



The President
Palikir, Pohnpei
Federated States of Micronesia

PRESIDENTIAL COMM. NO. 18-254
FSM CONGRESS

April 3, 2014

The Honorable Dohsis Halbert
Speaker
18th FSM Congress
Palikir, Pohnpei, FM 96941

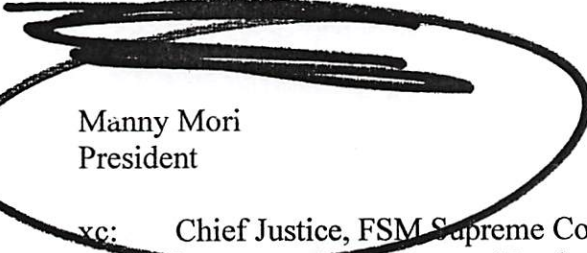


Dear Speaker Halbert:

This is to inform you that I have signed and designated the following Congressional Act as Public Law No. 18-52:

Congressional Act No. 18-56, "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."

Sincerely,



Manny Mori
President

xc: Chief Justice, FSM Supreme Court
Secretary, Department of Justice
Director, Office of SBOC
Legislative Counsel, CFSM ✓
Library, CFSM
PIO, FSM



CONGRESS OF THE FEDERATED STATES OF MICRONESIA

P.O. Box PS 3
Palikir, Sokehs
Pohnpei State, FM 96941
Tel: (691) 320-2324 / 2338
Fax: (691) 320-5122

PRESIDENTIAL COMM. NO. 18-254
FSM CONGRESS

Office of the Chief Clerk

April 02, 2014



His Excellency Manny Mori
President
Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear President Mori:

I have the honor to transmit herewith Congressional Act No. 18-56, "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", which was passed by the Eighteenth Congress of the Federated States of Micronesia, Third Special Session, 2014, by a two-thirds vote of all the State delegations as required and as duly certified.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Liwiana Ramon Ioanis". The signature is fluid and cursive.

Liwiana Ramon Ioanis
Chief Clerk, Congress of the
Federated States of Micronesia

Enclosures



PRESIDENTIAL COMM. NO. 18-254
FSM CONGRESS

EIGHTEENTH CONGRESS OF THE
FEDERATED STATES OF MICRONESIA
THIRD SPECIAL SESSION
MARCH 24 – APRIL 02, 2014

PUBLIC LAW No. 18- 52

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.

INTRODUCED BY SENATOR: FLORENCIO S. HARPER (BY REQUEST)

DATE: MARCH 24, 2014

REFERRED TO: COMMITTEE ON TRANSPORTATION AND COMMUNICATIONS

S.C.R. NO. 18-131 – MARCH 28, 2014

FIRST READING: MARCH 31, 2014

SECOND READING: APRIL 01, 2014

A handwritten signature in blue ink, appearing to read "Liwiana Ramon Ioanis".

Liwiana Ramon Ioanis
Chief Clerk, FSM Congress



CONGRESS OF THE FEDERATED STATES OF MICRONESIA

P.O. Box PS 3
Palikir, Sokehs
Pohnpei State, FM 96941
Tel: (691) 320-2324 / 2338
Fax: (691) 320-5122

Office of the Speaker

PRESIDENTIAL COMM. NO. 18-254
FSM CONGRESS

ACT NO. 18-56

(CONGRESSIONAL BILL NO. 18-145, C.D.1)

We hereby certify that on April 01 the foregoing act passed
Second and Final Reading of the Eighteenth Congress of the
Federated States of Micronesia, Third Special Session,
2014, by a two-thirds vote of all the State delegations as
required under article IX, section 20, of the Constitution
of the Federated States of Micronesia.

Dohsis Halbert
Speaker
Congress of the
Federated States of Micronesia

A handwritten signature in blue ink, appearing to read "Liwiana Ramon Ioanis", is written over a large, stylized blue circular stamp or seal.

Liwiana Ramon Ioanis
Chief Clerk
Congress of the
Federated States of Micronesia

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

1 telecommunications facilities and services;

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

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

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

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

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

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

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

9 "Section 205. Legal capacity of the Corporation.

