Procedures for a declaration that assigned
10 spectrum is assigned on a non-exclusive basis and the
11 making of further allocations of spectrum in the same
12 frequency band;
13 (h) Procedures for the vacation of spectrum that
14 has been assigned to any person and the assignment of
15 that spectrum to another person; and
16 (i) General licence conditions for spectrum
17 licences.
18 (2) In accordance with the Administrative Procedures
19 Act, the Authority shall promulgate appropriate rules
20 and regulation governing the use of radio frequency
21 spectrum."

22 Section 38. Title 21 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by adding a new
24 section 334 under chapter 3, to read as follows:

25 "Section 334. Application for spectrum licence.

1 (1) Any person may apply to the Authority for a
2 spectrum licence for the purpose of providing
3 communications services.

4 (2) The Authority shall issue a spectrum licence to an
5 applicant provided that:

6 (a) If required, the application has been made
7 pursuant to and consistent with a request for
8 applications published by the Authority;

9 (b) The applicant's application complies with the
10 spectrum licensing rules;

11 (c) The applicant pays any applicable application
12 fee to the Authority;

13 (d) The applicant meets the eligibility criteria
14 for the licence;

15 (e) The application is consistent with the
16 spectrum plan and any other spectrum planning
17 instruments made by the Authority or the Department; and

18 (f) In circumstances where a method of selecting
19 applicants is specified in the spectrum licensing rules
20 and the applications for licences exceed the available
21 spectrum, the applicant has been selected in accordance
22 with those rules.

23 (3) The Authority shall publish all spectrum licences
24 issued under this Act."

25 Section 39. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 335 under chapter 3, to read as follows:

3 "Section 335. Licence conditions.

4 (1) It is a condition of an operating or spectrum
5 licence that the licensee:

6 (a) Comply with this Act;

7 (b) Pay any applicable licence fees; and

8 (c) Comply with any applicable general conditions
9 imposed under this Act and any special conditions
10 imposed under subsection (2).

11 (2) The Authority may impose special operating licence
12 conditions that shall apply to an individual licensee."

13 Section 40. Title 21 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by adding a new
15 section 336 under chapter 3, to read as follows:

16 "Section 336. Licence fees.

17 (1) The Authority shall make rules specifying the
18 annual licence fees payable by a holder of either an
19 operating or spectrum licence.

20 (2) Rules under subsection (1) shall determine annual
21 fees for operating and spectrum licences in accordance
22 with the following principles:

23 (a) The Authority shall endeavour to minimise the
24 fees payable by licensees (having regard to section
25 319(1) and the funding required for the proper discharge

1 of the functions of the Authority under this Act;

2 (b) The method of determining such fees shall be
3 transparent;

4 (c) Operating licence fees should aim to reflect
5 the relative value of the licensed communications
6 networks or communications services to the licensees;

7 (d) Subject to subsections (e) and (f), licence
8 fees shall be determined on the same basis for all
9 licensees holding the same category of licence;

10 (e) Operating licence fees for individual
11 licences shall be based on a percentage of the gross
12 revenues of the licensee; and

13 (f) Operating licence fees for class licences
14 shall be a fixed sum.

15 (3) The total projected annual licence fees payable by
16 all licensees in a year shall not exceed the lesser of:

17 (a) 5% of the gross revenues of all licensees
18 from the provision of communications services and from
19 interconnection and access in the Federated States of
20 Micronesia in the prior financial year of the Authority;
21 or

22 (b) The Authority's proposed annual budget and
23 forecasts under section 319.

24 (4) Spectrum licence fees paid as a result of a
25 competitive tender process shall be paid into the

1 Universal Access Special Revolving Fund, after deduction
2 of any costs reasonably incurred by the Authority in
3 relation to the tender process."

4 Section 41. Title 21 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a new
6 section 337 under chapter 3, to read as follows:

7 "Section 337. Revocation, suspension, dealing or
8 surrender of a licence.

9 (1) An operating or spectrum licence continues in
10 effect until:

11 (a) It is revoked by the Authority; or

12 (b) The expiration of any term specified in the
13 licence.

14 (2) The Authority may revoke or suspend an individual
15 licence or registration of a person under a class
16 licence for a communications network or service:

17 (a) With the consent of the licensee;

18 (b) If the licensee is in material breach of a
19 licence condition;

20 (c) If the licensee has made false or misleading
21 statements to the Authority in:

22 (i) Its licence application; or

23 (ii) Information submitted to the Authority
24 under this Act; or

25 (iii) If the licensee is insolvent, in

1 receivership, bankrupt or being wound up.

2 (3) Subject to subsection (4), the Authority may
3 revoke or suspend a spectrum licence:

4 (a) In the circumstances specified in subsections
5 (2) (a) to (d); or

6 (b) If it is necessary to implement a variation
7 to the spectrum plan or any other spectrum planning
8 instrument made by the Authority or the Department and
9 is consistent with international spectrum planning or
10 the international obligations of the Federated States of
11 Micronesia.

12 (4) The Authority may only revoke a licence under
13 subsection (2) (b) or (2) (c) if it is satisfied that
14 suspension is not appropriate in the circumstances,
15 having regard to the seriousness of the breach of
16 licence condition or the false or misleading statements.

17 (5) A licensee may surrender a licence (other than a
18 class licence) by notice to the Authority.

19 (6) A licence is personal to the licensee and must not
20 be assigned, transferred, sub-licensed or otherwise
21 dealt with without the Authority's written consent."

22 Section 42. Title 21 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by adding
24 section 338 under chapter 3, to read as follows:

25 "Section 338. Commercial negotiation.

1 Subject to this Act, licensees may negotiate, agree and
2 vary agreements with one another for interconnection of
3 communications networks, access to and sharing of
4 facilities and other services, and the provision of
5 wholesale services, including the type and amount of
6 charges, in such manner and on such conditions as are
7 mutually acceptable to the licensees."

8 Section 43. Title 21 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended by adding a new
10 section 339 under chapter 3, to read as follows:

11 "Section 339. Interconnection and access and supply of
12 wholesale services by all licensees.

13 (1)A licensee must, on written request from another
14 licensee, promptly negotiate an interconnection and
15 access agreement providing for the following, as the
16 case may be:

17 (a) Interconnection of the licensees'
18 communications networks at any economically and
19 technically feasible point of the first licensee's
20 network where interconnection would not affect the
21 security, performance or efficiency of the first
22 licensee's network;

23 (b) Conditions that maintain end-to-end
24 operability to facilitate the provision of
25 communications services by the second licensee to a

1 customer notwithstanding that the customer is directly
2 connected to the first licensee's communications
3 network;

4 (c) The provision of wholesale services on terms
5 that are comparable to those on which the first licensee
6 provides such services for use in its own retail
7 operations or those of its affiliates;

8 (d) The standard terms contained in the
9 interconnection and access rules;

10 (e) Subject to subsection (d), otherwise
11 reasonable conditions, including with respect to the
12 timing, quality, technical, operational and fault
13 handling terms;

14 (f) Conditions that do not unfairly discriminate
15 between licensees and are no less favourable to the
16 second licensee than those the first licensee provides
17 for its own communications services or those of its
18 affiliates;

19 (g) Access to communications facilities,
20 networks, software and services, in a manner that is
21 sufficiently unbundled, including co-location, to enable
22 the second licensee to access the facilities and
23 wholesale services that it reasonably requires in order
24 to provide communications services to its customers;

25 (h) The provision on a timely basis by each

1 licensee of information, including technical
2 specifications and commercially relevant information
3 reasonably required for interconnection and the
4 operation of communications services for each licensee's
5 customers; and

6 (i) A commitment from each licensee not to
7 disclose or use information received from the other
8 licensee in connection with the interconnection and
9 access agreement for any purpose other than that for
10 which it was supplied.

11 (2) Licensees in negotiations for an interconnection
12 and access agreement must:

13 (a) Act at all times in good faith;

14 (b) Promptly provide information reasonably
15 requested by the other party;

16 (c) Avoid obstructing or delaying negotiations;
17 Comply with any direction given by the Authority as to
18 the conduct of the negotiations;

19 (d) Not seek to cause the other party to withhold
20 from the Authority information concerning the
21 negotiations.

22 (3) A licensee who enters an interconnection and access
23 agreement with another licensee must promptly lodge a
24 copy of the interconnection and access agreement with
25 the Authority."

