

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 a provider of all
8 telecommunications within the Federated States of
9 Micronesia and between points in the Federated States of
10 Micronesia and points outside thereof;

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

16 (3) to plan for the expansion and improvement of
17 telecommunications facilities and services;

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

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

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

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

23 (8) to incur indebtedness for the purpose of
24 expanding and improving telecommunications facilities,
25 to the extent and on such terms as are deemed

1 commercially reasonable by the Corporation; and
2 (9) to provide on a reimbursable basis emergency
3 telecommunications services to governments, individuals,
4 and entities in the Federated States of Micronesia.

5 Section 2. Section 205 of Title 21 of the Code of the
6 Federated States of Micronesia, as amended, is hereby amended as
7 follows:

8 "Section 205. Legal capacity of the Corporation.
9 In performing the functions authorized under this
10 chapter or other law of the Federated States of
11 Micronesia, the Corporation shall have the capacity to
12 exercise all powers normally exercised by a corporation,
13 including, but not limited to, the following:
14 (1) to adopt, alter, and use a corporate seal;
15 (2) to adopt and amend bylaws governing the conduct of
16 its business and the exercise of its powers;
17 (3) to sue and be sued in its corporate name;
18 (4) to acquire, in any lawful manner, real, personal,
19 or mixed property, either tangible or intangible; to
20 hold, maintain, use, and operate such property; and to
21 sell, lease, or otherwise dispose of such property;
22 (5) to borrow or raise any sum or sums of money and to
23 issue corporate bonds on such security and upon such
24 terms as may from time to time be deemed necessary for
25 the expansion and improvement of communications

1 facilities;

2 (6) to retain and terminate the services of employees,
3 agents, attorneys, auditors, and independent contractors
4 upon such terms and conditions as it may deem
5 appropriate; and

6 (7) to do all such other things as may be deemed
7 incidental to or conducive to the attainment of the
8 responsibilities of the Corporation.

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

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

15 Section 5. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by adding a new
17 section 301 under chapter 3, to read as follows:

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

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

23 "Section 302. Definition. In this Act, unless the
24 context otherwise requires:

25 (a) 'access' means the provision of access to a

1 bottleneck facility by one licensee to another for the
2 purpose of the second licensee providing communications
3 services;

4 (b) 'Act' means the FSM Telecommunications Act of
5 2014, and where appropriate includes the rules and
6 regulation made pursuant to this Act;

7 (c) 'affiliate' means, in relation to any one
8 person, any other person directly or indirectly
9 controlling or controlled by or under the direct or
10 indirect common control with, such specified person;

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

13 (e) 'Authority' means the Office of the
14 Telecommunication Regulation Authority established under
15 section 304;

16 (f) 'bottleneck facility' means a communications
17 facility declared by the Authority to be essential for
18 the production of communications services which, for
19 technical reasons or due to economies of scope and scale
20 and the presence of sunk costs, cannot practicably be
21 duplicated by a potential competitor in a communications
22 market;

23 (g) 'communications' means the conveyance from
24 one device to another of any message by means of any
25 wire, radio, optical, electric, magnetic,

1 electromagnetic, or similar system;

2 (h) 'communications facility' means any
3 infrastructure, building, or switching equipment; any
4 submarine cable landing in the Federated States of
5 Micronesia, submarine cable landing station, or
6 satellite transmitting facility; any location, mast
7 site, tower, pole, trunk line, access line, duct or
8 other underground facility; or other passive equipment
9 that is used or is capable of being used for
10 communications or for any operation directly connected
11 with communications, but excluding customer equipment;

12 (i) 'communications market' means a market
13 determined by the Authority for communications services
14 or access;

15 (j) 'communications network' means a system that
16 uses electricity or electromagnetic energy for providing
17 communications services between network termination
18 points;

19 (k) 'communications service' means a service for
20 the transmission of communications by means of a
21 communications network;

22 (l) 'consumer' means a customer who contracts for
23 a communications service that is offered on standard
24 conditions that are of general application and not
25 negotiated individually;

1 (m) 'customer' means a person who contracts for a
2 communications service;

3 (n) 'customer equipment' means equipment
4 (including cabling) that is on the customer side of the
5 network termination point and intended to be connected
6 to a communications network;

7 (o) 'Department' means the Department of
8 Transportation, Communications & Infrastructure of the
9 Government;

10 (p) 'Dominant Service Provider' means in respect
11 of a communications market a licensee who, in the
12 opinion of the Authority:

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

15 (ii) Has a position of economic strength or
16 controls a bottleneck facility in that market that
17 allows the licensee to behave independently of
18 competitors or potential competitors, consumers, or
19 customers;

20 (q) 'equipment' includes any appliance,
21 apparatus, device or accessory used or intended to be
22 used for communications purposes;

23 (r) 'exempt network' means a communications
24 network;

25 (i) Not used to provide any communications

1 service for which a charge is imposed;

2 (ii) Wholly within one property (including a
3 ship or aircraft) or a number of properties which
4 together comprise a campus;

5 (iii) Used only for a person's private or
6 internal requirements (including the requirements of an
7 organisation's staff, a related entity or a holding
8 company, subsidiary company or associated company); or

9 (iv) Covered by an exemption under subsection
10 330(1)(a);

11 (s) 'exempt service' means a communications
12 service:

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

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

16 (t) 'Government' means the Government of the
17 Federated States of Micronesia;

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

20 (v) 'interconnection' means the physical and
21 logical linking of communications networks of different
22 licensees in order to allow the customers of one
23 licensee to communicate with customers of the same or
24 another licensee, or to access the communications
25 services of another licensee;

1 (w) 'licence' means an operating or spectrum
2 licence issued to a person or class of persons under
3 this Act;

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

6 (y) 'market' means a market in the Federated
7 States of Micronesia for goods and services that, as a
8 matter of fact and commercial common sense, are
9 substitutable for them;

10 (z) 'message' means any sign, signal, writing,
11 image, sound, instruction, information, or intelligence
12 of any nature;

13 (aa) 'net revenue' means, in respect of any
14 service provider, the gross revenue received by the
15 service provider from the provision of communications
16 services and from interconnection and access, less the
17 sum of:

18 (i) The interconnection and access charges
19 paid by the service provider to another person in the
20 Federated States of Micronesia; and

21 (ii) Payments made by the service provider to
22 an unrelated person outside the Federated States of
23 Micronesia for the carriage of telecommunications
24 traffic originating in the Federated States of
25 Micronesia to destinations outside of FSM;

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

4 (i) The first equipment socket in a private
5 residence;

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

8 (iii) A point agreed between the customer and
9 the owner of the communications facility to which that
10 customer is connected; or

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

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

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

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

21 (af) 'President' means the President of the
22 Federated States of Micronesia;

23 (ag) 'radio communication' has the meaning
24 assigned to that term in the Federated States of
25 Micronesia Radio Communication Act of 1991, codified as

1 Chapter 1 Title 21 of the Code of the Federated States
2 of Micronesia;

3 (ah) 'radio frequency spectrum' means those radio
4 frequencies comprising channels for specific radio
5 transmission technologies usable in the Federated States
6 of Micronesia;

7 (ai) 'Secretary' means the Secretary of the
8 Department of Transportation, Communications &
9 Infrastructure;

10 (aj) 'sensitive information' has the meaning given
11 in section 322(5);

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

13 (i) Owns a communications network; or

14 (ii) Provides or is entitled to provide a
15 communications service under a licence or exemption; or

16 (iii) Has applied for a licence or exemption
17 under this Act;

18 (al) 'specified communications network' means a
19 communications network that includes a line or radio
20 communications link, or a series of lines or radio
21 communications links, between two fixed points,
22 including:

23 (i) Radio communications transmission links;

24 (ii) Cable transmission links; and

25 (iii) Cable access networks;

1 (am) 'universal access obligation' means an
2 obligation of a licensee to provide communications
3 services under a universal access policy in an eligible
4 geographic area under Section 361(1).

5 (an) 'universal access plan' has the meaning given
6 in section 367;

7 (ao) 'Universal Access Special Revolving Fund'
8 means the Universal Access Special Revolving Fund
9 established under section 365;

10 (ap) 'user' means any person using a
11 communications service, regardless of whether such a
12 person is contracted to acquire the service.

13 (aq) 'wholesale services' means services required
14 by a licensee in order to provide communications
15 services where such services are supplied or provided by
16 means of or by means that rely upon a bottleneck
17 facility."

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

21 "Section 303. General objectives

22 (1) The objectives of this Act are:

23 (a) Providing transparent, technologically and
24 competitively neutral regulation, which focuses on
25 promoting the long-term interests of users;

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

5 (c) Providing conditions for effective
6 competition among service providers in the Federated
7 States of Micronesia and encouraging efficient and
8 sustainable investment in and use of communications
9 networks and services;

10 (d) Providing a licensing regime which promotes
11 entry of new licensees and which fosters investment and
12 innovation in communications networks and the supply of
13 communications services;

14 (e) Providing efficient use of communications
15 facilities and providing for cost-based interconnection
16 and access on an equitable and non-discriminatory basis
17 for operators of communications networks, to promote
18 end-to-end connectivity of separate communications
19 networks;

20 (f) Protecting the interests of consumers and
21 regulating prices;

22 (g) Promoting the development of communications
23 in the Federated States of Micronesia, as far as
24 practicable in accordance with recognised international
25 standards and practices;

1 (h) Promoting the effective and efficient use of
2 the radio frequency spectrum, numbers, rights of way,
3 and other finite resources;

4 (i) Extending access to communications services
5 to all persons in the Federated States of Micronesia, to
6 the greatest extent reasonable in the circumstances; and

7 (j) Promoting the appropriate use of
8 communications networks and communications services."

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

12 "Section 304. Establishment of the Authority.

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

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

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

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

25 "Section 305. Functions and powers of the Authority.

1 For the purpose of achieving the objectives referred to
2 in section 303, the Authority shall:

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

5 (b) Regulate access to and the sharing of
6 communications facilities and interconnection of certain
7 communications networks of licensees where such matters
8 are not agreed to by the licensees;

9 (c) Monitor and enforce compliance with
10 competition requirements and determine when industry
11 consolidation is permissible;

12 (d) Regulate the protection of consumers, the
13 charges levied by licensees for communications networks,
14 and the communications services and attributes of
15 communications services;

16 (e) Specify the technical standards and
17 procedures for interconnection, the operation of
18 communications networks, and the provision of
19 communications services;

20 (f) Regulate types and characteristics of
21 communications equipment which may be connected to a
22 communications network;

23 (g) Monitor and report on the development and
24 performance of the communications sector in supplying
25 services and the contribution of the communications

1 sector to the overall development of the Federated
2 States of Micronesia;

3 (h) Monitor the quality of services provided by
4 licensees and ensure that licensees conform to standards
5 specified by the Authority;

6 (i) Manage the radio frequency spectrum required
7 to provide communications services, including numbering
8 and electronic addressing, and where practicable assist
9 licensees in obtaining access to land for communications
10 networks;

11 (j) Administer universal service arrangements for
12 the supply of communications services throughout the
13 Federated States of Micronesia;

14 (k) Give effect to policies approved by the
15 Authority or the President;

16 (l) Where required by the Secretary, represent
17 the Government in international conferences or
18 international and other organisations concerned with
19 communications;

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

22 (n) Undertake consultations on matters relating
23 to communications;

24 (o) Take enforcement action under this Act;

25 (p) Make rules and regulations as provided for

1 under this Act; and

2 (q) Perform such other functions as are
3 consistent with this Act."