10 In performing the functions authorized under this
11 chapter or other law of the Federated States of
12 Micronesia, the Corporation shall have the capacity to
13 exercise all powers normally exercised by a corporation,
14 including, but not limited to, the following:

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

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

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

19 (4) to acquire, in any lawful manner, real, personal,
20 or mixed property, either tangible or intangible; to
21 hold, maintain, use, and operate such property; and to
22 sell, lease, or otherwise dispose of such property;

23 (5) to borrow or raise any sum or sums of money and
24 to issue corporate bonds on such security and upon such
25 terms as may from time to time be deemed necessary for

1 the expansion and improvement of communications
2 facilities;

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

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

10 Section 3. Section 208 of Title 21 of the Code of the
11 Federated States of Micronesia, as amended by Public Laws Nos.
12 11-26 and 17-03, is hereby deleted in its entirety.

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

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

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

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

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

1 (a) 'access' means the provision of access to a
2 bottleneck facility by one licensee to another for the
3 purpose of the second licensee providing communications
4 services;

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

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

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

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

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

24 (g) 'communications' means the conveyance from
25 one device to another of any message by means of any

1 wire, radio, optical, electric, magnetic,
2 electromagnetic, or similar system;

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

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

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

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

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

1 negotiated individually;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Provided only over an exempt network;
or

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

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

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

(v) 'interconnection' means the physical and logical linking of communications networks of different licensees in order to allow the customers of one licensee to communicate with customers of the same or

1 another licensee, or to access the communications
2 services of another licensee;

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

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

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

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

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

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

23 (ii) Payments made by the service provider
24 to an unrelated person outside the Federated States of
25 Micronesia for the carriage of telecommunications

1 traffic originating in the Federated States of
2 Micronesia to destinations outside of FSM;

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

6 (i) The first equipment socket in a private
7 residence;

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

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

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

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

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

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

23 (af) 'President' means the President of the
24 Federated States of Micronesia;

25 (ag) 'radio communication' has the meaning

1 assigned to that term in the Federated States of
2 Micronesia Radio Communication Act of 1991, codified as
3 Chapter 1 Title 21 of the Code of the Federated States
4 of Micronesia;

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

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

12 (aj) 'sensitive information' has the meaning
13 given in section 322(5);

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

15 (i) Owns a communications network; or

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

18 (iii) Has applied for a licence or exemption
19 under this Act;

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

25 (i) Radio communications transmission

1 links;

2 (ii) Cable transmission links; and

3 (iii) Cable access networks;

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

8 (an) 'universal access plan' has the meaning
9 given in section 367;

10 (ao) 'Universal Access Special Revolving Fund'
11 means the Universal Access Special Revolving Fund
12 established under section 365;

13 (ap) 'user' means any person using a
14 communications service, regardless of whether such a
15 person is contracted to acquire the service.

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

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

24 "Section 303. General objectives

25 (1) The objectives of this Act are:

1 (a) Providing transparent, technologically and
2 competitively neutral regulation, which focuses on
3 promoting the long-term interests of users;

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

9 (c) Providing conditions for effective
10 competition among service providers in the Federated
11 States of Micronesia and encouraging efficient and
12 sustainable investment in and use of communications
13 networks and services;

14 (d) Providing a licensing regime which promotes
15 entry of new licensees and which fosters investment and
16 innovation in communications networks and the supply of
17 communications services;

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

24 (f) Protecting the interests of consumers and
25 regulating prices;

1 (g) Promoting the development of communications
2 in the Federated States of Micronesia, as far as
3 practicable in accordance with recognised international
4 standards and practices;

5 (h) Promoting the effective and efficient use of
6 the radio frequency spectrum, numbers, rights of way,
7 and other finite resources;

8 (i) Extending access to communications services
9 to all persons in the Federated States of Micronesia, to
10 the greatest extent reasonable in the circumstances; and

11 (j) Promoting the appropriate use of
12 communications networks and communications services."

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

16 "Section 304. Establishment of the Authority.