1 Section 44. Title 21 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by adding a new
3 section 340 under chapter 3, to read as follows:

4 "Section 340. Disputes between licensees.

5 (1) If an interconnection and access agreement has not
6 been reached within 30 days of a request under section
7 339(1), the Authority may, on written request by either
8 licensee:

9 (a) Determine the terms of the interconnection
10 and access agreement including the terms contemplated by
11 section 339(1); or

12 (b) Direct the licensees to take specified action
13 to reach agreement (such as to engage a mediator or
14 arbitrator), by written notice to both licensees. The
15 licensees shall comply with such a direction.

16 (2) An interconnection and access agreement determined
17 by the Authority must:

18 (a) Include the provisions referred to in section
19 339(1);

20 (b) Apply the interconnection and access terms
21 specified in the interconnection and access rules;

22 (c) Not provide for interconnection or access to
23 communications facilities or the provision of wholesale
24 services where interconnection or access or the
25 provision of wholesale services is not technically,

1 economically or legally feasible or would materially
2 adversely affect the security, performance or efficiency
3 of the first licensee's network;

4 (d) Have regard to the best interests of
5 consumers, aim to have a positive impact on competition
6 between licensees, and encourage efficient and
7 sustainable investment in communications networks and
8 services in the Federated States of Micronesia.

9 (3) The Authority must consult with both licensees and
10 provide both licensees with a draft interconnection and
11 access agreement or a draft direction before determining
12 the terms of the interconnection and access agreement or
13 making the direction.

14 (4) A licensee may apply for reconsideration under
15 section 326 or for a review under section 328 of the
16 terms of any interconnection and access agreement
17 determined by the Authority that applies to it.

18 (5) The Authority shall publish copies of all
19 interconnection and access agreements."

20 Section 45. Title 21 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by adding a new
22 section 341 under chapter 3, to read as follows:

23 "Section 341. Interconnection and access rules.

24 (1) The Authority may make interconnection and access
25 rules specifying standard terms to apply to all

1 interconnection and access agreements, including
2 wholesale prices or pricing principles.

3 (2) The interconnection and access rules made under
4 subsection (1) may designate mandatory services,
5 including roaming services, which licensees must provide
6 between interconnected communications networks and which
7 must be included in interconnection and access
8 agreements.

9 (3) In specifying interconnection and access prices or
10 pricing principles for interconnection and access rules
11 made under subsection (1), the Authority shall take into
12 account internationally accepted principles for
13 determining regulated prices, including methodologies
14 designed to reflect actual costs.

15 (4) The Authority may determine interim
16 interconnection and access prices, based on benchmarking
17 against cost-based prices set by regulators in
18 comparable countries, to apply to all interconnection
19 and access agreements, including agreements that have
20 been agreed between the parties or have been determined
21 by the Authority or the appeals panel. Such interim
22 prices shall apply until:

23 (a) Interconnection and access prices or pricing
24 principles are made under subsection (1); or

25 (b) Different prices are set by the appeals panel

1 on a rehearing of the Authority's decision as to interim
2 prices.

3 (5) A licensee may apply for a review under section
4 328 of any interconnection and access rules made by the
5 Authority under subsection (1)."

6 Section 46. Title 21 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by adding a new
8 section 342 under chapter 3, to read as follows:

9 "Section 342. New infrastructure.

10 (1) A licensee who proposes to construct a new
11 communications facility to expand its communications
12 network shall at least 30 days before it plans to
13 finalise the design of the communications facility:

14 (a) Publish details of its proposal on its
15 website together with an invitation for expressions of
16 interest in sharing the communications facility; and

17 (b) On the same day, provide a copy of the
18 details and invitation to the Authority (which shall
19 promptly publish the details and invitation).

20 (2) A person may, within 7 days of a proposal being
21 published by the licensee, provide an expression of
22 interest in sharing the communications facility to the
23 Authority. The Authority shall promptly provide any
24 expressions of interest to the licensee who proposes to
25 construct the communications facility.

1 (3) After the expiry of the period in subsection (2),
2 the licensee who proposes to construct the
3 communications facility shall promptly provide each
4 person who has provided an expression of interest with a
5 list of the other persons who have provided an
6 expression of interest.

7 (4) The licensee who proposes to construct the
8 communications facility and each person who has provided
9 an expression of interest shall promptly negotiate in
10 good faith the:

11 (a) Design characteristics of the communications
12 facility so that, to the extent practical, each such
13 person shall be able to use the communications facility
14 for their reasonably anticipated requirements; and

15 (b) Commercial terms for the construction,
16 maintenance, ownership and on-going use of the
17 communications facility by the licensee and each such
18 person.

19 (5) If the design characteristics and commercial terms
20 described in subsection (4) have not been agreed within
21 14 days of the negotiations commencing, the Authority
22 may, on written request by any party to the
23 negotiations, and by written notice to each party,
24 direct the parties to take specified action to reach
25 agreement (such as to engage a mediator or arbitrator).

1 The parties shall comply with such a direction."

2 Section 47. Title 21 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by adding a new
4 section 343 under chapter 3, to read as follows:

5 "Section 343. Prohibition of anti-competitive conduct.

6 (1) A licensee shall not engage in conduct having the
7 purpose or effect, or likely to have the effect, of
8 substantially lessening competition in a communications
9 market, and no provision of a contract or agreement
10 having such purpose or effect, or likely to have such
11 effect, will be enforceable.

12 (2) Without limiting subsection (1), conduct has the
13 purpose, effect or likely effect of substantially
14 lessening competition in a communications market if it
15 directly or indirectly involves:

16 (a) Supplying a communications service at a price
17 below cost for a substantial period of time for the
18 purpose or with the effect or likely effect of limiting
19 competition in a communications market;

20 (b) Cross-subsidising a service in a competitive
21 communications market from a service that is supplied in
22 a communications market that is not competitive;

23 (c) Bundling a communications service that is
24 supplied in a competitive market with a service that is
25 not supplied in a competitive market, in circumstances

1 where more favourable terms are applied to the
2 competitive service sold as part of the bundle;

3 (d) Imposing restrictions on whom another person
4 may deal with in a communications market or otherwise
5 hindering the willingness of a supplier to provide goods
6 or services to another licensee, without legitimate
7 commercial justification;

8 (e) Reducing the margin of profit available to a
9 competing licensee in a retail communications market by
10 engaging in a margin squeeze at the wholesale or retail
11 level in circumstances where the wholesale service or
12 access service:

13 (i) Is not supplied in a competitive
14 communications market;

15 (ii) Is necessary as a matter of commercial
16 necessity for the competitor to provide the retail
17 service; and

18 (iii) Cannot for economic, technical or legal
19 reasons be duplicated by the competitor;

20 (f) Pre-emptively acquiring scarce facilities or
21 resources, including land, that are required or likely
22 to be required by another licensee for the operation of
23 its business, for the purpose of restricting the use of
24 the facilities or resources by the other licensee; or

25 (g) Designing or installing a communications

1 facility or communications network with the purpose of
2 preventing or hindering another licensee from acquiring
3 interconnection or access.

4 (3) Without limiting subsection (1), an arrangement
5 between two or more licensees has the effect or likely
6 effect of reducing competition in a communications
7 market if it directly or indirectly:

8 (a) Fixes the prices or other conditions for the
9 supply of a communications service or access service;

10 (b) Apportions, shares or allocates a
11 communications market or markets among themselves or
12 other licensees; or

13 (c) Prevents, restricts or limits the supply or
14 acquisition of a communications service or access
15 service to or from a person or class of persons.

16 (4) The Authority may exempt conduct from the
17 prohibition in subsection (1) if the Authority is
18 satisfied that the conduct:

19 (a) Will or is likely to create efficiencies for
20 the supply of communications services which are greater
21 than any potential detriments; and

22 (b) Will not eliminate competition in respect of
23 a substantial part of such communications services."

24 Section 48. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 344 under chapter 3, to read as follows:

2 "Section 344. Contravention of competition provisions.

3 (1) If the Authority considers that a licensee is
4 engaging in anti-competitive conduct, it may serve a
5 notice of contravention on the licensee specifying the
6 conduct that the Authority deems to be in contravention
7 of this Act and requiring the licensee to cease or
8 modify that conduct.