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

7 "Section 306. Appointment and removal of members.

8 (1) All the members of the Authority (including the
9 Chief Executive who shall be appointed as such) shall be
10 appointed by the President, with the advice and consent
11 of Congress, from among persons appearing to him to be
12 qualified for the office for a term of 4 years. The
13 President may renew the term of appointment of a member
14 for up to two additional terms of four years each.

15 (2) The terms of appointment of a member shall be
16 issued by the President and shall include with
17 appropriate modifications an obligation to comply with
18 such ethics rules comparable to those applicable to
19 employees of the Public Service System from time to
20 time.

21 (3) The President shall not appoint a person as Chief
22 Executive under subsection (1) unless in the opinion of
23 the President the person:

24 (a) Has demonstrated experience of not less than
25 10 years in the fields of economics, law, finance,

1 business, engineering or public administration in
2 relation to the communications sector; and

3 (b) Is not disqualified for appointment under
4 subsection (5).

5 (4) There shall be no requirement that the Chief
6 Executive is a citizen of the Federated States of
7 Micronesia, but preference may be given in the
8 evaluation of candidates for the position to citizens of
9 the Federated States of Micronesia where such persons
10 are otherwise qualified under subsection (2).

11 (5) The President shall not appoint a person as an
12 additional member under subsection (1) unless in the
13 opinion of the President the person:

14 (a) Has demonstrated experience in the fields of
15 economics, law, finance, business, engineering or public
16 administration in relation to the communications sector;
17 and

18 (b) Is not disqualified for appointment under
19 subsection (6).

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

22 (a) Is found or declared to suffer from mental or
23 physical incapacity;

24 (b) Is or has been convicted of a criminal
25 offense involving dishonesty or corruption, or where the

1 penalty includes imprisonment for one year or longer;

2 (c) Is or has been declared bankrupt or
3 insolvent;

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

6 (e) In the case of the Chief Executive, is a
7 staff member or officer of a department or agency of the
8 Government; or

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

12 (7) The President may remove a member who is
13 disqualified under subsection (6), or has committed a
14 serious breach of the terms of appointment as such
15 member.

16 (8) A member may resign from the Authority upon one
17 month's written notice to the President, or such shorter
18 time as the President and the member may agree in
19 writing.

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

25 (10) The President may appoint a person as Acting Chief

1 Executive of the Authority on an interim basis for up to
2 no more than six months where the Chief Executive has
3 not yet been appointed, or has ceased to hold office and
4 a replacement has not been appointed, or during a period
5 of temporary absence or incapacity.

6 (11) Any Acting Chief Executive appointed under
7 subsection (10) shall during his period of appointment
8 have and exercise all the powers of the Chief
9 Executive."

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

13 "Section 307. Remuneration of members.

14 The Authority shall pay to each of its members, in
15 respect of his office as such, remuneration and/or
16 allowances as prescribed by the terms of appointment of
17 such member issued by the President, and in determining
18 the remuneration and allowances to be paid under this
19 section, different provisions may be made as regards the
20 Chief Executive and the other members but not as between
21 the other members."

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

25 "Section 308. Incorporation and legal capacity of the

1 Authority.

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

4 (2) The Authority may sue and be sued in its corporate
5 name, may enter into contracts, and may acquire,
6 purchase, take, hold and enjoy property of every
7 description. The Authority may convey, assign,
8 surrender, yield up, charge, mortgage, lease, demise,
9 reassign, transfer or otherwise dispose of or deal with
10 any property or any interest therein vested in the
11 Authority upon such terms as it sees fit.

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

14 Section 13. Title 21 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by adding a new
16 section 309 under chapter 3, to read as follows:

17 "Section 309. Procedure of the Authority.

18 (1) Where no additional members have been appointed,
19 the Chief Executive shall exercise all the functions and
20 powers of the Authority.

21 (2) Where additional members have been appointed, the
22 functions and powers of the Authority shall, subject to
23 section 311, be exercised by a quorum comprising the
24 Chief Executive and one other member. Each member of
25 the Authority including the Chief Executive shall have

1 one vote and a simple majority of votes shall be
2 required to dispose of any item of business. In the
3 event of a tie, the Chief Executive shall cast an
4 additional deciding vote.

5 (3) Except as provided in subsections (1) and (2), the
6 Authority shall determine its own procedure as the
7 Authority shall consider is necessary for the equitable
8 and transparent exercise of its powers or for the
9 effective administration of the Authority."

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

13 "Section 310. Duty of members to disclose conflicts of
14 interest.

15 (1) A member of the Authority who is in any way
16 directly or indirectly interested in a matter before the
17 Authority shall, as soon as possible after the relevant
18 circumstances have come to his knowledge, disclose the
19 nature of his interest to the Authority. If the Chief
20 Executive is the sole member, the Chief Executive shall
21 disclose the nature of his interest to the President.

22 (2) Any disclosure made under subsection (1) shall be
23 recorded:

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

1 (b) By the Chief Executive confirming in writing
2 to the President the nature of his conflict of interest
3 where the Chief Executive is the sole member.

4 (3) The disclosing member:

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

8 (b) Shall be disregarded for the purpose of
9 constituting a quorum of the Authority for any such
10 deliberation or decision."

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

14 "Section 311. Chief Executive.

15 The Chief Executive shall be:

16 (a) Primarily responsible for the execution of
17 the policies, and the implementation of the decisions,
18 of the Authority;

19 (b) Primarily responsible for the supervision and
20 day-to-day management of the affairs of the Authority
21 and its staff; and

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

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

1 "Section 312. Delegation by Chief Executive.

2 The Chief Executive may, in writing, delegate any of his
3 powers and functions in his capacity as Chief Executive
4 to any of the staff of the Authority, except this power
5 of delegation."

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

9 "Section 313. Employees of the Authority.

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

13 (2) The terms of employment shall include an
14 obligation to comply with ethics rules adopted by the
15 Authority that shall be comparable with appropriate
16 modifications to those applicable to employees of the
17 Public Service System from time to time.

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

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

24 "Section 314. Authentication of Authority's seal.

25 The Chief Executive shall by signature authenticate the

1 application of the seal of the Authority."

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

5 "Section 315. Presumption of authenticity of documents
6 issued by the Authority.

7 Any document purporting to be an instrument issued by
8 the Authority and sealed as aforesaid or signed on
9 behalf of the Authority or by the Chief Executive on
10 behalf of the Authority shall be received in evidence
11 and shall be deemed to be such an instrument without
12 further proof unless the contrary is shown."

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

16 "Section 316. Protection of members of the Authority.
17 No personal liability shall attach to any member or
18 staff of the Authority in respect of anything done or
19 permitted in good faith under the provisions of this
20 Act."

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

24 "Section 317. Government policies and international
25 conventions.

1 (1) The Secretary shall:

2 (a) Before recommending to the President any
3 general policy in relation to communications, consult
4 with the Authority, licensees and other interested
5 persons and allow a reasonable period for consultation;
6 and

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

9 (2) The Authority shall publish policies notified to
10 it under subsection (1).

11 (3) The Authority shall:

12 (a) Give effect to a Government policy notified
13 under subsection (1) to the extent possible consistent
14 with this Act; and

15 (b) Have regard to obligations under any convention to
16 which the Federated States of Micronesia is a party.

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

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

23 "Section 318. Exemption from income tax, customs duty
24 and import levy.

25 Notwithstanding the provisions of any other Act, the

1 income of the Authority shall be exempt from payment of
2 income tax, and the Authority shall not be liable for
3 the payment of customs duty and import levy, or any
4 other tax having a similar effect."

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

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

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

13 (2) Notwithstanding the provisions of any other Act,
14 charges and fees payable to the Authority pursuant to
15 this Act shall be payable to the Authority's nominated
16 bank account.

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

20 (4) The Authority shall by:

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

24 (b) 31 March of each year, cause its accounts for
25 the previous financial year to be audited by the Public

1 Auditor;

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

5 (d) 30 June of each year, submit to the President
6 a report on all significant matters relating to the
7 performance and efficiency of the communications sector,
8 with particular reference to the:

9 (i) Adequacy and quality of services; and

10 (ii) Contribution of the communications
11 sector to economic development in the Federated States
12 of Micronesia.

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

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

16 (b) A list of the interconnection and access
17 agreements then in force;

18 (c) A summary of any material litigation
19 involving the Authority;

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

22 (6) The Authority shall transfer to the Universal
23 Access Special Revolving Fund any monies that it
24 receives under this Act in excess of its approved budget
25 and forecast funding needs, unless the Secretary directs

1 the Authority to retain such excess in anticipation of
2 future expenditure."

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

6 "Section 320. Efficiency audit.

7 (1) The President may at any time direct the Public
8 Auditor to undertake an efficiency audit of the
9 Authority.

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

12 (a) Review the Authority's annual budget for the
13 current fiscal year and the Authority's forecasts for
14 the following two fiscal years;

15 (b) Assess whether the budget and forecasts are
16 reasonable having regard to the Authority's functions
17 under this Act; and

18 (c) Provide a report to the Authority and the
19 President outlining these findings and, if practicable,
20 recommend changes to the Authority's budget and
21 forecasts.

22 (3) The Public Auditor may delegate its responsibility
23 to undertake the efficiency audit to a suitably
24 qualified auditing firm.

25 (4) The Authority shall fully cooperate in the conduct

1 of the efficiency audit by providing assistance
2 including giving access to and full disclosure of
3 documents and financial records of the Authority to the
4 auditor.

5 (5) If a report under subsection (2) concludes that
6 the Authority's budget or forecasts are not reasonable
7 having regard to the functions of the Authority under
8 this Act, the Authority shall provide views on that
9 conclusion to the President within three months. The
10 President shall, after considering the views of the
11 Authority and the Public Auditor, either affirm the
12 Authority's budget and forecasts or direct the Authority
13 to modify the budget or forecasts and the Authority
14 shall promptly comply with such direction."

15 Section 25. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by adding a new
17 section 321 under chapter 3, to read as follows:

18 "Section 321. Consultation.

19 (1) The Authority shall carry out such consultations
20 as are required by this Act. The Authority may also
21 carry out such other consultations with interested
22 persons as it deems appropriate in the circumstances.