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

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

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

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

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

5 For the purpose of achieving the objectives referred to
6 in section 303, the Authority shall:

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

9 (b) Regulate access to and the sharing of
10 communications facilities and interconnection of certain
11 communications networks of licensees where such matters
12 are not agreed to by the licensees;

13 (c) Monitor and enforce compliance with
14 competition requirements and determine when industry
15 consolidation is permissible;

16 (d) Regulate the protection of consumers, the
17 charges levied by licensees for communications networks,
18 and the communications services and attributes of
19 communications services;

20 (e) Specify the technical standards and
21 procedures for interconnection, the operation of
22 communications networks, and the provision of
23 communications services;

24 (f) Regulate types and characteristics of
25 communications equipment which may be connected to a

1 communications network;

2 (g) Monitor and report on the development and
3 performance of the communications sector in supplying
4 services and the contribution of the communications
5 sector to the overall development of the Federated
6 States of Micronesia;

7 (h) Monitor the quality of services provided by
8 licensees and ensure that licensees conform to standards
9 specified by the Authority;

10 (i) Manage the radio frequency spectrum required
11 to provide communications services, including numbering
12 and electronic addressing, and where practicable assist
13 licensees in obtaining access to land for communications
14 networks;

15 (j) Administer universal service arrangements
16 for the supply of communications services throughout the
17 Federated States of Micronesia;

18 (k) Give effect to policies approved by the
19 Authority or the President;

20 (l) Where required by the Secretary, represent
21 the Government in international conferences or
22 international and other organisations concerned with
23 communications;

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

(n) Undertake consultations on matters relating to communications;

(o) Take enforcement action under this Act;

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

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

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

"Section 306. Appointment and removal of members.

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

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

(3) The President shall not appoint a person as Chief

1 Executive under subsection (1) unless in the opinion of
2 the President the person:

3 (a) Has demonstrated experience of not less than
4 10 years in the fields of economics, law, finance,
5 business, engineering or public administration in
6 relation to the communications sector; and

7 (b) Is not disqualified for appointment under
8 subsection (5).

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

15 (5) The President shall not appoint a person as an
16 additional member under subsection (1) unless in the
17 opinion of the President the person:

18 (a) Has demonstrated experience in the fields of
19 economics, law, finance, business, engineering or public
20 administration in relation to the communications sector;
21 and

22 (b) Is not disqualified for appointment under
23 subsection (6).

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

1 (a) Is found or declared to suffer from mental
2 or physical incapacity;

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

6 (c) Is or has been declared bankrupt or
7 insolvent;

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

10 (e) In the case of the Chief Executive, is a
11 staff member or officer of a department or agency of the
12 Government; or

13 (f) Holds a direct or indirect financial or
14 other interest in any service provider other than
15 through a fund over which the person has no control or
16 influence.

17 (7) The President may remove a member who is
18 disqualified under subsection (6), or has committed a
19 serious breach of the terms of appointment as such
20 member.

21 (8) A member may resign from the Authority upon one
22 month's written notice to the President, or such shorter
23 time as the President and the member may agree in
24 writing.

25 (9) If any member of the Authority dies or ceases to

1 hold office before the expiration of the term for which
2 he was appointed, the term of office of his successor
3 shall be so fixed as to expire at the end of the first-
4 mentioned term.

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

11 (11) Any Acting Chief Executive appointed under
12 subsection (10) shall during his period of appointment
13 have and exercise all the powers of the Chief
14 Executive."

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

18 "Section 307. Remuneration of members.

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

1 the other members."

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

5 "Section 308. Incorporation and legal capacity of the
6 Authority.

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

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

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

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

22 "Section 309. Procedure of the Authority.

23 (1) Where no additional members have been appointed,
24 the Chief Executive shall exercise all the functions and
25 powers of the Authority.

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

10 (3) Except as provided in subsections (1) and (2),
11 the Authority shall determine its own procedure as the
12 Authority shall consider is necessary for the equitable
13 and transparent exercise of its powers or for the
14 effective administration of the Authority."

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

18 "Section 310. Duty of members to disclose conflicts of
19 interest.

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

1 disclose the nature of his interest to the President.

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

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

6 (b) By the Chief Executive confirming in writing
7 to the President the nature of his conflict of interest
8 where the Chief Executive is the sole member.

9 (3) The disclosing member:

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

13 (b) Shall be disregarded for the purpose of
14 constituting a quorum of the Authority for any such
15 deliberation or decision."