9 (2) A licensee specified in the notice under
10 subsection (1) shall comply with the notice within such
11 time period and on such conditions as is specified in
12 the notice.

13 (3) A licensee specified in a notice issued under
14 subsection (1) may apply for reconsideration under
15 section 326 seeking relief including setting the notice
16 aside or varying any conditions specified in the notice.

17 (4) If a licensee complies with subsection (2) in
18 relation to a notice served under subsection (1), the
19 Authority shall not take enforcement action under
20 sections 329, 330, 331, 332, 333, 334, 335, 336, 381,
21 382, 383, 384, 385, 386 or 387 of this Act in respect of
22 the conduct specified in that notice."

23 Section 49. Title 21 of the Code of the Federated States of
24 Micronesia, as amended, is hereby further amended by adding a new
25 section 345 under chapter 3, to read as follows:

1 "Section 345. Industry consolidation.

2 (1) A licensee shall not acquire or obtain an interest
3 in shares or assets related to communications facilities
4 or the provision of communications services of another
5 licensee without the prior written consent of the
6 Authority.

7 (2) A licensee obtains an interest in shares or assets
8 if the licensee becomes the legal or beneficial owner of
9 the shares or assets or it or its affiliate is in a
10 position to control the shares or assets.

11 (3) A licensee who wishes to acquire, directly or
12 indirectly, shares in or assets of another licensee
13 shall:

14 (a) Apply to the Authority for consent to the
15 acquisition;

16 (b) Disclose to the Authority such information as
17 the Authority may require concerning any affiliate of
18 the licensee; and

19 (c) Provide the Authority with such additional
20 information as the Authority may request for the
21 purposes of determining the effect or likely effect of
22 the proposed acquisition on competition in a
23 communications market.

24 (4) The Authority may make rules specifying the form
25 and information required for an application under

1 subsection (3).

2 (5) The Authority shall consent to an application
3 lodged under subsection (3) unless it is satisfied,
4 after consultation with the licensee proposing to make
5 the acquisition, that the proposed acquisition would
6 have the effect or likely effect of reducing competition
7 in a communications market.

8 (6) A licensee may apply for reconsideration under
9 section 326 of a decision of the Authority not to
10 consent to an application it has provided under
11 subsection (3)."

12 Section 50. Title 21 of the Code of the Federated States of
13 Micronesia, as amended, is hereby further amended, by adding a new
14 section 346 under chapter 3, to read as follows:

15 "Section 346. Publication of terms and conditions.

16 (1) Before offering a communications service to the
17 public, or altering the terms of any such service, a
18 Dominant Service Provider shall:

19 (a) Publish on its website and make available for
20 inspection at its offices, the terms and conditions
21 (including the price) for that service in clear and
22 simple terms; and

23 (b) Provide a copy to the Authority and obtain
24 the approval of the Authority to the proposed tariff.

25 (2) Subject to the provisions of sections 343, 344 and

1 345, the requirements of subsection (1)(b) as to
2 approval of the Authority shall not apply to:

3 (a) Any proposed reduction in a retail tariff;

4 (b) The inclusion in an offer of a price discount
5 either on a time-bound basis or to an objectively
6 identifiable group of consumers.

7 (3) The Authority shall publish information provided
8 to it under this section.

9 (4) The Authority may by notice to a Dominant Service
10 Provider dispense with the requirements of subsection
11 (1) in respect of any service or market if in the
12 opinion of the Authority the state of competition in the
13 relevant market is such that tariff changes are unlikely
14 to harm competition or to be substantially detrimental
15 to consumers."

16 Section 51. Title 21 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by adding a new
18 section 347 under chapter 3, to read as follows:

19 "Section 347. Pricing rules.

20 (1) The Authority may make pricing rules applicable to
21 a Dominant Service Provider in a communications market
22 specifying:

23 (a) Communications services to which this section
24 applies; and

25 (b) A pricing model or pricing models to be

1 applied in assessing the retail prices charged by that
2 licensee for those communications services.

3 (2) Before making pricing rules under subsection (1),
4 the Authority must be satisfied that the prices for the
5 communications services in question exceed the price set
6 on the basis of economically efficient costs.

7 (3) A Dominant Service Provider affected by pricing
8 rules made under subsection (1) may apply for
9 reconsideration under section 326 of the designation of
10 the licensee as a Dominant Service Provider or the
11 pricing model specified by the Authority.

12 (4) Any pricing model referred to in subsection (1)
13 shall be designed to:

14 (a) Ensure the prices reasonably reflect
15 economically efficient costs;

16 (b) Promote efficient and sustainable investment
17 in communications networks and services in the Federated
18 States of Micronesia; and

19 (c) Reasonably protect the interests of consumers
20 and other licensees.

21 (5) The Authority may:

22 (a) Assess the prices charged for communications
23 services by a licensee to whom a pricing model under
24 subsection (1) applies against the relevant pricing
25 model; and

1 (b) By written notice to the licensee, determine
2 any adjustment to the prices charged by the licensee.

3 (6) The Authority shall consult with the licensee and
4 provide the licensee with a draft of the adjustment
5 prior to making any determination under subsection
6 (5) (b).

7 (7) If the Authority makes a determination to adjust
8 the prices of a licensee's communications services under
9 subsection (5):

10 (a) The Authority shall notify the licensee of
11 the adjustment and publish its determination; and

12 (b) The licensee shall not charge an amount
13 greater than the adjusted price.

14 (8) The licensee may apply for reconsideration under
15 section 326 of the adjusted prices."

16 Section 52. Title 21 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by adding a new
18 section 348 under chapter 3, to read as follows:

19 "Section 348. Fair dealing.

20 (1) A licensee shall only charge a customer for the
21 specific communications services or equipment that the
22 customer has ordered, and a customer shall have no
23 liability to pay for any communications services or
24 equipment that it has not ordered.

25 (2) A Dominant Service Provider shall provide all its

1 customers the same terms and conditions for each service
2 offering, unless:

3 (a) More favorable terms are offered to an
4 objectively identifiable group of customers; or

5 (b) Differences are otherwise objectively
6 justifiable, to the satisfaction of the Authority; or

7 (c) The Authority gives prior approval to the
8 terms of the service offering, including the
9 differences.

10 (3) In the case of a customer who has:

11 (a) Contracted for communications services for
12 which they will pay after usage, a licensee shall
13 provide the customer with invoices:

14 (i) In writing, which may be transmitted
15 electronically if the customer consents;

16 (ii) On a regular basis;

17 (iii) In a plain and simple format;

18 (iv) With accurate and itemised information
19 about the services provided and the corresponding
20 amounts due; and

21 (v) That clearly indicate the method of
22 calculation of prices for any service for which invoices
23 are based on the length of calls or other measure or
24 usage; and

25 (b) Paid in advance for communications services,

1 the licensee shall permit the customer on request to
2 review the amount of the prepayment that has been
3 consumed and the amount remaining.

4 (4) A licensee shall not make or cause to be made any
5 claim or representation about the availability, price or
6 quality of its communications services or equipment or
7 those of a competing licensee if the licensee knows or
8 reasonably ought to know that the statement or claim is
9 false or misleading in any material respect.

10 (5) The Authority may make consumer protection rules
11 regulating or prohibiting the use of a communications
12 network or communications services to provide
13 unsolicited communications."

14 Section 53. Title 21 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by adding a new
16 section 349 under chapter 3, to read as follows:

17 "Section 349. Confidentiality of customer information.

18 (1) Subject to subsections (2) and (3), a licensee:

19 (a) Shall not, without a customer's consent,
20 collect, use, maintain or disclose information about a
21 customer for any purpose; and

22 (b) Shall apply appropriate security safeguards
23 to prevent the collection, use, maintenance or
24 disclosure of such information without the customer's
25 consent.

1 (2) A licensee may disclose a customer's name, address
2 and telephone number in a printed or electronic
3 directory or as provided for in the consumer protection
4 rules, provided that a licensee shall permit customers
5 on request to have their name omitted from such
6 directory.

7 (3) A licensee shall ensure that information it
8 discloses or retains concerning a customer is accurate
9 and complete for the purposes for which it is to be
10 used.

11 (4) A licensee shall permit a customer to inspect its
12 records regarding a communications service provided to
13 that customer and shall promptly correct or remove
14 information that is shown to be incorrect.