23 (2) Where this Act requires the Authority to conduct a
24 consultation, the Chief Executive shall publish a
25 written notice specifying:

1 (a) The power which the Authority intends to
2 exercise;

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

5 (c) The reasons for the intended exercise of that
6 power.

7 (3) Where this Act requires the Authority to conduct
8 consultation with a particular person, the Chief
9 Executive shall also provide the written notice
10 specified in subsection (2) to that person.

11 (4) A person shall be entitled to provide a submission
12 to the Authority in response to a notice published under
13 subsection (2). The due date to lodge such a submission
14 shall be 14 days from the date of the notice or such
15 longer period as the Authority may specify in the
16 notice.

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

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

24 (7) The Authority shall, before making a final
25 decision:

1 (a) Publish a draft decision; and

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

6 (8) If the Authority issues a draft decision,
7 subsections (2) to (6) shall apply to the draft
8 decision, as if references to the written notice
9 provided under subsection (2) were references to the
10 draft decision.

11 (9) After making a final decision, the Authority shall
12 promptly;

13 (a) Publish that decision; and

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

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

19 "Section 322. Publication and use of information

20 (1) Subject to subsection (3), the Authority shall
21 publish:

22 (a) All rules or other instruments made under
23 this Act;

24 (b) All licences and exemptions issued under this
25 Act; and

1 (c) Such other documents it is required to
2 publish under this Act.

3 (2) Where the Authority is required to publish a
4 document, the Authority:

5 (a) Shall publish the document on its website;
6 and

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

9 (3) Subject to subsections (8) and (9), neither the
10 Authority nor any agent of the Authority shall knowingly
11 publish or disclose sensitive information to any person,
12 knowingly allow sensitive information to be disclosed to
13 any person, or use sensitive information for personal
14 advantage. A breach of this prohibition by a member or
15 employee of the Authority shall be a breach of the terms
16 of appointment or employment of that person.

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

21 (5) Subject to subsection (8), 'sensitive information'
22 means information:

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

24 (b) Not already in the public domain;

25 (c) Designated as confidential or proprietary by

1 that person because:

2 (i) The person has a legal obligation to
3 keep the information confidential;

4 (ii) The information is commercially
5 sensitive to the person;

6 (iii) Disclosure would compromise effective
7 competition in a communications market; or

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

10 (6) The Authority may, by notice given to the person
11 supplying information under subsection (5) within 7 days
12 of the information being submitted, determine that the
13 information and any data derived from that information
14 is not confidential or proprietary and as of the date of
15 such notice that information shall not be 'sensitive
16 information'.

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

22 (a) The Authority shall not have regard to the
23 information; and

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

1 (8) Sensitive information does not include the terms
2 of an interconnection and access agreement, including
3 prices for interconnection and access services.

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

7 (a) Publish such information in reports
8 concerning the state of a communications market in the
9 Federated States of Micronesia;

10 (b) Provide such information to other persons for
11 the purposes of research or the preparation and
12 publication of reports for non-commercial purposes
13 concerning communications markets including such markets
14 in the Federated States of Micronesia.

15 (10) The Authority may in the course of taking any
16 action or making any decision in regard to an
17 interconnection or access dispute supply any sensitive
18 information provided by a party to that dispute to
19 representatives of another party to the dispute where
20 the Authority is satisfied that the confidentiality of
21 the information is protected by legal privilege or that
22 other steps have been taken to ensure that the use of
23 that information is restricted to the proper conduct of
24 the dispute."

25 Section 27. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 323 under chapter 3, to read as follows:

3 "Section 323. Service of notices.

4 Unless otherwise expressly provided in this Act, any
5 document required or authorised by this Act to be
6 provided to or served on any person, may be provided or
7 served on the person concerned by:

8 (a) Delivering it to the person or to some adult
9 member or employee of that person's family at the
10 person's last known residence;

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

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

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

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

20 (i) Delivering it to the secretary or other
21 similar officer of the body corporate at its registered
22 or principal office; or

23 (ii) Sending it by registered post addressed
24 to the body corporate at its registered or principal
25 office."

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

4 "Section 324. Delegation of powers to other regulatory
5 bodies.

6 (1) Where, in the opinion of the Secretary and after
7 consultation with the Authority, a regional or sub-
8 regional regulatory body has been established with the
9 capacity to efficiently perform any of the functions of
10 the Authority described in section 305(e), (f) or (g),
11 the Secretary may by notice to the Authority authorize
12 the Authority to delegate to that body on such terms as
13 the Authority shall think fit all or any of those
14 functions.

15 (b) Any decisions or actions of a regional or sub-
16 regional regulatory body taken in accordance with a
17 delegation under subsection (1) shall have full force
18 and effect in the Federated States of Micronesia as a
19 decision or action of the Authority."

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

23 "Section 325. Review options.

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

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

3 (b) For a review by way of appeal under section
4 328; or

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

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

10 (a) If the person has not applied for
11 reconsideration of the determination, decision or order
12 under section 326;

13 (b) If the person has applied for reconsideration
14 and the Authority has not yet made a decision as to
15 whether to reconsider the determination, decision or
16 order; or

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

19 (d) If the person has applied for a review and
20 the appeals panel has not yet made a decision on that
21 application.

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

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

4 "Section 326. Reconsideration of determinations,
5 decisions or orders.

6 (1) Any person directly affected by a determination,
7 decision or order of the Authority may apply to the
8 Authority for reconsideration within 14 days of the
9 determination, decision, or order of which review is
10 sought.

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

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

14 (b) The reasons for which the reconsideration is
15 sought; and

16 (c) The action sought on reconsideration.

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

21 (4) If, 20 days after the filing of an application for
22 reconsideration, the applicant has not received a
23 response to the application, the Authority shall be
24 deemed to have affirmed the determination, decision or
25 order in respect of which the application for

1 reconsideration was made.

2 (5) If the Authority determines to reconsider the
3 determination, decision or order, it shall comply with
4 the same procedures (such as consultation and
5 preparation of a draft decision) to be complied with
6 when the determination, decision or order was first
7 made."

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

11 "Section 327. Appointment of experts.

12 (1) The Secretary shall establish a register of
13 experts who shall be available to act as members of an
14 appeals panel constituted under section 328. In
15 establishing and maintaining the register, the Secretary
16 shall consult with the Authority and with all service
17 providers.

18 (2) The Authority or any service provider may from
19 time to time nominate additional persons for inclusion
20 in the register. Such additional person or persons
21 shall be added to the register unless there is an
22 objection either from the Authority or any service
23 provider.

24 (3) The register of experts shall comprise at all
25 times at least three persons who collectively have

1 commercial, technical and legal expertise in the field
2 of communications.

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

5 (a) Meets the eligibility criteria to be
6 appointed a member of the Authority; or

7 (b) Has at least 10 years international
8 experience in the regulation of communications markets;
9 and

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

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

16 (6) The Authority shall act as the secretariat for the
17 appeals panel and shall publish the membership of the
18 register of experts."

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

22 "Section 328. Appeals.

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

- 1 (2) An application under subsection (1) must:
- 2 (a) Specify the decision to which the application
- 3 relates;
- 4 (b) Specify the reasons why the review is sought
- 5 and the outcome sought from the appeals panel; and
- 6 (c) Be submitted to the secretariat within 14
- 7 days of publication of the decision or after that period
- 8 with the consent of the secretariat.
- 9 (3) On receipt of a valid and complete application for
- 10 review under subsection (1), the secretariat shall
- 11 select from the register not less than two persons whom
- 12 the secretariat considers are suitably qualified to form
- 13 the appeals panel. The secretariat shall notify the
- 14 parties to the decision appealed against, including the
- 15 Authority, of those names and invite the parties to
- 16 agree on the person or persons from amongst those names
- 17 to be chosen to form the appeals panel.
- 18 (4) Should the parties to the decision appealed
- 19 against be unable to agree within 5 working days of the
- 20 delivery of the list, the secretariat may either
- 21 nominate an additional name or names from the register,
- 22 in which case the parties shall have a further 5 working
- 23 days to agree on the composition of the appeals panel,
- 24 or may choose the members of the appeal panel from
- 25 amongst the persons nominated by the secretariat.

1 (5) If more than one member is appointed to the
2 appeals panel, the secretariat shall designate one
3 member of the panel as the Chair whose opinion shall
4 determine the appeal in the event of a tie.

5 (6) The appeals panel:

6 (a) Shall give a copy of the application for
7 review to persons affected by the decision under review
8 and any other person who made a submission to the
9 Authority in a consultation relating to the decision
10 under review, and invite such persons to make
11 submissions;

12 (b) May determine an application on the papers or
13 convene a hearing in person or by teleconference or
14 other means that permits all those participating to
15 communicate with each other simultaneously and
16 instantaneously; and

17 (c) In all other matters, may determine its own
18 procedures as it sees fit, provided that such procedures
19 do not give one person affected by the decision an
20 advantage over any other person affected by the
21 decision.

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

24 (a) Shall take into account information submitted
25 by a party to the appeal that updates the information

1 previously provided to the Authority; and

2 (b) May, in exceptional circumstances, take into
3 account new information submitted by a party to the
4 appeal.

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

7 (9) The appeals panel shall:

8 (a) Affirm the decision under review;

9 (b) Vary the decision under review;

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

13 (d) Refer the matter back to the Authority for
14 reconsideration in such respects as the panel shall
15 specify and the Authority shall comply with any such
16 direction.

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

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

22 (12) The costs of the appeals panel in conducting the
23 review shall be borne by the person making the
24 application for review. That person shall on filing the
25 application for review promptly pay to the secretariat

1 such amount or amounts by way of pre-payment of such
2 costs as the secretariat shall reasonably determine.

3 (13) The appeals panel may make a costs order in
4 exceptional circumstances where it considers that a
5 person other than the applicant for review has
6 materially contributed to an increase in the amount of
7 the costs of the review and if such order is made, costs
8 will be apportioned between that person and the
9 applicant.

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

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

15 "Section 329. Licence for communications network or
16 service.

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

21 (a) Own or operate a specified communications
22 network; or

23 (b) Provide a communications service.

24 (2) The Authority may issue the following types of
25 operating licences pursuant to the requirements of the

1 licensing rules:

2 (a) An individual licence, to authorise the
3 ownership or operation of any specified communications
4 network and the provision of any communications service;
5 and

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

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

11 (4) A class licence shall:

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

13 (i) The terms and conditions of the licence;
14 and

15 (ii) Any applicable eligibility criteria; and

16 (b) Come into force with respect to any person
17 upon registration by that person under section
18 331(1)(b).

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

23 (6) No licence shall be required for the ownership of
24 a specified communications network where the operator of
25 that specified communications network has been issued

1 with the required licence.

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

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

8 "Section 330. Licensing rules for communications
9 networks or services.