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

19 "Section 311. Chief Executive.

20 The Chief Executive shall be:

21 (a) Primarily responsible for the execution of
22 the policies, and the implementation of the decisions,
23 of the Authority;

24 (b) Primarily responsible for the supervision
25 and day-to-day management of the affairs of the

1 Authority and its staff; and

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

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

6 "Section 312. Delegation by Chief Executive.

7 The Chief Executive may, in writing, delegate any of his
8 powers and functions in his capacity as Chief Executive
9 to any of the staff of the Authority, except this power
10 of delegation."

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

14 "Section 313. Employees of the Authority.

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

18 (2) The terms of employment shall include an
19 obligation to comply with ethics rules adopted by the
20 Authority that shall be comparable with appropriate
21 modifications to those applicable to employees of the
22 Public Service System from time to time.

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

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

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

5 The Chief Executive shall by signature authenticate the
6 application of the seal of the Authority."

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

10 "Section 315. Presumption of authenticity of documents
11 issued by the Authority.

12 Any document purporting to be an instrument issued by
13 the Authority and sealed as aforesaid or signed on
14 behalf of the Authority or by the Chief Executive on
15 behalf of the Authority shall be received in evidence
16 and shall be deemed to be such an instrument without
17 further proof unless the contrary is shown."

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

21 "Section 316. Protection of members of the Authority.

22 No personal liability shall attach to any member or
23 staff of the Authority in respect of anything done or
24 permitted in good faith under the provisions of this
25 Act."

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

4 "Section 317. Government policies and international
5 conventions.

6 (1) The Secretary shall:

7 (a) Before recommending to the President any
8 general policy in relation to communications, consult
9 with the Authority, licensees and other interested
10 persons and allow a reasonable period for consultation;
11 and

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

14 (2) The Authority shall publish policies notified to
15 it under subsection (1).

16 (3) The Authority shall:

17 (a) Give effect to a Government policy notified
18 under subsection (1) to the extent possible consistent
19 with this Act; and

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

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

25 Section 22. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 318 under chapter 3, to read as follows:

3 "Section 318. Exemption from income tax, customs duty
4 and import levy.

5 Notwithstanding the provisions of any other Act, the
6 income of the Authority shall be exempt from payment of
7 income tax, and the Authority shall not be liable for
8 the payment of customs duty and import levy, or any
9 other tax having a similar effect."

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

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

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

18 (2) Notwithstanding the provisions of any other Act,
19 charges and fees payable to the Authority pursuant to
20 this Act shall be payable to the Authority's nominated
21 bank account.

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

25 (4) The Authority shall by:

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

4 (b) 31 March of each year, cause its accounts
5 for the previous financial year to be audited by the
6 Public Auditor;

7 (c) 30 June of each year, submit to the
8 President and publish the audited accounts and an annual
9 report on its activities for the previous financial
10 year; and

11 (d) 30 June of each year, submit to the
12 President a report on all significant matters relating
13 to the performance and efficiency of the communications
14 sector, with particular reference to the:

15 (i) Adequacy and quality of services; and
16 (ii) Contribution of the communications
17 sector to economic development in the Federated States
18 of Micronesia.

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

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

22 (b) A list of the interconnection and access
23 agreements then in force;

24 (c) A summary of any material litigation
25 involving the Authority;

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

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

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

12 "Section 320. Efficiency audit.

13 (1) The President may at any time direct the Public
14 Auditor to undertake an efficiency audit of the
15 Authority.

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

18 (a) Review the Authority's annual budget for the
19 current fiscal year and the Authority's forecasts for
20 the following two fiscal years;

21 (b) Assess whether the budget and forecasts are
22 reasonable having regard to the Authority's functions
23 under this Act; and

24 (c) Provide a report to the Authority and the
25 President outlining these findings and, if practicable,

1 recommend changes to the Authority's budget and
2 forecasts.

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

6 (4) The Authority shall fully cooperate in the
7 conduct of the efficiency audit by providing assistance
8 including giving access to and full disclosure of
9 documents and financial records of the Authority to the
10 auditor.

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

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

24 "Section 321. Consultation.

25 (1) The Authority shall carry out such consultations

1 as are required by this Act. The Authority may also
2 carry out such other consultations with interested
3 persons as it deems appropriate in the circumstances.