15 (5) A licensee shall retain accurate records of all
16 customer invoices for six months from their billing date
17 and shall make them available to the Authority on
18 request made in writing.

19 (6) A licensee shall on request disclose to a customer
20 the purpose of requesting or collecting any information
21 about that customer, and shall not use or maintain
22 information about customers for undisclosed purposes.

23 (7) The Authority may make consumer protection rules
24 requiring a class of licensees to retain or not retain
25 specified information relating to customers, including

1 information about billing, beyond a specified period."

2 Section 54. Title 21 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by adding a new
4 section 350 under chapter 3, to read as follows:

5 "Section 350. Confidentiality of customer
6 communications.

7 A licensee shall take all reasonable steps to ensure the
8 confidentiality of its customers' communications except
9 as permitted by law and shall not, without the prior
10 consent of the customer, divulge any information
11 concerning the customer's communications unless required
12 by law or authorized by the Authority."

13 Section 55. Title 21 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by adding a new
15 section 351 under chapter 3, to read as follows:

16 "Section 351. Access by government authorities.
17 Nothing in sections 349 to 350 shall be interpreted to
18 prohibit or infringe upon the rights of government
19 authorities under the laws of the Federated States of
20 Micronesia to exercise such rights to access otherwise
21 confidential information or communications in a lawful
22 manner."

23 Section 56. Title 21 of the Code of the Federated States of
24 Micronesia, as amended, is hereby further amended by adding a new
25 section 352 under chapter 3, to read as follows:

1 "Section 352. Terms of service, complaints and
2 disputes.

3 (1) The Authority may make consumer protection rules
4 requiring licensees to take any of the following steps
5 in a communications market:

6 (a) Establish fair and reasonable standard
7 conditions for the provision of communications services
8 to consumers, including procedures for dealing with
9 complaints from and disputes with consumers, and
10 provision for consumers' remedies (including refunds and
11 compensation) where circumstances warrant;

12 (b) Submit such conditions, procedures and
13 remedies, or proposed amendments to the Authority for
14 its approval;

15 (c) Make such changes to such conditions,
16 procedures and remedies as may be reasonably required by
17 the Authority;

18 (d) Publish such conditions, procedures and
19 remedies on its website and circulate them to points of
20 sale for publication in a manner that ensures that
21 prospective consumers are able to be clearly informed of
22 them;

23 (e) Comply with such conditions, implement such
24 procedures and provide such remedies in accordance with
25 their terms as approved by the Authority;

1 (f) Report to the Authority on the types and
2 volumes of consumer complaints and disputes, the
3 application of complaints procedures and manner in which
4 complaints have been resolved; and

5 (g) Take such other measures as the Authority
6 considers appropriate to ensure that consumers'
7 complaints and disputes are satisfactorily addressed.

8 (2) If a licensee fails to establish, submit or make
9 changes to conditions, procedures or remedies if so
10 required under subsection (1), the Authority may do so
11 and the licensee shall comply with such conditions,
12 implement such procedures and provide such remedies.

13 (3) A consumer whose complaint or dispute has not been
14 treated by a licensee in accordance with its procedures
15 for dealing with complaints may apply to the Authority
16 for a determination:

17 (a) Requiring the licensee to comply with those
18 procedures; or

19 (b) Addressing the complaint or dispute and
20 providing for a remedy, if such remedy is not
21 inconsistent with any reasonable conditions and
22 procedures established by the licensee pursuant to this
23 section.

24 (4) Before making a determination under subsection
25 (3), the Authority shall consult with the licensee and

1 the affected consumer."

2 Section 57. Title 21 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by adding a new
4 section 353 under chapter 3, to read as follows:

5 "Section 353. Directory assistance.

6 (1) The Authority may make consumer protection rules
7 requiring a licensee or class of licensees to establish
8 and provide customers with directory assistance services
9 on conditions prescribed in those rules, requiring
10 licensees to co-operate for the provision of directory
11 assistance services, and providing for the costs of
12 providing directory assistance services to be shared
13 between licensees whose customers may access the
14 service.

15 (2) In this section, 'directory assistance services'
16 means such services to provide access to a customer's
17 name, telephone number and such other information about
18 a customer as is set out in the consumer protection
19 rules."

20 Section 58. Title 21 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by adding a new
22 section 354 under chapter 3, to read as follows:

23 "Section 354. Quality of service.

24 (1) The Authority may make consumer protection rules
25 requiring a Dominant Service Provider to:

1 (a) Establish key performance indicators for the
2 quality of its service to users, which may be required
3 to comply with minimum standards set out in the consumer
4 protection rules;

5 (b) Submit the indicators (and any subsequent
6 amendments) to the Authority for approval;

7 (c) Make such changes to such indicators as may
8 be required by the Authority; and

9 (d) Ensure that its services comply with such
10 indicators.

11 (2) If a licensee fails to make performance indicators
12 as required by consumer protection rules made under
13 subsection (1), the Authority may issue performance
14 indicators and the licensee shall comply with such
15 indicators."

16 Section 59. Title 21 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by adding a new
18 section 355 under chapter 3, to read as follows:

19 "Section 355. Technical standards.

20 (1) The Authority may make technical rules specifying
21 technical standards for:

22 (a) Interconnection of licensees' communications
23 networks; and

24 (b) Customer equipment permitted to be attached
25 to licensees' communications networks.

1 (2) In making the technical rules the Authority may
2 apply, adopt, or incorporate, with or without
3 modification, any standard as it exists at a particular
4 time or from time to time."

5 Section 60. Title 21 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding
7 section 356 under chapter 3, to read as follows:

8 "Section 356. Customer equipment standards.

9 (1) A person shall not sell, or offer for sale,
10 equipment, and a person other than the owner or operator
11 of a communications network shall not attach equipment
12 to a communications network, if the equipment:

13 (a) Does not conform to a relevant equipment
14 standard in the technical rules made under section
15 355(1);

16 (b) Does not conform with a relevant
17 international standard; or

18 (c) Would adversely affect the operation,
19 reliability or integrity of the communications network
20 or cause a health or safety risk to a person.

21 (2) A licensee may:

22 (a) Disconnect from its communications networks
23 any customer equipment; and

24 (b) Cease or refuse to supply a communications
25 service to a customer who has connected customer

1 equipment to its communications network,
2 if that customer equipment does not comply with the
3 standards referred to in subsection (1)."

4 Section 61. Title 21 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a new
6 section 357 under chapter 3, to read as follows:

7 "Section 357. Numbering plan.

8 (1) The Authority shall make numbering rules
9 specifying matters that include:

10 (a) A numbering plan for communications services;

11 (b) Annual fees for the right to use allocated
12 numbers in order to recover the costs of the
13 administration of the numbering plan;

14 (c) Rules regarding the assignment and use of
15 numbers;

16 (d) Provision for any service provider using
17 numbering ranges as at the date of this Act to retain
18 such numbering ranges, subject to the amendment of those
19 ranges by the addition of further digits where the
20 Authority considers that to be necessary in order to
21 ensure an adequate supply of numbers;

22 (e) The assignment of numbers for emergency
23 services; and

24 (f) Requirements for the allocation of priority,
25 quality and capacity for calls to emergency services.

1 (2) The Authority may make numbering rules specifying
2 provisions for number portability if the Authority:

3 (a) Has conducted a public consultation about the
4 inclusion of the provisions;

5 (b) Determines that there is a reasonable
6 likelihood of demand for number portability; and

7 (c) Determines that the benefit outweighs the
8 costs of introducing number portability.

9 (3) The Authority may invite individual licensees to
10 develop a number portability scheme in accordance with
11 any directions given by the Authority as to the content
12 of such a scheme and to submit the scheme to the
13 Authority for approval.

14 (4) Should the Authority approve a number portability
15 scheme submitted under subsection (3), such scheme shall
16 have effect as a decision of the Authority."

17 Section 62. Title 21 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by adding a new
19 section 358 under chapter 3, to read as follows:

20 "Section 358. National emergency numbers.

21 A licensee that provides voice communications services
22 shall provide its subscribers with access to the numbers
23 specified in the numbering rules as being assigned for
24 emergency services free of charge."

25 Section 63. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 360 under chapter 3, to read as follows:

3 "Section 360. Universal access policy.