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

11 (a) Additional exempt services and exempt
12 networks and conditions attaching to such exemption;

13 (b) The process for submitting an individual
14 licence application or application for registration,
15 including the intended timeframe for the Authority to
16 process an application:

17 (c) The eligibility criteria for individual
18 licences and registration under class licences;

19 (d) A fair and transparent method or methods of
20 selecting applicants in circumstances where applications
21 for licences may exceed the restrictions set out in
22 subsection (2); and

23 (e) General licence conditions which apply to all
24 operating licences.

25 (2) The licensing rules may set out restrictions or

1 limitations on the issuance or scope of licences
2 necessary to give effect to the objectives of this Act,
3 including promoting competitive communications markets."

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

7 "Section 331. Obtaining a licence for communications
8 networks or services.

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

11 (a) For an individual licence; or

12 (b) For registration under a class licence.

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

15 (a) The applicant's application complies with the
16 licensing rules;

17 (b) The applicant pays any applicable application
18 fee to the Authority;

19 (c) The applicant meets the eligibility criteria
20 for the licence; and

21 (d) The licence is not of a type that is
22 restricted in number.

23 (3) An applicant for an individual licence may combine
24 that application with an application for a radio
25 frequency spectrum licence. In such case, the Authority

1 shall progress the two applications in concert and issue
2 the licences together or under such arrangement as the
3 Authority and the applicant agree.

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

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

8 (a) The application for registration complies
9 with the licensing rules; and

10 (b) The applicant meets the eligibility criteria
11 for the licence.

12 (6) The Authority shall maintain and publish a
13 register of licensees and licences. The entry in the
14 register shall be the authoritative record of the status
15 of any licence.

16 (7) Any restrictions under other laws concerning
17 foreign investment in the Federated States of Micronesia
18 shall not apply to carrying on the business of owning or
19 operating a communications network or providing a
20 communications service by a licensee.

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

25 Section 36. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 332 under chapter 3, to read as follows:

3 "Section 332. Spectrum Licensing Authority.

4 (1) The Authority shall have sole responsibility in
5 licensing the use and allocating and assigning the radio
6 frequency spectrum for the provision of communications
7 services in the Federated States of Micronesia.

8 (2) No person may use radio frequencies in a manner
9 that is inconsistent with an allocation and assignment
10 of radio frequencies by the Authority under this
11 section.

12 (3) In performing its functions and duties and
13 exercising its powers under this section, the Authority
14 shall ensure that radio frequency spectrum is managed
15 and used in a manner that:

16 (a) Is open, non-discriminatory, competitively
17 neutral, objective and transparent;

18 (b) Is consistent with any applicable
19 international treaties, commitments, recommendations or
20 standards legally binding on the Federated States of
21 Micronesia; and

22 (c) Is economically efficient and permits
23 evolution to new technologies and services."

24 Section 37. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 333 under chapter 3, to read as follows:

2 "Section 333. Spectrum licensing rules.

3 (1) The Authority may make spectrum licensing rules
4 relating to the use of radio frequency spectrum for the
5 provision of communications services specifying:

6 (a) The types of spectrum licences that may be
7 issued in relation to spectrum blocks or particular
8 frequencies;

9 (b) The technical requirements that apply to the
10 use of parts of the radio frequency spectrum or
11 particular spectrum licensees;

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

15 (d) The process for submitting an application for
16 a spectrum licence including the intended timeframe for
17 the Authority to process an application;

18 (e) The eligibility criteria for a spectrum
19 licence;

20 (f) A fair and transparent method or methods of
21 selecting applicants in circumstances where applications
22 for spectrum licences exceed the available spectrum,
23 which may include a competitive tender;

24 (g) Procedures for a declaration that assigned
25 spectrum is assigned on a non-exclusive basis and the

1 making of further allocations of spectrum in the same
2 frequency band;

3 (h) Procedures for the vacation of spectrum that
4 has been assigned to any person and the assignment of
5 that spectrum to another person; and

6 (i) General licence conditions for spectrum
7 licences.

8 (2) In accordance with the Administrative Procedures
9 Act, the Authority shall promulgate appropriate rules
10 and regulation governing the use of radio frequency
11 spectrum."

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

15 "Section 334. Application for spectrum licence.

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

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

21 (a) If required, the application has been made
22 pursuant to and consistent with a request for
23 applications published by the Authority;

24 (b) The applicant's application complies with the
25 spectrum licensing rules;

1 (c) The applicant pays any applicable application
2 fee to the Authority;

3 (d) The applicant meets the eligibility criteria
4 for the licence;

5 (e) The application is consistent with the
6 spectrum plan and any other spectrum planning
7 instruments made by the Authority or the Department; and

8 (f) In circumstances where a method of selecting
9 applicants is specified in the spectrum licensing rules
10 and the applications for licences exceed the available
11 spectrum, the applicant has been selected in accordance
12 with those rules.

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

15 Section 39. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by adding a new
17 section 335 under chapter 3, to read as follows:

18 "Section 335. Licence conditions.

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

21 (a) Comply with this Act;

22 (b) Pay any applicable licence fees; and

23 (c) Comply with any applicable general conditions
24 imposed under this Act and any special conditions
25 imposed under subsection (2).

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

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

6 "Section 336. Licence fees.

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

10 (2) Rules under subsection (1) shall determine annual
11 fees for operating and spectrum licences in accordance
12 with the following principles:

13 (a) The Authority shall endeavour to minimise the
14 fees payable by licensees (having regard to section
15 319(1) and the funding required for the proper discharge
16 of the functions of the Authority under this Act;

17 (b) The method of determining such fees shall be
18 transparent;

19 (c) Operating licence fees should aim to reflect
20 the relative value of the licensed communications
21 networks or communications services to the licensees;

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

25 (e) Operating licence fees for individual

1 licences shall be based on a percentage of the gross
2 revenues of the licensee; and

3 (f) Operating licence fees for class licences
4 shall be a fixed sum.

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

7 (a) 5% of the gross revenues of all licensees
8 from the provision of communications services and from
9 interconnection and access in the Federated States of
10 Micronesia in the prior financial year of the Authority;
11 or

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

14 (4) Spectrum licence fees paid as a result of a
15 competitive tender process shall be paid into the
16 Universal Access Special Revolving Fund, after deduction
17 of any costs reasonably incurred by the Authority in
18 relation to the tender process."

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

22 "Section 337. Revocation, suspension, dealing or
23 surrender of a licence.

24 (1) An operating or spectrum licence continues in
25 effect until:

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

2 (b) The expiration of any term specified in the
3 licence.

4 (2) The Authority may revoke or suspend an individual
5 licence or registration of a person under a class
6 licence for a communications network or service:

7 (a) With the consent of the licensee;

8 (b) If the licensee is in material breach of a
9 licence condition;

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

12 (i) Its licence application; or

13 (ii) Information submitted to the Authority
14 under this Act; or

15 (iii) If the licensee is insolvent, in
16 receivership, bankrupt or being wound up.

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

19 (a) In the circumstances specified in subsections
20 (2) (a) to (d); or

21 (b) If it is necessary to implement a variation
22 to the spectrum plan or any other spectrum planning
23 instrument made by the Authority or the Department and
24 is consistent with international spectrum planning or
25 the international obligations of the Federated States of

1 Micronesia.

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

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

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

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

15 "Section 338. Commercial negotiation.

16 Subject to this Act, licensees may negotiate, agree and
17 vary agreements with one another for interconnection of
18 communications networks, access to and sharing of
19 facilities and other services, and the provision of
20 wholesale services, including the type and amount of
21 charges, in such manner and on such conditions as are
22 mutually acceptable to the licensees."

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

1 "Section 339. Interconnection and access and supply of
2 wholesale services by all licensees.

3 (1) A licensee must, on written request from another
4 licensee, promptly negotiate an interconnection and
5 access agreement providing for the following, as the
6 case may be:

7 (a) Interconnection of the licensees'
8 communications networks at any economically and
9 technically feasible point of the first licensee's
10 network where interconnection would not affect the
11 security, performance or efficiency of the first
12 licensee's network;

13 (b) Conditions that maintain end-to-end
14 operability to facilitate the provision of
15 communications services by the second licensee to a
16 customer notwithstanding that the customer is directly
17 connected to the first licensee's communications
18 network;

19 (c) The provision of wholesale services on terms
20 that are comparable to those on which the first licensee
21 provides such services for use in its own retail
22 operations or those of its affiliates;

23 (d) The standard terms contained in the
24 interconnection and access rules;

25 (e) Subject to subsection (d), otherwise

1 reasonable conditions, including with respect to the
2 timing, quality, technical, operational and fault
3 handling terms;

4 (f) Conditions that do not unfairly discriminate
5 between licensees and are no less favourable to the
6 second licensee than those the first licensee provides
7 for its own communications services or those of its
8 affiliates;

9 (g) Access to communications facilities,
10 networks, software and services, in a manner that is
11 sufficiently unbundled, including co-location, to enable
12 the second licensee to access the facilities and
13 wholesale services that it reasonably requires in order
14 to provide communications services to its customers;

15 (h) The provision on a timely basis by each
16 licensee of information, including technical
17 specifications and commercially relevant information
18 reasonably required for interconnection and the
19 operation of communications services for each licensee's
20 customers; and

21 (i) A commitment from each licensee not to
22 disclose or use information received from the other
23 licensee in connection with the interconnection and
24 access agreement for any purpose other than that for
25 which it was supplied.

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

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

4 (b) Promptly provide information reasonably
5 requested by the other party;

6 (c) Avoid obstructing or delaying negotiations;
7 Comply with any direction given by the Authority as to
8 the conduct of the negotiations;

9 (d) Not seek to cause the other party to withhold
10 from the Authority information concerning the
11 negotiations.

12 (3) A licensee who enters an interconnection and
13 access agreement with another licensee must promptly
14 lodge a copy of the interconnection and access agreement
15 with the Authority."

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

19 "Section 340. Disputes between licensees.

20 (1) If an interconnection and access agreement has not
21 been reached within 30 days of a request under section
22 339(1), the Authority may, on written request by either
23 licensee:

24 (a) Determine the terms of the interconnection
25 and access agreement including the terms contemplated by

1 section 339(1); or

2 (b) Direct the licensees to take specified action
3 to reach agreement (such as to engage a mediator or
4 arbitrator), by written notice to both licensees. The
5 licensees shall comply with such a direction.

6 (2) An interconnection and access agreement determined
7 by the Authority must:

8 (a) Include the provisions referred to in section
9 339(1);

10 (b) Apply the interconnection and access terms
11 specified in the interconnection and access rules;

12 (c) Not provide for interconnection or access to
13 communications facilities or the provision of wholesale
14 services where interconnection or access or the
15 provision of wholesale services is not technically,
16 economically or legally feasible or would materially
17 adversely affect the security, performance or efficiency
18 of the first licensee's network;

19 (d) Have regard to the best interests of
20 consumers, aim to have a positive impact on competition
21 between licensees, and encourage efficient and
22 sustainable investment in communications networks and
23 services in the Federated States of Micronesia.

