FOURTEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA
SECOND REGULAR SESSION, 2005 C.B. NO. 14-103

A BILL FOR AN ACT

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

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

Section 1. Purpose. Section 203 of title 21 of the Code of the Federated States of Micronesia currently grants to FSM Telecommunications Corporation a monopoly in the providing of all telecommunications services in the FSM, with the exception of radio and television broadcasting. In the more than 20 years since that law was enacted, telecommunications technology has progressed dramatically. Cellular phones and internet service, in particular, have changed how the people of the FSM communicate with each other and with the outside world. Access to sophisticated telecommunications technology has become essential for many of the nation’s businesses. The well-being of the citizens of the FSM and the nation’s economic development will be promoted by the availability of affordable, high-quality telecommunications services. Experience in other parts of the world has shown that competition can cause telecommunications providers to reduce the costs and improve the quality of the services that they offer. The purpose of this act is to permit competition in the providing of such services in the FSM to the
extent that it is consistent with the public interest. The Secretary of the Department of Transportation, Communications and Infrastructure is empowered to authorize such competition, but only if technically feasible and compatible with the paramount objective of making reliable, affordable telephone service available to the people and businesses of the FSM.

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

"Section 203. Powers and responsibilities of the Corporation.

The Corporation has the following powers and responsibilities:

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

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

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

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

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

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

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

(8) to incur indebtedness for the purpose of expanding and improving telecommunications facilities,
Section 3. Title 21 of the Code of the Federated States of Micronesia is hereby amended by enacting a new chapter 4 to be entitled "Competition in Telecommunications".

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

"Section 401. Definitions.

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

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

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

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

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

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

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

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

Section 5. Title 21 of the Code of the Federated States of Micronesia "Section 402. Telecommunication Permits."
(1) With the exception of FSM Telecom, no person may offer or provide telecommunications services within the Federated States of Micronesia, or between points within the Federated States of Micronesia and points outside thereof, except pursuant to a valid telecommunications permit.

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

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

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

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

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

(a) The financial and technical capability of the
applicant to provide, for the term of the permit, the telecommunications services that it proposes to provide;

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

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

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

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

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

(4) If the Secretary determines that a telecommunications permit should be issued, he may, in
the permit, place such conditions or limits on the telecommunications services to be provided as are consistent with this chapter and the best interests of the nation.

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

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

"Section 403. Regulations. The Secretary shall promulgate such regulations as may be necessary to implement this chapter, including, without limitation, regulations identifying the information to be provided to the Secretary by applicants for telecommunications permits, and specifying application fees and fees for the issuance of telecommunications permits."

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

"Section 404. Revocation and Suspension of Permits. The Secretary may suspend or revoke the telecommunications permit of any person that the
Secretary finds to have (1) provided false or misleading information when applying for a permit or the renewal of a permit, (2) violated any law of the Federated States of Micronesia or of any state thereof in the course of its telecommunication services business, (3) violated any term, limit or condition of the permit, including any limitation on the telecommunication services that may be provided under the authority of the permit, or (4) abandoned the permit. For the purposes of this section, a telecommunications permit holder may be deemed to have abandoned its permit if it does not provide services, as authorized by the permit, for any period of twelve consecutive months during the term of the permit. The Secretary may also revoke a permit pursuant to section 405(3) of this chapter."

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

"Section 405. Non-Transferability.

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

(2) No permit may be sold, transferred or assigned by the permit holder to any other person without the
written approval of the Secretary. The Secretary shall approve the sale, transfer or assignment unless he finds that it is not in the public interest. The permit holder shall provide to the Secretary such information with respect to the sale, transfer or assignment as may be requested by the Secretary.

(3) Any permit holder which is not a natural person shall advise the Secretary within ten days of the occurrence of any change of control of the permit holder. For the purposes of this section, a 'change of control' shall be deemed to have occurred upon (a) the sale or liquidation of the permit holder, (b) a sale of all or substantially all of the assets of the permit holder, or (c) a change, through one or more related or unrelated transactions, in the beneficial ownership of thirty percent or more of the permit holder, as it existed at the time of application for the telecommunications permit, as evidenced by ownership of the stock of the permit holder, partnership shares, or other pertinent measure of ownership. The permit holder shall provide the Secretary with such information as the Secretary may request with respect to the change of control. Following a change of control, the Secretary may modify or revoke the telecommunications permit upon a finding that such action is in the public interest.
In considering whether to modify or revoke the permit, the Secretary shall take into account the factors set forth in section 402 of this title and the effect, if any, upon customers of the permit holder if the permit were to be modified or revoked. The Secretary may revoke or suspend a telecommunications permit upon a finding that the permit holder has failed to report a change of control as required in this section."

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

"Section 406. Facilities Access.
The Secretary may order FSM Telecom to provide, to a permit holder, such access to FSM Telecom facilities and services as may be necessary to enable the permit holder to provide telecommunications services authorized by a telecommunications permit, provided that FSM Telecom shall not be so ordered (1) if such access is not technically feasible, or (2) if access cannot be provided without substantially impairing FSM Telecom’s ability to provide telecommunications services to its customers. If FSM Telecom is required, under this section, to provide a permit holder with access to FSM Telecom facilities or services, it shall do so on commercially reasonable terms. FSM Telecom may charge
the permit holder an access fee, sufficient to cover its reasonable costs, if any, of providing such access, including a reasonable contribution to the capital cost of the assets employed in providing access, and a reasonable profit."

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

"Section 407. Grievances.
Any person adversely affected or aggrieved by any action of the Secretary under this chapter may seek review under the provisions of chapter 1 of title 17 of the Code of the Federated States of Micronesia."

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

Date: 9/20/05 Introduced by: /s/ Moses A. Nelson
Moses A. Nelson