4 (1) The Secretary shall develop a policy for improving
5 access to communications services of the nature
6 described in subsection (3) for areas of the Federated
7 States of Micronesia that are not adequately served by
8 existing services.

9 (2) The policy referred to in subsection (1) shall be
10 promulgated pursuant to the Administrative Procedures
11 Act, and shall be implemented by the Authority.

12 (3) The communications services to be considered for
13 the purposes of the universal access policy shall be:

14 (a) A voice calling service, either fixed or
15 mobile;

16 (b) Data services which permit access to the
17 Internet with a minimum peak download speed of 256 Kbps;

18 (c) Emergency services with priority routing
19 enabling contact with police, fire services, ambulance
20 and marine rescue services;

21 (d) Disaster relief services;

22 (e) Operator assistance for call set-up and
23 faults reporting; and

24 (f) Such other communications services designated
25 by the Secretary."

1 Section 64. Title 21 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by adding a new
3 section 361 under chapter 3, to read as follows:

4 "Section 361. Universal access eligibility.

5 (1) The Secretary shall identify, publish and update
6 annually a list of geographic areas that are eligible
7 under the universal access policy for the application of
8 universal access obligations and funding under the
9 universal access policy.

10 (2) The Secretary shall invite proposals from
11 licensees or prospective licensees to introduce or
12 improve communications services described in section
13 360(3), and shall take into account such proposals in
14 identifying eligible universal access areas under
15 subsection (1)."

16 Section 65. Title 21 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by adding a new
18 section 362 under chapter 3, to read as follows:

19 "Section 362. Universal access obligations.

20 (1) A licensee shall become subject to a universal
21 access obligation if:

22 (a) The provision of those universal access
23 services is a requirement of the license; or

24 (b) The licensee has assumed that obligation
25 under section 369.

1 (2) The Authority may enforce a universal access
2 obligation by giving notice to the licensee concerned
3 requiring that licensee to take any action or meet any
4 timetable described in that notice and in the reasonable
5 opinion of the Authority required to comply with that
6 obligation.

7 (3) The Authority may defer the commencement of a
8 universal access obligation for such period and to such
9 an extent as the Authority deems fit where the Authority
10 is satisfied that the licensee concerned is building
11 network facilities at its cost in an area subject to the
12 universal access policy or the licensee has voluntarily
13 undertaken to provide additional communications services
14 or to construct additional network facilities at its
15 cost in such an area."

16 Section 66. Title 21 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by adding a new
18 section 363 under chapter 3, to read as follows:

19 "Section 363. Eligibility for universal access funding

20 (1) Subject to subsection (2), a licensee subject to a
21 universal access obligation as a result of a successful
22 tender under section 369 is entitled to receive funding
23 from the universal access special revolving fund.

24 (2) No licensee is entitled to funding from the
25 universal access special revolving fund for the

1 provision of services in a geographic area, and any
2 entitlement previously established shall cease, where a
3 substantial level of access to comparable communications
4 services is, in the opinion of the Authority, available
5 in that area from another licensee."

6 Section 67. Title 21 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by adding a new
8 section 364 under chapter 3, to read as follows:

9 "Section 364. Administration of universal access
10 obligations.
11 The Authority shall ensure that universal access
12 obligations are administered in an open, transparent,
13 non-discriminatory, objective, and competitively neutral
14 manner, and are not more burdensome than necessary to
15 achieve the objectives of the universal access plan."

16 Section 68. Title 21 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by adding a new
18 section 365 under chapter 3, to read as follows:

19 "Section 365. Universal access special revolving fund.
20 (1) A universal access special revolving fund is
21 established and will be administered by the Authority.
22 (2) The fund shall be used for the purposes in
23 accordance with the universal access plan.
24 (3) The following shall be deposited in the fund:
25 (a) Any amounts transferred under section 319(6);

1 (b) Any amounts available under section by way of
2 spectrum license fees paid as a result of a competitive
3 tender process;

4 (c) Any grants or donations made to or for the
5 benefit of the fund;

6 (d) Appropriations made by Congress for the
7 purposes of the fund.

8 (4) The Authority shall cause to be maintained books
9 of account and records in accordance with general
10 accounting principles for funds administered by the
11 Government in respect of the fund and any monies paid
12 into or out of the fund.

13 (5) The Authority may pay monies out of the fund only
14 to provide subsidies or concessional loans in accordance
15 with a contract under section 369.

16 (6) The fund and any transactions from the fund are
17 not subject to any tax, rate, charge or impost under any
18 other law."

19 Section 69. Title 21 of the Code of the Federated States of
20 Micronesia, as amended, is hereby further amended by adding a new
21 section 366 under chapter 3, to read as follows:

22 "Section 366. Universal access rules.

23 (1) The Authority shall make universal access rules
24 consistent with this Act and prescribing the:

25 (a) Operation of the universal access special

1 revolving fund; and

2 (b) Provision of services pursuant to a universal
3 access plan and project plans.

4 (2) In addition to the matters set out under
5 subsection (1), the universal access rules may also
6 prescribe the:

7 (a) Rules for a competitive tender or the method
8 of selecting a person under section 369;

9 (b) Requirements for persons entering a contract
10 with the Authority under section 369, including
11 conditions to coordinate development of communications
12 facilities with development of other infrastructure; and

13 (c) Such other matters necessary to give effect
14 to this section and the objectives of this Act.

15 (3) The universal access rules shall provide that a
16 tender process conducted by the Authority under section
17 369 shall require that the Authority select the
18 compliant tender that in the opinion of the Authority
19 best serves the purposes of the universal access plan
20 and provides the lowest cost solution commensurate with
21 the outcomes to be achieved."

22 Section 70. Title 21 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by adding a new
24 section 367 under chapter 3, to read as follows:

25 "Section 367. Universal Access Plan.

1 The Authority shall, upon receipt from the Secretary of
2 a list of geographic areas that are eligible under the
3 universal access policy for the application of universal
4 access obligations and funding under the universal
5 access policy, prepare and publish a universal access
6 plan."

7 Section 71. Title 21 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by adding a new
9 section 368 under chapter 3, to read as follows:

10 "Section 368. Universal Access Projects.

11 The Authority shall prepare and publish one or more
12 project plans to address a universal access plan. A
13 project plan shall specify:

14 (a) The timing by which deployment of such
15 services (or communications facilities to enable such
16 services) in particular areas or segments of society of
17 the Federated States of Micronesia should take place;
18 and

19 (b) Any general requirements or specifications
20 for the provision of such communications services or
21 communications facilities."

22 Section 72. Title 21 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by adding
24 section 369 under chapter 3, to read as follows:

25 "Section 369. Provision of universal access services.

1 (1) The Authority may contract with a person to
2 provide a subsidy or concessional loan for the provision
3 of communications services or communications facilities
4 in accordance with a project plan.

5 (2) The Authority shall, before entering a contract
6 under subsection (1):

7 (a) Consider whether there is likely to be
8 competition for the subsidy or concessional loan offered
9 under subsection (1) for the provision of communications
10 services or communications facilities in accordance with
11 the project plan; and

12 (b) If the Authority believes there would be such
13 competition, conduct a competitive tender for the
14 provision of those services or facilities in accordance
15 with the universal access rules.

16 (3) If the Authority considers that there is not
17 likely to be competition for the provision of the
18 communications services or communications facilities for
19 the maximum subsidy or concessional loan the Authority
20 could offer in fulfilment of the relevant project plan,
21 the Authority shall negotiate with any person the
22 Authority considers has the capability of providing
23 those services or facilities and may enter into a
24 contract for the provision of those services or
25 facilities in accordance with the project plan.

1 (4) If after attempting to negotiate under subsection
2 (3) the Authority considers agreement cannot be reached,
3 the Authority may by written notice require a licensee
4 to enter into a specified contract with the Authority
5 for the provision of the relevant communications
6 services or communications facilities for a subsidy or
7 concessional loan.

8 (5) The Authority shall be guided by the following
9 principles in requiring a licensee to enter into a
10 contract and specifying the terms of the contract under
11 subsection (4):

12 (a) The licensee shall be chosen based on the
13 Authority's assessment of its capability to provide the
14 communications services or communications facilities;

15 (b) The obligation to provide the relevant
16 communications services or communications facilities
17 shall not unfairly discriminate between licensees;

18 (c) The licensee shall receive reasonable
19 compensation having regard to the costs of providing the
20 communications services or communications facilities and
21 the revenues likely to be achieved from those services
22 or facilities; and

23 (d) The obligation to provide the relevant
24 communications services or communications facilities
25 shall not be more burdensome than is reasonably

1 necessary to achieve the objectives of the relevant
2 universal access plan.