24 (3) The Authority must consult with both licensees and
25 provide both licensees with a draft interconnection and

1 access agreement or a draft direction before determining
2 the terms of the interconnection and access agreement or
3 making the direction.

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

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

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

13 "Section 341. Interconnection and access rules.

14 (1) The Authority may make interconnection and access
15 rules specifying standard terms to apply to all
16 interconnection and access agreements, including
17 wholesale prices or pricing principles.

18 (2) The interconnection and access rules made under
19 subsection (1) may designate mandatory services,
20 including roaming services, which licensees must provide
21 between interconnected communications networks and which
22 must be included in interconnection and access
23 agreements.

24 (3) In specifying interconnection and access prices or
25 pricing principles for interconnection and access rules

1 made under subsection (1), the Authority shall take into
2 account internationally accepted principles for
3 determining regulated prices, including methodologies
4 designed to reflect actual costs.

5 (4) The Authority may determine interim
6 interconnection and access prices, based on benchmarking
7 against cost-based prices set by regulators in
8 comparable countries, to apply to all interconnection
9 and access agreements, including agreements that have
10 been agreed between the parties or have been determined
11 by the Authority or the appeals panel. Such interim
12 prices shall apply until:

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

15 (b) Different prices are set by the appeals panel
16 on a rehearing of the Authority's decision as to interim
17 prices.

18 (5) A licensee may apply for a review under section
19 328 of any interconnection and access rules made by the
20 Authority under subsection (1)."

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

24 "Section 342. New infrastructure.

25 (1) A licensee who proposes to construct a new

1 communications facility to expand its communications
2 network shall at least 30 days before it plans to
3 finalise the design of the communications facility:

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

7 (b) On the same day, provide a copy of the
8 details and invitation to the Authority (which shall
9 promptly publish the details and invitation).

10 (2) A person may, within 7 days of a proposal being
11 published by the licensee, provide an expression of
12 interest in sharing the communications facility to the
13 Authority. The Authority shall promptly provide any
14 expressions of interest to the licensee who proposes to
15 construct the communications facility.

16 (3) After the expiry of the period in subsection (2),
17 the licensee who proposes to construct the
18 communications facility shall promptly provide each
19 person who has provided an expression of interest with a
20 list of the other persons who have provided an
21 expression of interest.

22 (4) The licensee who proposes to construct the
23 communications facility and each person who has provided
24 an expression of interest shall promptly negotiate in
25 good faith the:

1 (a) Design characteristics of the communications
2 facility so that, to the extent practical, each such
3 person shall be able to use the communications facility
4 for their reasonably anticipated requirements; and

5 (b) Commercial terms for the construction,
6 maintenance, ownership and on-going use of the
7 communications facility by the licensee and each such
8 person.

9 (5) If the design characteristics and commercial terms
10 described in subsection (4) have not been agreed within
11 14 days of the negotiations commencing, the Authority
12 may, on written request by any party to the
13 negotiations, and by written notice to each party,
14 direct the parties to take specified action to reach
15 agreement (such as to engage a mediator or arbitrator).

16 The parties shall comply with such a direction."

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

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

21 (1) A licensee shall not engage in conduct having the
22 purpose or effect, or likely to have the effect, of
23 substantially lessening competition in a communications
24 market, and no provision of a contract or agreement
25 having such purpose or effect, or likely to have such

1 effect, will be enforceable.

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

6 (a) Supplying a communications service at a price
7 below cost for a substantial period of time for the
8 purpose or with the effect or likely effect of limiting
9 competition in a communications market;

10 (b) Cross-subsidising a service in a competitive
11 communications market from a service that is supplied in
12 a communications market that is not competitive;

13 (c) Bundling a communications service that is
14 supplied in a competitive market with a service that is
15 not supplied in a competitive market, in circumstances
16 where more favourable terms are applied to the
17 competitive service sold as part of the bundle;

18 (d) Imposing restrictions on whom another person
19 may deal with in a communications market or otherwise
20 hindering the willingness of a supplier to provide goods
21 or services to another licensee, without legitimate
22 commercial justification;

23 (e) Reducing the margin of profit available to a
24 competing licensee in a retail communications market by
25 engaging in a margin squeeze at the wholesale or retail

1 level in circumstances where the wholesale service or
2 access service:

3 (i) Is not supplied in a competitive
4 communications market;

5 (ii) Is necessary as a matter of commercial
6 necessity for the competitor to provide the retail
7 service; and

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

10 (f) Pre-emptively acquiring scarce facilities or
11 resources, including land, that are required or likely
12 to be required by another licensee for the operation of
13 its business, for the purpose of restricting the use of
14 the facilities or resources by the other licensee; or

15 (g) Designing or installing a communications
16 facility or communications network with the purpose of
17 preventing or hindering another licensee from acquiring
18 interconnection or access.

19 (3) Without limiting subsection (1), an arrangement
20 between two or more licensees has the effect or likely
21 effect of reducing competition in a communications
22 market if it directly or indirectly:

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

25 (b) Apportions, shares or allocates a

1 communications market or markets among themselves or
2 other licensees; or

3 (c) Prevents, restricts or limits the supply or
4 acquisition of a communications service or access
5 service to or from a person or class of persons.

6 (4) The Authority may exempt conduct from the
7 prohibition in subsection (1) if the Authority is
8 satisfied that the conduct:

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

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

14 Section 48. Title 21 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by adding a new
16 section 344 under chapter 3, to read as follows:

17 "Section 344. Contravention of competition provisions.

18 (1) If the Authority considers that a licensee is
19 engaging in anti-competitive conduct, it may serve a
20 notice of contravention on the licensee specifying the
21 conduct that the Authority deems to be in contravention
22 of this Act and requiring the licensee to cease or
23 modify that conduct.

24 (2) A licensee specified in the notice under
25 subsection (1) shall comply with the notice within such

1 time period and on such conditions as is specified in
2 the notice.

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

7 (4) If a licensee complies with subsection (2) in
8 relation to a notice served under subsection (1), the
9 Authority shall not take enforcement action under
10 sections 329, 330, 331, 332, 333, 334, 335, 336, 381,
11 382, 383, 384, 385, 386 or 387 of this Act in respect of
12 the conduct specified in that notice."

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

16 "Section 345. Industry consolidation.

17 (1) A licensee shall not acquire or obtain an interest
18 in shares or assets related to communications facilities
19 or the provision of communications services of another
20 licensee without the prior written consent of the
21 Authority.

22 (2) A licensee obtains an interest in shares or assets
23 if the licensee becomes the legal or beneficial owner of
24 the shares or assets or it or its affiliate is in a
25 position to control the shares or assets.

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

4 (a) Apply to the Authority for consent to the
5 acquisition;

6 (b) Disclose to the Authority such information as
7 the Authority may require concerning any affiliate of
8 the licensee; and

9 (c) Provide the Authority with such additional
10 information as the Authority may request for the
11 purposes of determining the effect or likely effect of
12 the proposed acquisition on competition in a
13 communications market.

14 (4) The Authority may make rules specifying the form
15 and information required for an application under
16 subsection (3).

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

23 (6) A licensee may apply for reconsideration under
24 section 326 of a decision of the Authority not to
25 consent to an application it has provided under

1 subsection (3)."

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

5 "Section 346. Publication of terms and conditions.

6 (1) Before offering a communications service to the
7 public, or altering the terms of any such service, a
8 Dominant Service Provider shall:

9 (a) Publish on its website and make available for
10 inspection at its offices, the terms and conditions
11 (including the price) for that service in clear and
12 simple terms; and

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

15 (2) Subject to the provisions of sections 343, 344 and
16 345, the requirements of subsection (1)(b) as to
17 approval of the Authority shall not apply to:

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

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

22 (3) The Authority shall publish information provided
23 to it under this section.

24 (4) The Authority may by notice to a Dominant Service
25 Provider dispense with the requirements of subsection

1 (1) in respect of any service or market if in the
2 opinion of the Authority the state of competition in the
3 relevant market is such that tariff changes are unlikely
4 to harm competition or to be substantially detrimental
5 to consumers."

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

9 "Section 347. Pricing rules.

10 (1) The Authority may make pricing rules applicable to
11 a Dominant Service Provider in a communications market
12 specifying:

13 (a) Communications services to which this section
14 applies; and

15 (b) A pricing model or pricing models to be
16 applied in assessing the retail prices charged by that
17 licensee for those communications services.

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

22 (3) A Dominant Service Provider affected by pricing
23 rules made under subsection (1) may apply for
24 reconsideration under section 326 of the designation of
25 the licensee as a Dominant Service Provider or the

1 pricing model specified by the Authority.

2 (4) Any pricing model referred to in subsection (1)
3 shall be designed to:

4 (a) Ensure the prices reasonably reflect
5 economically efficient costs;

6 (b) Promote efficient and sustainable investment
7 in communications networks and services in the Federated
8 States of Micronesia; and

9 (c) Reasonably protect the interests of consumers
10 and other licensees.

11 (5) The Authority may:

12 (a) Assess the prices charged for communications
13 services by a licensee to whom a pricing model under
14 subsection (1) applies against the relevant pricing
15 model; and

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

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

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

25 (a) The Authority shall notify the licensee of

1 the adjustment and publish its determination; and

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

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

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

9 "Section 348. Fair dealing.

10 (1) A licensee shall only charge a customer for the
11 specific communications services or equipment that the
12 customer has ordered, and a customer shall have no
13 liability to pay for any communications services or
14 equipment that it has not ordered.

15 (2) A Dominant Service Provider shall provide all its
16 customers the same terms and conditions for each service
17 offering, unless:

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

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

22 (c) The Authority gives prior approval to the
23 terms of the service offering, including the
24 differences.

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

1 (a) Contracted for communications services for
2 which they will pay after usage, a licensee shall
3 provide the customer with invoices:

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

6 (ii) On a regular basis;

7 (iii) In a plain and simple format;

8 (iv) With accurate and itemised information
9 about the services provided and the corresponding
10 amounts due; and

11 (v) That clearly indicate the method of
12 calculation of prices for any service for which invoices
13 are based on the length of calls or other measure or
14 usage; and

15 (b) Paid in advance for communications services,
16 the licensee shall permit the customer on request to
17 review the amount of the prepayment that has been
18 consumed and the amount remaining.

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

25 (5) The Authority may make consumer protection rules

1 regulating or prohibiting the use of a communications
2 network or communications services to provide
3 unsolicited communications."

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

7 "Section 349. Confidentiality of customer information.

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

9 (a) Shall not, without a customer's consent,
10 collect, use, maintain or disclose information about a
11 customer for any purpose; and

12 (b) Shall apply appropriate security safeguards
13 to prevent the collection, use, maintenance or
14 disclosure of such information without the customer's
15 consent.

16 (2) A licensee may disclose a customer's name, address
17 and telephone number in a printed or electronic
18 directory or as provided for in the consumer protection
19 rules, provided that a licensee shall permit customers
20 on request to have their name omitted from such
21 directory.