3 (6) The Authority shall endeavor to ensure that any
4 contract entered into under this section does not
5 diminish the incentives of licensees to maximize the
6 availability of communications services."

7 Section 73. Title 21 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by adding a new
9 section 370 under chapter 3, to read as follows:

10 "Section 370. Existing facilities.

11 (1) Should any provider of communications services as
12 at the date of this Act ('existing provider') enjoy any
13 rights to lease or otherwise use land for the purpose of
14 erecting or installing telecommunications facilities or
15 equipment, any service provider may, by notice to that
16 provider, the land owner, and any lessee of the land
17 ('parties with land rights'), elect to share the use of
18 that land with the existing provider.

19 (2) On receipt of a notice under subsection (1), the
20 existing provider and the parties with land rights shall
21 enter into good faith negotiations with the service
22 provider to agree on terms for the sharing of use rights
23 that will preserve competitive neutrality as between the
24 existing provider and the service provider.

25 (3) Should agreement be unable to be reached to the

1 reasonable satisfaction of the service provider, the
2 service provider may apply to the Authority for
3 assistance.

4 (4) Upon receipt of an application for assistance
5 under subsection (3), the Authority shall consult with
6 the existing provider and parties with land rights and
7 attempt to find a solution acceptable to all parties.

8 (5) Should the actions of the Authority under
9 subsection (4) fail to produce an agreement between the
10 parties within such time as the Authority considers
11 reasonable, the Authority may determine the terms for
12 the sharing by the existing provider and the service
13 provider of use rights and may direct the parties with
14 land rights to take such action as the Authority deems
15 fit in order to implement that determination.

16 (6) A determination under subsection (5) may include
17 provision for defined amounts by way of compensation to
18 any of the parties with land rights or may provide for
19 compensation to be determined by the Supreme Court of
20 the Federated States of Micronesia under section 373.

21 (7) The existing provider, the service provider or any
22 party with land rights may apply for reconsideration
23 under section 326 of a determination under subsection
24 (5)."

25 Section 74. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 371 under chapter 3, to read as follows:

3 "Section 371. New facilities.

4 (1) Should an agreement be reached under section 342
5 to share a new communications facility (a 'sharing
6 agreement'), a party to the sharing agreement may, by
7 notice to the other parties to that agreement and to the
8 owner or occupier of third party land, require that the
9 owner or occupier of the third party land provide access
10 to and use of that land to the extent required to give
11 effect to the sharing agreement and on the same terms
12 and conditions as those enjoyed by other parties to that
13 agreement.

14 (2) Should the owner or occupier of the third party
15 land fail without reasonable excuse to provide access to
16 and use of the land under subsection (1), the Authority
17 may direct the owner or occupier to take such action as
18 the Authority deems fit in order to implement the
19 requirements of subsection (1) and the owner or occupier
20 shall comply with any such direction. A direction under
21 this subsection may include provision for defined
22 amounts by way of compensation to any of the parties
23 with land rights or may provide for compensation to be
24 determined by the Supreme Court of the Federated States
25 of Micronesia under section 373.

1 (3) It shall be a reasonable excuse under subsection
2 (2) that:

3 (a) The land concerned is residential land and
4 the access and use rights sought by a party to the
5 sharing agreement would be unreasonably intrusive on the
6 residential occupants of the land; or

7 (b) The land concerned is not residential land
8 and the provision of the access and use rights sought
9 would not be technically feasible.

10 (4) Any party to the sharing agreement or the owner or
11 occupier of the third party land may apply for
12 reconsideration under section 326 of a direction under
13 subsection (2)."

14 Section 75. Title 21 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by adding a new
16 section 372 under chapter 3, to read as follows:

17 "Section 372. Land access charges.

18 (1) Charges proposed by land owners or land occupiers
19 may include:

20 (a) Actual or average administrative costs as a
21 result of a service provider being granted permission to
22 use land, and maintaining land to the extent costs
23 result from the use of the land by service providers;

24 (b) For each service provider, a pro rata share
25 (based on the percentage of total capacity used or

1 occupied) of capital improvements such as ducts,
2 fixtures and other permanent improvements to lands,
3 based on historic cost of the improvements.
4 The Authority may make rules governing a fair and
5 reasonable allocation of charges under sections 370 and
6 371."

7 Section 76. Title 21 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by adding a new
9 section 373 under chapter 3, to read as follows:

10 "Section 373. Supreme Court may determine compensation.
11 (1) Should a determination of the Authority under
12 sections 370(6) and 371 (2) provide for compensation to
13 be determined by the Supreme Court of the Federated
14 States of Micronesia, the Supreme Court shall, on
15 application by any of the service provider concerned or
16 a party with land rights, determine the amounts and
17 manner of payment of compensation on such terms as it
18 considers reasonable."

19 Section 77. Title 21 of the Code of the Federated States of
20 Micronesia, as amended, is hereby further amended by adding a new
21 section 374 under chapter 3, to read as follows:

22 "Section 374. Restoration after use.
23 If the relevant land owner or land occupier so requires,
24 the service provider shall at the end of the term of the
25 permitted use promptly remove all fixtures and other

1 improvements installed on the land at its own cost and
2 restore the land to its original condition."

3 Section 78. Title 21 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by adding a new
5 section 375 under chapter 3, to read as follows:

6 "Section 375. Evidence.

7 (1) A document appearing to be signed by the Secretary
8 or on behalf of the Authority shall be evidence of the
9 official character of the person appearing to have
10 signed it and, in the case of the Authority, of its
11 issuance by the Authority and, if the document appears
12 to be a copy of a decision or report, shall be evidence
13 of its contents.

14 (2) A copy of a document submitted to the Authority
15 and appearing to be certified as a true copy by the
16 Authority shall be evidence of the original, of its
17 submission to the Authority, of the date of its
18 submission, and of the signature of any person appearing
19 to have signed it.

20 (3) A certificate appearing to be signed by the
21 Authority and bearing the Authority's seal shall be
22 evidence of its contents without proof of the
23 signature."

24 Section 79. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 376 under chapter 3, to read as follows:

2 "Section 376. Appointment of Inspectors.

3 (1) The Authority may appoint or designate Inspectors
4 for the purposes of verifying compliance with this Act
5 and with decisions or instruments of the Authority made
6 under this Act.

7 (2) An Inspector shall be provided with a certificate
8 of identity, which shall be presented at the request of
9 any person appearing to be in charge of any place
10 entered by the Inspector."

11 Section 80. Title 21 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by adding a new
13 section 377 under chapter 3, to read as follows:

14 "Section 377. Powers of Inspector.

15 (1) Subject to subsection (2), an Inspector may:

16 (a) Enter and inspect, at any reasonable time,
17 any place owned by or under the control of a service
18 provider or a person operating a device under a licence,
19 in which the Inspector believes on reasonable grounds
20 there is any document, information, equipment, or thing
21 relevant to the enforcement of this Act, and examine the
22 document, information, equipment, or thing or remove it
23 for examination or reproduction, as the case may be;

24 (b) Enter any place on which the Inspector
25 believes on reasonable grounds there is any radio

1 transmitting device or interference-causing equipment,
2 and examine any radio transmitting device or
3 interference-causing equipment, logs, books, reports,
4 data, records, documents, or other papers, and remove
5 such information, document, device, equipment, or thing
6 for examination or reproduction, as the case may be;

7 (c) Make use of or cause to be made use of, any
8 data processing network or computer at the place, to
9 examine any data contained in or available to the
10 network or computer;

11 (d) Retain, remove, or reproduce or cause to be
12 reproduced any such data whether in electronic or hard
13 copy form; and

14 (e) Make use of any copying equipment or means of
15 communication located at the place.

16 (2) Where a place referred to in subsection (1) is a
17 residence, an Inspector shall not enter that residence
18 without the consent of the occupier, except:

19 Under the authority of a warrant issued under section
20 378; or

21 Where, by reason of special circumstances, it would not
22 be practical for the Inspector to obtain a warrant.

23 (3) For the purposes of subsection (2)(b), special
24 circumstances include circumstances in which the delay
25 arising from obtaining a warrant would result in danger

1 to human life or safety or the loss or destruction of
2 evidence.

3 (4) The owner or person in charge of a place entered
4 by an Inspector shall give the Inspector all reasonable
5 assistance and shall give the Inspector any information
6 that the Inspector reasonably requests.

7 (5) Every person who is required to hold a licence
8 under this Act shall exhibit the licence for inspection
9 on demand by the Authority or an Inspector.

10 (6) Any person who obstructs an Inspector in the
11 exercise of the powers under this Act commits an
12 offence.

13 (7) The Authority shall pay reasonable compensation to
14 a person for property used or damaged by an Inspector
15 exercising powers under this section."

16 Section 81. Title 21 of the Code of the Federated States of
17 Micronesia is hereby amended by inserting section 378 under
18 chapter 3, to read as follows:

19 "Section 378. Search warrant.

20 (1) A judge may issue a warrant authorizing the
21 Inspector named in it to enter a residence, subject to
22 any conditions specified in the warrant, if the judge is
23 satisfied by information on oath that:

24 (a) Entry to a residence is necessary for the
25 purpose of performing any duty of an Inspector under

1 this Act; and

2 (b) Entry to the residence has been refused, or
3 there are reasonable grounds for believing that entry
4 will be refused.

5 (2) In executing a warrant issued under this section,
6 an Inspector shall not use force unless the Inspector is
7 accompanied by a police officer and the use of force is
8 specifically authorised in the warrant."

9 Section 82. Title 21 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by adding a new
11 section 379 under chapter 3, to read as follows:

12 "Section 379. Requirement to supply information or
13 documents or give evidence.

14 (1) Where the Authority considers it necessary or
15 desirable for the purposes of carrying out its functions
16 and exercising its powers under this Act, the Authority
17 may, by notice in writing served on any person, require
18 that person:

19 (a) To furnish to the Authority, by writing
20 signed by that person or, in the case of a corporation
21 or other entity, by a director or competent
22 representative of the corporation or other entity,
23 within the time and in the manner specified in the
24 notice, any information or class of information
25 specified in the notice; or

1 (b) To produce to the Authority, or to a person
2 specified in the notice acting on its behalf in
3 accordance with the notice, any document or class of
4 documents specified in the notice; or

5 (c) To appear before the Authority at a time and
6 place specified in the notice to give evidence, either
7 orally or in writing, and produce any document or class
8 of documents specified in the notice.

9 (2) Any person who either fails to comply with a
10 notice issued under this section, provides false or
11 misleading information to the Authority, or having been
12 required to appear before the Authority shall fail to do
13 so without reasonable excuse or shall fail to give
14 evidence, answer any question, or produce any document
15 or class of documents, commits an offence under this
16 Act."

17 Section 82. Title 21 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by adding a new
19 section 380 under chapter 3, to read as follows:

20 "Section 380. Interception and interference.

21 (1) A licensee and any person engaged in the operation
22 or provision of a communications network or service
23 shall intercept or disclose a message, communication or
24 customer information only pursuant to a warrant under
25 the hand of a judge in connection with the investigation

1 of any criminal offence or for the purposes of any
2 criminal proceedings where the maximum penalty that may
3 be imposed by a court is at least three years in prison.

4 (2) A licensee and any person engaged in the operation
5 or provision of a communications network or service
6 shall ensure its communications networks and services
7 are capable of interception under subsection (1) and
8 shall facilitate such interception as reasonably
9 directed by the police or other services directly
10 employed by the Government for national security.

11 (3) A licensee and any person engaged in the operation
12 or provision of a communications network or service
13 shall disclose the contents of any statement of account
14 specifying the communications services provided, or any
15 details about the customer, if requested by the police
16 or other services directly employed by the Government
17 for national security, in connection with the
18 investigation of any criminal offence or for the
19 purposes of any criminal proceedings. Such requests
20 must be in writing and authorized and signed by a judge.

21 (4) A licensee shall not intercept, interfere with or
22 obstruct radio communications other than in in terms of
23 a written interception order issued by a judge.

24 (5) If the Authority believes that a person is in
25 possession of data stored in a computer system or

1 retrievable from a data storage medium, which data is
2 necessary to investigate a breach of this Act, the
3 Authority may by written notice to that person, require
4 that person to allow the Authority to:

5 (a) Access the computer system or retrieve data
6 from the data storage medium;

7 (b) Seize or similarly secure the computer system
8 or data storage medium;

9 (c) Maintain the integrity of the relevant stored
10 data; and

11 (d) Render inaccessible or remove that data from
12 the computer system or data storage medium."

13 Section 83. Title 21 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by adding a new
15 section 381 under chapter 3, to read as follows:

16 "Section 381. Real-time collection of data.

17 (1) If the Authority believes on reasonable grounds
18 that a person is engaged in conduct that may contravene
19 this Act, then for the purposes of enforcing this Act,
20 the Authority may:

21 (a) Collect or record through the application of
22 technical means; and

23 (b) Compel a licensee, by written notice to that
24 person, within its existing technical capability:

25 (i) To collect or record through the

1 application of technical means; or
2 (ii) To assist the Authority in the
3 collection or recording of, traffic and content data, in
4 real-time, associated with specified communications.
5 (2) The Authority may, in a notice issued under
6 subsection (1), oblige the licensee or person to keep
7 confidential the fact of the execution of the power
8 provided for in this section and any information
9 relating to it."

10 Section 84. Title 21 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by adding a new
12 section 382 under chapter 3, to read as follows:

13 "Section 382. Specific offences.
14 Any person commits an offence if the person:
15 (a) Fraudulently, maliciously, or with dishonest
16 or otherwise wrongful intent, obtains any communications
17 service without payment of a lawful price for that
18 service;
19 (b) Intentionally, without right or with
20 dishonest intent or otherwise wrongful, accesses the
21 whole or any part of any communications facility by
22 infringing security measures;
23 (c) Intentionally, without right or with
24 dishonest or otherwise wrongful intent, intercepts by
25 technical means a transmission not intended for that

1 person or for public reception except in accordance with
2 section 384(3);

3 (d) Intentionally, without right and with
4 dishonest or otherwise wrongful intent, damages,
5 deletes, deteriorates, alters or suppresses data carried
6 by a communications network without right, where this
7 results in serious harm;

8 (e) Intentionally, without right and with
9 dishonest or otherwise wrongful intent, seriously
10 hinders the functioning of any communications facility
11 by inputting, transmitting, damaging, deleting,
12 deteriorating, altering or suppressing data;

13 (f) Intentionally, without right and with
14 dishonest or otherwise wrongful intent, possesses,
15 produces, sells, procures for use, imports, distributes
16 or otherwise makes available a device designed or
17 adapted primarily for the purpose of committing any of
18 the offences established in paragraph (a), (b), (c), (d)
19 or (e), or a password, access code, or similar data by
20 which the whole or any part of any communications
21 facility is capable of being accessed with intent that
22 it be used for the purpose of committing any of the
23 offences established in paragraph (a), (b), (c), (d) or
24 (e);

25 (g) Intentionally and without right, uses, or

1 causes or suffers to be used, any communications
2 facility for the purpose of harassing any person,
3 including by means of a call with or without speech or
4 other sounds, data or video images;

5 (h) Deliberately damages any communications
6 facility; or

7 (i) Knowingly makes any false statement of a
8 material fact (or knowingly omits to state a material
9 fact necessary in order to make the statements made, in
10 the light of the circumstances under which they were
11 made, not misleading) to the Authority, an Inspector or
12 an appeals panel."

13 Section 85. Title 21 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by adding a new
15 section 383 under chapter 3, to read as follows:

16 "Section 383. General offence.
17 Save in respect of an offence under section 386, any
18 person who contravenes or fails to comply with any
19 provision or requirement of this Act, any rules made
20 under this Act, a licence issued under this Act, or any
21 direction, order or decision of the Authority or the
22 appeals panel, commits a general offence."

23 Section 86. Title 21 of the Code of the Federated States of
24 Micronesia, as amended, is hereby further amended by adding a new
25 section 384 under chapter 3, to read as follows:

1 "Section 384. Penalties.