22 (3) A licensee shall ensure that information it
23 discloses or retains concerning a customer is accurate
24 and complete for the purposes for which it is to be
25 used.

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

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

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

13 (7) The Authority may make consumer protection rules
14 requiring a class of licensees to retain or not retain
15 specified information relating to customers, including
16 information about billing, beyond a specified period."

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

20 "Section 350. Confidentiality of customer
21 communications.

22 A licensee shall take all reasonable steps to ensure the
23 confidentiality of its customers' communications except
24 as permitted by law and shall not, without the prior
25 consent of the customer, divulge any information

1 concerning the customer's communications unless required
2 by law or authorized by the Authority."

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

6 "Section 351. Access by government authorities.
7 Nothing in sections 349 to 350 shall be interpreted to
8 prohibit or infringe upon the rights of government
9 authorities under the laws of the Federated States of
10 Micronesia to exercise such rights to access otherwise
11 confidential information or communications in a lawful
12 manner."

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

16 "Section 352. Terms of service, complaints and
17 disputes.

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

21 (a) Establish fair and reasonable standard
22 conditions for the provision of communications services
23 to consumers, including procedures for dealing with
24 complaints from and disputes with consumers, and
25 provision for consumers' remedies (including refunds and

1 compensation) where circumstances warrant;

2 (b) Submit such conditions, procedures and
3 remedies, or proposed amendments to the Authority for
4 its approval;

5 (c) Make such changes to such conditions,
6 procedures and remedies as may be reasonably required by
7 the Authority;

8 (d) Publish such conditions, procedures and
9 remedies on its website and circulate them to points of
10 sale for publication in a manner that ensures that
11 prospective consumers are able to be clearly informed of
12 them;

13 (e) Comply with such conditions, implement such
14 procedures and provide such remedies in accordance with
15 their terms as approved by the Authority;

16 (f) Report to the Authority on the types and
17 volumes of consumer complaints and disputes, the
18 application of complaints procedures and manner in which
19 complaints have been resolved; and

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

23 (2) If a licensee fails to establish, submit or make
24 changes to conditions, procedures or remedies if so
25 required under subsection (1), the Authority may do so

1 and the licensee shall comply with such conditions,
2 implement such procedures and provide such remedies.

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

7 (a) Requiring the licensee to comply with those
8 procedures; or

9 (b) Addressing the complaint or dispute and
10 providing for a remedy, if such remedy is not
11 inconsistent with any reasonable conditions and
12 procedures established by the licensee pursuant to this
13 section.

14 (4) Before making a determination under subsection
15 (3), the Authority shall consult with the licensee and
16 the affected consumer."

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

20 "Section 353. Directory assistance.

21 (1) The Authority may make consumer protection rules
22 requiring a licensee or class of licensees to establish
23 and provide customers with directory assistance services
24 on conditions prescribed in those rules, requiring
25 licensees to co-operate for the provision of directory

1 assistance services, and providing for the costs of
2 providing directory assistance services to be shared
3 between licensees whose customers may access the
4 service.

5 (2) In this section, 'directory assistance services'
6 means such services to provide access to a customer's
7 name, telephone number and such other information about
8 a customer as is set out in the consumer protection
9 rules."

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

13 "Section 354. Quality of service.

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

16 (a) Establish key performance indicators for the
17 quality of its service to users, which may be required
18 to comply with minimum standards set out in the consumer
19 protection rules;

20 (b) Submit the indicators (and any subsequent
21 amendments) to the Authority for approval;

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

24 (d) Ensure that its services comply with such
25 indicators.

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

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

9 "Section 355. Technical standards.

10 (1) The Authority may make technical rules specifying
11 technical standards for:

12 (a) Interconnection of licensees' communications
13 networks; and

14 (b) Customer equipment permitted to be attached
15 to licensees' communications networks.

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

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

23 "Section 356. Customer equipment standards.

24 (1) A person shall not sell, or offer for sale,
25 equipment, and a person other than the owner or operator

1 of a communications network shall not attach equipment
2 to a communications network, if the equipment:

3 (a) Does not conform to a relevant equipment
4 standard in the technical rules made under section
5 355(1);

6 (b) Does not conform with a relevant
7 international standard; or

8 (c) Would adversely affect the operation,
9 reliability or integrity of the communications network
10 or cause a health or safety risk to a person.

11 (2) A licensee may:

12 (a) Disconnect from its communications networks
13 any customer equipment; and

14 (b) Cease or refuse to supply a communications
15 service to a customer who has connected customer
16 equipment to its communications network, if that
17 customer equipment does not comply with the standards
18 referred to in subsection (1)."

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

22 "Section 357. Numbering plan.

23 (1) The Authority shall make numbering rules
24 specifying matters that include:

25 (a) A numbering plan for communications services;

1 (b) Annual fees for the right to use allocated
2 numbers in order to recover the costs of the
3 administration of the numbering plan;

4 (c) Rules regarding the assignment and use of
5 numbers;

6 (d) Provision for any service provider using
7 numbering ranges as at the date of this Act to retain
8 such numbering ranges, subject to the amendment of those
9 ranges by the addition of further digits where the
10 Authority considers that to be necessary in order to
11 ensure an adequate supply of numbers;

12 (e) The assignment of numbers for emergency
13 services; and

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

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

18 (a) Has conducted a public consultation about the
19 inclusion of the provisions;

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

22 (c) Determines that the benefit outweighs the
23 costs of introducing number portability.

24 (3) The Authority may invite individual licensees to
25 develop a number portability scheme in accordance with

1 any directions given by the Authority as to the content
2 of such a scheme and to submit the scheme to the
3 Authority for approval.

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

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

10 "Section 358. National emergency numbers.

11 A licensee that provides voice communications services
12 shall provide its subscribers with access to the numbers
13 specified in the numbering rules as being assigned for
14 emergency services free of charge."

15 Section 63. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by adding a new
17 section 360 under chapter 3, to read as follows:

18 "Section 360. Universal access policy.

19 (1) The Secretary shall develop a policy for improving
20 access to communications services of the nature
21 described in subsection (3) for areas of the Federated
22 States of Micronesia that are not adequately served by
23 existing services.

24 (2) The policy referred to in subsection (1) shall be
25 promulgated pursuant to the Administrative Procedures

1 Act, and shall be implemented by the Authority.

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

4 (a) A voice calling service, either fixed or
5 mobile;

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

8 (c) Emergency services with priority routing
9 enabling contact with police, fire services, ambulance
10 and marine rescue services;

11 (d) Disaster relief services;

12 (e) Operator assistance for call set-up and
13 faults reporting; and

14 (f) Such other communications services designated
15 by the Secretary."

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

19 "Section 361. Universal access eligibility.

20 (1) The Secretary shall identify, publish and update
21 annually a list of geographic areas that are eligible
22 under the universal access policy for the application of
23 universal access obligations and funding under the
24 universal access policy.

25 (2) The Secretary shall invite proposals from

1 licenses or prospective licensees to introduce or
2 improve communications services described in section
3 360(3), and shall take into account such proposals in
4 identifying eligible universal access areas under
5 subsection (1)."

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

9 "Section 362. Universal access obligations.

10 (1) A licensee shall become subject to a universal
11 access obligation if:

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

14 (b) The licensee has assumed that obligation
15 under section 369.

16 (2) The Authority may enforce a universal access
17 obligation by giving notice to the licensee concerned
18 requiring that licensee to take any action or meet any
19 timetable described in that notice and in the reasonable
20 opinion of the Authority required to comply with that
21 obligation.

22 (3) The Authority may defer the commencement of a
23 universal access obligation for such period and to such
24 an extent as the Authority deems fit where the Authority
25 is satisfied that the licensee concerned is building

1 network facilities at its cost in an area subject to the
2 universal access policy or the licensee has voluntarily
3 undertaken to provide additional communications services
4 or to construct additional network facilities at its
5 cost in such an area."

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

9 "Section 363. Eligibility for universal access funding.

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

14 (2) No licensee is entitled to funding from the
15 universal access special revolving fund for the
16 provision of services in a geographic area, and any
17 entitlement previously established shall cease, where a
18 substantial level of access to comparable communications
19 services is, in the opinion of the Authority, available
20 in that area from another licensee."

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

24 "Section 364. Administration of universal access
25 obligations.

1 The Authority shall ensure that universal access
2 obligations are administered in an open, transparent,
3 non-discriminatory, objective, and competitively neutral
4 manner, and are not more burdensome than necessary to
5 achieve the objectives of the universal access plan.”

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

9 “Section 365. Universal access special revolving fund.

10 (1) A universal access special revolving fund is
11 established and will be administered by the Authority.

12 (2) The fund shall be used for the purposes in
13 accordance with the universal access plan.

14 (3) The following shall be deposited in the fund:

15 (a) Any amounts transferred under section 319(6);

16 (b) Any amounts available under section by way of
17 spectrum license fees paid as a result of a competitive
18 tender process;

19 (c) Any grants or donations made to or for the
20 benefit of the fund;

21 (d) Appropriations made by Congress for the
22 purposes of the fund.

23 (4) The Authority shall cause to be maintained books
24 of account and records in accordance with general
25 accounting principles for funds administered by the

1 Government in respect of the fund and any monies paid
2 into or out of the fund.

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

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

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

12 "Section 366. Universal access rules.

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

15 (a) Operation of the universal access special
16 revolving fund; and

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

19 (2) In addition to the matters set out under
20 subsection (1), the universal access rules may also
21 prescribe the:

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

24 (b) Requirements for persons entering a contract
25 with the Authority under section 369, including

1 conditions to coordinate development of communications
2 facilities with development of other infrastructure; and

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

5 (3) The universal access rules shall provide that a
6 tender process conducted by the Authority under section
7 369 shall require that the Authority select the
8 compliant tender that in the opinion of the Authority
9 best serves the purposes of the universal access plan
10 and provides the lowest cost solution commensurate with
11 the outcomes to be achieved."

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

15 "Section 367. Universal Access Plan.

16 The Authority shall, upon receipt from the Secretary of
17 a list of geographic areas that are eligible under the
18 universal access policy for the application of universal
19 access obligations and funding under the universal
20 access policy, prepare and publish a universal access
21 plan."

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

25 "Section 368. Universal Access Projects.

1 The Authority shall prepare and publish one or more
2 project plans to address a universal access plan. A
3 project plan shall specify:

4 (a) The timing by which deployment of such
5 services (or communications facilities to enable such
6 services) in particular areas or segments of society of
7 the Federated States of Micronesia should take place;
8 and

9 (b) Any general requirements or specifications
10 for the provision of such communications services or
11 communications facilities."

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

15 "Section 369. Provision of universal access services.

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

20 (2) The Authority shall, before entering a contract
21 under subsection (1):

22 (a) Consider whether there is likely to be
23 competition for the subsidy or concessional loan offered
24 under subsection (1) for the provision of communications
25 services or communications facilities in accordance with

1 the project plan; and

2 (b) If the Authority believes there would be such
3 competition, conduct a competitive tender for the
4 provision of those services or facilities in accordance
5 with the universal access rules.

6 (3) If the Authority considers that there is not
7 likely to be competition for the provision of the
8 communications services or communications facilities for
9 the maximum subsidy or concessional loan the Authority
10 could offer in fulfilment of the relevant project plan,
11 the Authority shall negotiate with any person the
12 Authority considers has the capability of providing
13 those services or facilities and may enter into a
14 contract for the provision of those services or
15 facilities in accordance with the project plan.

16 (4) If after attempting to negotiate under subsection
17 (3) the Authority considers agreement cannot be reached,
18 the Authority may by written notice require a licensee
19 to enter into a specified contract with the Authority
20 for the provision of the relevant communications
21 services or communications facilities for a subsidy or
22 concessional loan.

23 (5) The Authority shall be guided by the following
24 principles in requiring a licensee to enter into a
25 contract and specifying the terms of the contract under

1 subsection (4):

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

5 (b) The obligation to provide the relevant
6 communications services or communications facilities
7 shall not unfairly discriminate between licensees;

8 (c) The licensee shall receive reasonable
9 compensation having regard to the costs of providing the
10 communications services or communications facilities and
11 the revenues likely to be achieved from those services
12 or facilities; and

13 (d) The obligation to provide the relevant
14 communications services or communications facilities
15 shall not be more burdensome than is reasonably
16 necessary to achieve the objectives of the relevant
17 universal access plan.

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

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

25 "Section 370. Existing facilities.

1 (1) Should any provider of communications services as
2 at the date of this Act ('existing provider') enjoy any
3 rights to lease or otherwise use land for the purpose of
4 erecting or installing telecommunications facilities or
5 equipment, any service provider may, by notice to that
6 provider, the land owner, and any lessee of the land
7 ('parties with land rights'), elect to share the use of
8 that land with the existing provider.

9 (2) On receipt of a notice under subsection (1), the
10 existing provider and the parties with land rights shall
11 enter into good faith negotiations with the service
12 provider to agree on terms for the sharing of use rights
13 that will preserve competitive neutrality as between the
14 existing provider and the service provider.

15 (3) Should agreement be unable to be reached to the
16 reasonable satisfaction of the service provider, the
17 service provider may apply to the Authority for
18 assistance.

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

23 (5) Should the actions of the Authority under
24 subsection (4) fail to produce an agreement between the
25 parties within such time as the Authority considers

1 reasonable, the Authority may determine the terms for
2 the sharing by the existing provider and the service
3 provider of use rights and may direct the parties with
4 land rights to take such action as the Authority deems
5 fit in order to implement that determination.

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

11 (7) The existing provider, the service provider or any
12 party with land rights may apply for reconsideration
13 under section 326 of a determination under subsection
14 (5)."

15 Section 74. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by adding a new
17 section 371 under chapter 3, to read as follows:

18 "Section 371. New facilities.

19 (1) Should an agreement be reached under section 342
20 to share a new communications facility (a 'sharing
21 agreement'), a party to the sharing agreement may, by
22 notice to the other parties to that agreement and to the
23 owner or occupier of third party land, require that the
24 owner or occupier of the third party land provide access
25 to and use of that land to the extent required to give

1 effect to the sharing agreement and on the same terms
2 and conditions as those enjoyed by other parties to that
3 agreement.

4 (2) Should the owner or occupier of the third party
5 land fail without reasonable excuse to provide access to
6 and use of the land under subsection (1), the Authority
7 may direct the owner or occupier to take such action as
8 the Authority deems fit in order to implement the
9 requirements of subsection (1) and the owner or occupier
10 shall comply with any such direction. A direction under
11 this subsection may include provision for defined
12 amounts by way of compensation to any of the parties
13 with land rights or may provide for compensation to be
14 determined by the Supreme Court of the Federated States
15 of Micronesia under section 373.

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

18 (a) The land concerned is residential land and
19 the access and use rights sought by a party to the
20 sharing agreement would be unreasonably intrusive on the
21 residential occupants of the land; or

22 (b) The land concerned is not residential land
23 and the provision of the access and use rights sought
24 would not be technically feasible.

25 (4) Any party to the sharing agreement or the owner or

1 occupier of the third party land may apply for
2 reconsideration under section 326 of a direction under
3 subsection (2)."

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

7 "Section 372. Land access charges.

8 (1) Charges proposed by land owners or land occupiers
9 may include:

10 (a) Actual or average administrative costs as a
11 result of a service provider being granted permission to
12 use land, and maintaining land to the extent costs
13 result from the use of the land by service providers;

14 (b) For each service provider, a pro rata share
15 (based on the percentage of total capacity used or
16 occupied) of capital improvements such as ducts,
17 fixtures and other permanent improvements to lands,
18 based on historic cost of the improvements.

19 The Authority may make rules governing a fair and
20 reasonable allocation of charges under sections 370 and
21 371."

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

25 "Section 373. Supreme Court may determine compensation.

1 (1) Should a determination of the Authority under
2 sections 370(6) and 371 (2) provide for compensation to
3 be determined by the Supreme Court of the Federated
4 States of Micronesia, the Supreme Court shall, on
5 application by any of the service provider concerned or
6 a party with land rights, determine the amounts and
7 manner of payment of compensation on such terms as it
8 considers reasonable."

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

12 "Section 374. Restoration after use.

13 If the relevant land owner or land occupier so requires,
14 the service provider shall at the end of the term of the
15 permitted use promptly remove all fixtures and other
16 improvements installed on the land at its own cost and
17 restore the land to its original condition."

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

21 "Section 375. Evidence.

22 (1) A document appearing to be signed by the Secretary
23 or on behalf of the Authority shall be evidence of the
24 official character of the person appearing to have
25 signed it and, in the case of the Authority, of its

1 issuance by the Authority and, if the document appears
2 to be a copy of a decision or report, shall be evidence
3 of its contents.

4 (2) A copy of a document submitted to the Authority
5 and appearing to be certified as a true copy by the
6 Authority shall be evidence of the original, of its
7 submission to the Authority, of the date of its
8 submission, and of the signature of any person appearing
9 to have signed it.

10 (3) A certificate appearing to be signed by the
11 Authority and bearing the Authority's seal shall be
12 evidence of its contents without proof of the
13 signature."

14 Section 79. Title 21 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by adding a new
16 section 376 under chapter 3, to read as follows:

17 "Section 376. Appointment of Inspectors.

18 (1) The Authority may appoint or designate Inspectors
19 for the purposes of verifying compliance with this Act
20 and with decisions or instruments of the Authority made
21 under this Act.

22 (2) An Inspector shall be provided with a certificate
23 of identity, which shall be presented at the request of
24 any person appearing to be in charge of any place
25 entered by the Inspector."

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

4 "Section 377. Powers of Inspector.

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

6 (a) Enter and inspect, at any reasonable time,
7 any place owned by or under the control of a service
8 provider or a person operating a device under a licence,
9 in which the Inspector believes on reasonable grounds
10 there is any document, information, equipment, or thing
11 relevant to the enforcement of this Act, and examine the
12 document, information, equipment, or thing or remove it
13 for examination or reproduction, as the case may be;

14 (b) Enter any place on which the Inspector
15 believes on reasonable grounds there is any radio
16 transmitting device or interference-causing equipment,
17 and examine any radio transmitting device or
18 interference-causing equipment, logs, books, reports,
19 data, records, documents, or other papers, and remove
20 such information, document, device, equipment, or thing
21 for examination or reproduction, as the case may be;

22 (c) Make use of or cause to be made use of, any
23 data processing network or computer at the place, to
24 examine any data contained in or available to the
25 network or computer;

1 (d) Retain, remove, or reproduce or cause to be
2 reproduced any such data whether in electronic or hard
3 copy form; and

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

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

9 Under the authority of a warrant issued under section
10 378; or

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

13 (3) For the purposes of subsection (2)(b), special
14 circumstances include circumstances in which the delay
15 arising from obtaining a warrant would result in danger
16 to human life or safety or the loss or destruction of
17 evidence.

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

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

25 (6) Any person who obstructs an Inspector in the

1 exercise of the powers under this Act commits an
2 offence.

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

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

9 "Section 378. Search warrant.

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

14 (a) Entry to a residence is necessary for the
15 purpose of performing any duty of an Inspector under
16 this Act; and

17 (b) Entry to the residence has been refused, or
18 there are reasonable grounds for believing that entry
19 will be refused.

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

24 Section 82. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 379 under chapter 3, to read as follows:

2 "Section 379. Requirement to supply information or
3 documents or give evidence.

4 (1) Where the Authority considers it necessary or
5 desirable for the purposes of carrying out its functions
6 and exercising its powers under this Act, the Authority
7 may, by notice in writing served on any person, require
8 that person:

9 (a) To furnish to the Authority, by writing
10 signed by that person or, in the case of a corporation
11 or other entity, by a director or competent
12 representative of the corporation or other entity,
13 within the time and in the manner specified in the
14 notice, any information or class of information
15 specified in the notice; or

16 (b) To produce to the Authority, or to a person
17 specified in the notice acting on its behalf in
18 accordance with the notice, any document or class of
19 documents specified in the notice; or

20 (c) To appear before the Authority at a time and
21 place specified in the notice to give evidence, either
22 orally or in writing, and produce any document or class
23 of documents specified in the notice.

24 (2) Any person who either fails to comply with a
25 notice issued under this section, provides false or

1 misleading information to the Authority, or having been
2 required to appear before the Authority shall fail to do
3 so without reasonable excuse or shall fail to give
4 evidence, answer any question, or produce any document
5 or class of documents, commits an offence under this
6 Act."

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

10 "Section 380. Interception and interference.

11 (1) A licensee and any person engaged in the operation
12 or provision of a communications network or service
13 shall intercept or disclose a message, communication or
14 customer information only pursuant to a warrant under
15 the hand of a judge in connection with the investigation
16 of any criminal offence or for the purposes of any
17 criminal proceedings where the maximum penalty that may
18 be imposed by a court is at least three years in prison.

19 (2) A licensee and any person engaged in the operation
20 or provision of a communications network or service
21 shall ensure its communications networks and services
22 are capable of interception under subsection (1) and
23 shall facilitate such interception as reasonably
24 directed by the police or other services directly
25 employed by the Government for national security.

1 (3) A licensee and any person engaged in the operation
2 or provision of a communications network or service
3 shall disclose the contents of any statement of account
4 specifying the communications services provided, or any
5 details about the customer, if requested by the police
6 or other services directly employed by the Government
7 for national security, in connection with the
8 investigation of any criminal offence or for the
9 purposes of any criminal proceedings. Such requests
10 must be in writing and authorized and signed by a judge.