2 Any person who is convicted of an offence under section
3 382 or 383 is liable:

4 (a) In the case of a natural person, to a fine
5 not exceeding \$50,000 and to imprisonment for a term not
6 exceeding one year, and in the case of a continuing
7 offence, to a further fine not exceeding \$10,000 for
8 each day during which the offence continues;

9 (b) In the case of a corporation or other entity,
10 to a fine not exceeding 5% of the gross revenues of the
11 corporation or entity in its previous financial year,
12 and in the case of a continuing offence, to a further
13 fine not exceeding \$100,000 for each day during which
14 the offence continues."

15 Section 87. Title 21 of the Code of the Federated States of
16 Micronesia, amended, is hereby further amended by adding a new
17 section 385 under chapter 3, to read as follows:

18 "Section 385. Corporations or other entities.

19 Where a corporation or other entity commits an offense
20 under this Act, any director, officer, employee or agent
21 of the corporation or entity who directed, authorized,
22 assented to, acquiesced to or participated in the
23 conduct of the offence shall be a party to and guilty of
24 the offence, and shall be liable to the punishment
25 provided for that offence in respect of a natural

1 person. A corporation or other entity contravenes a
2 provision of this Act if an employee, agent or officer
3 of the corporation or entity engages in the offending
4 conduct and that person is acting within the actual or
5 apparent scope of his actual or apparent authority."

6 Section 88. Title 21 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by adding new a
8 section 386 under chapter 3, to read as follows:

9 "Section 386. Forfeiture of device.
10 In the case of a conviction for an offense under this
11 Act or any rules made under this Act, any device in
12 relation to which or by means of which the offence was
13 committed may be:

14 (a) Forfeited to the Authority by order of the
15 Court which tried the offense; and

16 (b) Disposed of as the Authority may direct."

17 Section 89. Title 21 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by adding a new
19 section 387 under chapter 3, to read as follows:

20 "Section 387. Prosecution.
21 The Attorney General may appoint Special Assistant
22 Attorneys General, pursuant to the Attorney General's
23 Office Act 2002, to prosecute offences under this Act
24 subject to any conditions or restrictions imposed."

25 Section 90. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 388 under chapter 3, to read as follows:

3 "Section 388. Exclusion of liability.

4 (1) The Federated States of Micronesia, the Secretary,
5 the Authority, an Inspector, or any other person
6 exercising or performing powers or functions under this
7 Act shall not:

8 (a) Be liable in respect of any action, claim, or
9 demand that may be brought or made by any person in
10 respect of any bodily injury or damage to property or
11 any other circumstances arising from any act permitted
12 by a licence issued under this Act; and

13 (b) Be subject to any action or claim, other than
14 by way of judicial review, arising from the good faith
15 exercise or intended exercise of any functions or powers
16 under this Act.

17 (2) No licensee or person engaging in conduct licensed
18 under this Act, or an employee or agent of such a
19 person, shall be liable in any criminal proceedings or
20 in any suit for damages by reason of his having in the
21 course of his employment transmitted or conveyed by any
22 communications, or taken any part in transmitting or
23 conveying by any communications, any defamatory libel."

24 Section 91. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 389 under chapter 3, to read as follows:

2 "Section 389. Establishment of Open Access Entity and
3 authority to acquire assets and assume liabilities and
4 obligations.

5 (1) Should the Secretary certify that it is in the
6 interests of the Federated States of Micronesia for a
7 corporation owned by the Government to be established
8 under this section in order to own and operate submarine
9 and terrestrial cable assets within the Federated States
10 of Micronesia or serving the Federated States of
11 Micronesia (the Open Access Entity), the corporation
12 shall be deemed to be established as at the vesting
13 date, and with such assets and liabilities, specified in
14 such certificate.

15 (2) The Open Access Entity shall provide international
16 and domestic connectivity for the transmission of data
17 for communications services as a wholesaler but not at
18 retail. Such connectivity shall be provided on non-
19 discriminatory and cost-based terms.

20 (3) The assets, liabilities and obligations referred
21 to in a certificate issued under subsection (1) or any
22 amending or supplementary certificate issued by the
23 Secretary may be described specifically or by class, and
24 no objection shall be taken in any court to the accuracy
25 or completeness of such description.

1 (4) Nothing in this section shall restrict or prevent
2 the Open Access Entity from acquiring other assets or
3 undertaking other activities that in the opinion of the
4 board of the Open access Entity are required in order to
5 provide the services referred to in subsection (3).

6 Section 92. Title 21 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by adding a new
8 section 390 under chapter 3, to read as follows:

9 "Section 390. Open Access Entity.

10 (1) The Open access Entity shall be a shareholding
11 company with a paid-up share capital equal to the amount
12 certified by the Public Auditor to be the amount by
13 which the assets of the Open Access Entity as at the
14 vesting date exceed its liabilities. Such share capital
15 shall be divided into paid-up common shares of such
16 denominations as shall be specified in the certificate
17 issued under subsection (1) and shall be issued in equal
18 numbers to the Secretary of Finance and the Secretary of
19 the Department of Transportation, Communications &
20 Infrastructure. The shareholding Secretaries shall hold
21 the shares for and on behalf of the Government.

22 (2) The directors of the Open Access Entity shall be
23 persons who in the opinion of the shareholding
24 Secretaries shall be qualified to assist the corporation
25 to operate its business, and shall be appointed and

1 removed by the shareholding Secretaries by resolution.
2 Save as provided in this section, all decisions relating
3 to the operation of the corporation shall be made by or
4 pursuant to the authority of the board of directors.

5 (3) The shareholding Secretaries may, after consulting
6 with the board, by written notice to the board determine
7 the amount of dividend payable by the corporation in
8 respect of any financial year and the board shall comply
9 with the notice.

10 (4) The board shall supply to the shareholding
11 Secretaries or to such persons or class of persons as
12 either of the Secretaries specifies such information
13 relating to the affairs of the corporation as either of
14 those Secretaries requests after consultation with the
15 board. Such information request shall not include any
16 information relating to an individual employee or
17 customer of the corporation.

18 (5) A shareholding Secretary may at any time, by
19 written notice to the secretary of the corporation,
20 authorise, on such terms and conditions as are specified
21 in the notice, such person as the Secretary thinks fit
22 to act as the Secretary's representative at any or all
23 of the meetings of shareholders of the corporation. Such
24 representative may exercise the same powers on behalf of
25 the Secretary as the Secretary could exercise if present

1 in person at the meeting.

2 (6) A 'major transaction' in relation to the
3 corporation means:

4 (a) The acquisition of, or an agreement to
5 acquire, whether contingent or not, assets the value of
6 which is more than half the value of the corporation's
7 assets before the acquisition; or

8 (b) The disposition of, or an agreement to
9 dispose of, whether contingent or not, assets of the
10 corporation the value of which is more than half the
11 value of the corporation's assets before the
12 disposition; or

13 (c) A transaction that has or is likely to have
14 the effect of the corporation acquiring rights or
15 interests or incurring obligations or liabilities,
16 including contingent liabilities, the value of which is
17 more than half the value of the corporation's assets
18 before the transaction.

19 (7) In assessing the value of any contingent liability
20 for the purposes of paragraph c of subsection (a), the
21 directors must have regard to all circumstances that the
22 directors know, or ought to know, affect or may affect
23 the value of any contingent liability, may rely on
24 estimates of the contingent liability that are
25 reasonable in the circumstances, and may take account of

1 the likelihood of the contingency occurring and any
2 claim that the corporation is entitled to make and can
3 reasonably expect to be met to reduce or extinguish the
4 contingent liability.

5 (8) The unanimous assent of the shareholders of the
6 corporation shall be required to any major transaction

7 Section 93. Title 21 of the Code of the Federated States of
8 Micronesia is hereby amended, by inserting section 391 under
9 chapter 3, to read as follows:

10 "Section 391. Rules and regulations.

11 (1) In addition to the matters which are specifically
12 prescribed, the Authority may make such rules and
13 regulations as are contemplated by or necessary for
14 giving full effect to the provisions of this Act.

15 (2) The rules and regulations shall be promulgated in
16 accordance with the Administrative Procedures Act."

17 Section 94. This act shall become law upon approval by the
18 President of the Federated States of Micronesia or upon its
19 becoming law without such approval.

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21 Date: 3/24/14

Introduced by: /s/ Florencio S. Harper

Florencio S. Harper

(by request)

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