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

14 (5) If the Authority believes that a person is in
15 possession of data stored in a computer system or
16 retrievable from a data storage medium, which data is
17 necessary to investigate a breach of this Act, the
18 Authority may by written notice to that person, require
19 that person to allow the Authority to:

20 (a) Access the computer system or retrieve data
21 from the data storage medium;

22 (b) Seize or similarly secure the computer system
23 or data storage medium;

24 (c) Maintain the integrity of the relevant stored
25 data; and

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

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

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

7 (1) If the Authority believes on reasonable grounds
8 that a person is engaged in conduct that may contravene
9 this Act, then for the purposes of enforcing this Act,
10 the Authority may:

11 (a) Collect or record through the application of
12 technical means; and

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

15 (i) To collect or record through the
16 application of technical means; or

17 (ii) To assist the Authority in the
18 collection or recording of, traffic and content data, in
19 real-time, associated with specified communications.

20 (2) The Authority may, in a notice issued under
21 subsection (1), oblige the licensee or person to keep
22 confidential the fact of the execution of the power
23 provided for in this section and any information
24 relating to it."

25 Section 84. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 382 under chapter 3, to read as follows:

3 "Section 382. Specific offences.

4 Any person commits an offence if the person:

5 (a) Fraudulently, maliciously, or with dishonest
6 or otherwise wrongful intent, obtains any communications
7 service without payment of a lawful price for that
8 service;

9 (b) Intentionally, without right or with
10 dishonest intent or otherwise wrongful, accesses the
11 whole or any part of any communications facility by
12 infringing security measures;

13 (c) Intentionally, without right or with
14 dishonest or otherwise wrongful intent, intercepts by
15 technical means a transmission not intended for that
16 person or for public reception except in accordance with
17 section 384(3);

18 (d) Intentionally, without right and with
19 dishonest or otherwise wrongful intent, damages,
20 deletes, deteriorates, alters or suppresses data carried
21 by a communications network without right, where this
22 results in serious harm;

23 (e) Intentionally, without right and with
24 dishonest or otherwise wrongful intent, seriously
25 hinders the functioning of any communications facility

1 by inputting, transmitting, damaging, deleting,
2 deteriorating, altering or suppressing data;

3 (f) Intentionally, without right and with
4 dishonest or otherwise wrongful intent, possesses,
5 produces, sells, procures for use, imports, distributes
6 or otherwise makes available a device designed or
7 adapted primarily for the purpose of committing any of
8 the offences established in paragraph (a), (b), (c), (d)
9 or (e), or a password, access code, or similar data by
10 which the whole or any part of any communications
11 facility is capable of being accessed with intent that
12 it be used for the purpose of committing any of the
13 offences established in paragraph (a), (b), (c), (d) or
14 (e);

15 (g) Intentionally and without right, uses, or
16 causes or suffers to be used, any communications
17 facility for the purpose of harassing any person,
18 including by means of a call with or without speech or
19 other sounds, data or video images;

20 (h) Deliberately damages any communications
21 facility; or

22 (i) Knowingly makes any false statement of a
23 material fact (or knowingly omits to state a material
24 fact necessary in order to make the statements made, in
25 the light of the circumstances under which they were

1 made, not misleading) to the Authority, an Inspector or
2 an appeals panel."

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

6 "Section 383. General offence.

7 Save in respect of an offence under section 386, any
8 person who contravenes or fails to comply with any
9 provision or requirement of this Act, any rules made
10 under this Act, a licence issued under this Act, or any
11 direction, order or decision of the Authority or the
12 appeals panel, commits a general offence."

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

16 "Section 384. Penalties.

17 Any person who is convicted of an offence under section
18 382 or 383 is liable:

19 (a) In the case of a natural person, to a fine
20 not exceeding \$50,000 and to imprisonment for a term not
21 exceeding one year, and in the case of a continuing
22 offence, to a further fine not exceeding \$10,000 for
23 each day during which the offence continues;

24 (b) In the case of a corporation or other entity,
25 to a fine not exceeding 5% of the gross revenues of the

1 corporation or entity in its previous financial year,
2 and in the case of a continuing offence, to a further
3 fine not exceeding \$100,000 for each day during which
4 the offence continues."

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

8 "Section 385. Corporations or other entities.

9 Where a corporation or other entity commits an offense
10 under this Act, any director, officer, employee or agent
11 of the corporation or entity who directed, authorized,
12 assented to, acquiesced to or participated in the
13 conduct of the offence shall be a party to and guilty of
14 the offence, and shall be liable to the punishment
15 provided for that offence in respect of a natural
16 person. A corporation or other entity contravenes a
17 provision of this Act if an employee, agent or officer
18 of the corporation or entity engages in the offending
19 conduct and that person is acting within the actual or
20 apparent scope of his actual or apparent authority."

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

24 "Section 386. Forfeiture of device.

25 In the case of a conviction for an offense under this

1 Act or any rules made under this Act, any device in
2 relation to which or by means of which the offence was
3 committed may be:

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

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

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

10 "Section 387. Prosecution.

11 The Attorney General may appoint Special Assistant
12 Attorneys General, pursuant to the Attorney General's
13 Office Act 2002, to prosecute offences under this Act
14 subject to any conditions or restrictions imposed."

15 Section 90. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by adding a new
17 section 388 under chapter 3, to read as follows:

18 "Section 388. Exclusion of liability.

19 (1) The Federated States of Micronesia, the Secretary,
20 the Authority, an Inspector, or any other person
21 exercising or performing powers or functions under this
22 Act shall not:

23 (a) Be liable in respect of any action, claim, or
24 demand that may be brought or made by any person in
25 respect of any bodily injury or damage to property or

1 any other circumstances arising from any act permitted
2 by a licence issued under this Act; and

3 (b) Be subject to any action or claim, other than
4 by way of judicial review, arising from the good faith
5 exercise or intended exercise of any functions or powers
6 under this Act.

7 (2) No licensee or person engaging in conduct licensed
8 under this Act, or an employee or agent of such a
9 person, shall be liable in any criminal proceedings or
10 in any suit for damages by reason of his having in the
11 course of his employment transmitted or conveyed by any
12 communications, or taken any part in transmitting or
13 conveying by any communications, any defamatory libel."

14 Section 91. Title 21 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by adding a new
16 section 389 under chapter 3, to read as follows:

17 "Section 389. Establishment of Open Access Entity and
18 authority to acquire assets and assume liabilities and
19 obligations.

20 (1) Should the Secretary certify that it is in the
21 interests of the Federated States of Micronesia for a
22 corporation owned by the Government to be established
23 under this section in order to own and operate submarine
24 and terrestrial cable assets within the Federated States
25 of Micronesia or serving the Federated States of

1 Micronesia (the Open Access Entity), the corporation
2 shall be deemed to be established as at the vesting
3 date, and with such assets and liabilities, specified in
4 such certificate.

5 (2) The Open Access Entity shall provide international
6 and domestic connectivity for the transmission of data
7 for communications services as a wholesaler but not at
8 retail. Such connectivity shall be provided on non-
9 discriminatory and cost-based terms.

10 (3) The assets, liabilities and obligations referred
11 to in a certificate issued under subsection (1) or any
12 amending or supplementary certificate issued by the
13 Secretary may be described specifically or by class, and
14 no objection shall be taken in any court to the accuracy
15 or completeness of such description.

16 (4) Nothing in this section shall restrict or prevent
17 the Open Access Entity from acquiring other assets or
18 undertaking other activities that in the opinion of the
19 board of the Open access Entity are required in order to
20 provide the services referred to in subsection (3).

21 Section 92. Title 21 of the Code of the Federated States of
22 Micronesia, as amended, is hereby further amended by adding a new
23 section 390 under chapter 3, to read as follows:

24 "Section 390. Open Access Entity.

25 (1) The Open access Entity shall be a shareholding

1 company with a paid-up share capital equal to the amount
2 certified by the Public Auditor to be the amount by
3 which the assets of the Open Access Entity as at the
4 vesting date exceed its liabilities. Such share capital
5 shall be divided into paid-up common shares of such
6 denominations as shall be specified in the certificate
7 issued under subsection (1) and shall be issued in equal
8 numbers to the Secretary of Finance and the Secretary of
9 the Department of Transportation, Communications &
10 Infrastructure. The shareholding Secretaries shall hold
11 the shares for and on behalf of the Government.

12 (2) The directors of the Open Access Entity shall be
13 persons who in the opinion of the shareholding
14 Secretaries shall be qualified to assist the corporation
15 to operate its business, and shall be appointed and
16 removed by the shareholding Secretaries by resolution.
17 Save as provided in this section, all decisions relating
18 to the operation of the corporation shall be made by or
19 pursuant to the authority of the board of directors.

20 (3) The shareholding Secretaries may, after consulting
21 with the board, by written notice to the board determine
22 the amount of dividend payable by the corporation in
23 respect of any financial year and the board shall comply
24 with the notice.

25 (4) The board shall supply to the shareholding

1 Secretaries or to such persons or class of persons as
2 either of the Secretaries specifies such information
3 relating to the affairs of the corporation as either of
4 those Secretaries requests after consultation with the
5 board. Such information request shall not include any
6 information relating to an individual employee or
7 customer of the corporation.

8 (5) A shareholding Secretary may at any time, by
9 written notice to the secretary of the corporation,
10 authorise, on such terms and conditions as are specified
11 in the notice, such person as the Secretary thinks fit
12 to act as the Secretary's representative at any or all
13 of the meetings of shareholders of the corporation. Such
14 representative may exercise the same powers on behalf of
15 the Secretary as the Secretary could exercise if present
16 in person at the meeting.

17 (6) A 'major transaction' in relation to the
18 corporation means:

19 (a) The acquisition of, or an agreement to
20 acquire, whether contingent or not, assets the value of
21 which is more than half the value of the corporation's
22 assets before the acquisition; or

23 (b) The disposition of, or an agreement to
24 dispose of, whether contingent or not, assets of the
25 corporation the value of which is more than half the

1 value of the corporation's assets before the
2 disposition; or

3 (c) A transaction that has or is likely to have
4 the effect of the corporation acquiring rights or
5 interests or incurring obligations or liabilities,
6 including contingent liabilities, the value of which is
7 more than half the value of the corporation's assets
8 before the transaction.

9 (7) In assessing the value of any contingent liability
10 for the purposes of paragraph c of subsection (a), the
11 directors must have regard to all circumstances that the
12 directors know, or ought to know, affect or may affect
13 the value of any contingent liability, may rely on
14 estimates of the contingent liability that are
15 reasonable in the circumstances, and may take account of
16 the likelihood of the contingency occurring and any
17 claim that the corporation is entitled to make and can
18 reasonably expect to be met to reduce or extinguish the
19 contingent liability.

20 (8) The unanimous assent of the shareholders of the
21 corporation shall be required to any major transaction

22 Section 93. Title 21 of the Code of the Federated States of
23 Micronesia is hereby amended, by inserting section 391 under
24 chapter 3, to read as follows:

25 "Section 391. Rules and regulations.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10