4 (2) Where this Act requires the Authority to conduct
5 a consultation, the Chief Executive shall publish a
6 written notice specifying:

7 (a) The power which the Authority intends to
8 exercise;

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

11 (c) The reasons for the intended exercise of
12 that power.

13 (3) Where this Act requires the Authority to conduct
14 consultation with a particular person, the Chief
15 Executive shall also provide the written notice
16 specified in subsection (2) to that person.

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

23 (5) The Authority shall take into account any
24 submission it receives under subsection (4) by the due
25 date. The Authority is not prohibited from taking into

1 account a submission it receives after the due date.

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

5 (7) The Authority shall, before making a final
6 decision:

7 (a) Publish a draft decision; and

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

12 (8) If the Authority issues a draft decision,
13 subsections (2) to (6) shall apply to the draft
14 decision, as if references to the written notice
15 provided under subsection (2) were references to the
16 draft decision.

17 (9) After making a final decision, the Authority
18 shall promptly;

19 (a) Publish that decision; and

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

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

25 "Section 322. Publication and use of information

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

3 (a) All rules or other instruments made under
4 this Act;

5 (b) All licences and exemptions issued under
6 this Act; and

7 (c) Such other documents it is required to
8 publish under this Act.

9 (2) Where the Authority is required to publish a
10 document, the Authority:

11 (a) Shall publish the document on its website;
12 and

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

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

23 (4) Subsection (3) shall also apply to a person who
24 publishes, discloses or uses sensitive information after
25 ceasing to be a member, employee or agent of the

1 Authority.

2 (5) Subject to subsection (8), 'sensitive
3 information' means information:

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

5 (b) Not already in the public domain;

6 (c) Designated as confidential or proprietary by
7 that person because:

8 (i) The person has a legal obligation to
9 keep the information confidential;

10 (ii) The information is commercially
11 sensitive to the person;

12 (iii) Disclosure would compromise effective
13 competition in a communications market; or

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

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

23 (7) Where information is provided to the Authority
24 voluntarily, upon receipt of a notice issued under
25 subsection (6) the submitter may within 3 days of

1 receipt by notice to the Authority withdraw the
2 information, in which case:

3 (a) The Authority shall not have regard to the
4 information; and

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

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

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

13 (a) Publish such information in reports
14 concerning the state of a communications market in the
15 Federated States of Micronesia;

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

21 (10) The Authority may in the course of taking any
22 action or making any decision in regard to an
23 interconnection or access dispute supply any sensitive
24 information provided by a party to that dispute to
25 representatives of another party to the dispute where

1 the Authority is satisfied that the confidentiality of
2 the information is protected by legal privilege or that
3 other steps have been taken to ensure that the use of
4 that information is restricted to the proper conduct of
5 the dispute."

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

9 "Section 323. Service of notices.

10 Unless otherwise expressly provided in this Act, any
11 document required or authorised by this Act to be
12 provided to or served on any person, may be provided or
13 served on the person concerned by:

14 (a) Delivering it to the person or to some adult
15 member or employee of that person's family at the
16 person's last known residence;

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

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

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

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

1 (i) Delivering it to the secretary or other
2 similar officer of the body corporate at its registered
3 or principal office; or

4 (ii) Sending it by registered post addressed
5 to the body corporate at its registered or principal
6 office."

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

10 "Section 324. Delegation of powers to other regulatory
11 bodies.

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

21 (b) Any decisions or actions of a regional or sub-
22 regional regulatory body taken in accordance with a
23 delegation under subsection (1) shall have full force
24 and effect in the Federated States of Micronesia as a
25 decision or action of the Authority."

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

4 "Section 325. Review options.

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

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

9 (b) For a review by way of appeal under section
10 328; or

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

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

16 (a) If the person has not applied for
17 reconsideration of the determination, decision or order
18 under section 326;

19 (b) If the person has applied for
20 reconsideration and the Authority has not yet made a
21 decision as to whether to reconsider the determination,
22 decision or order; or

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

25 (d) If the person has applied for a review and

1 the appeals panel has not yet made a decision on that
2 application.

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

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

10 "Section 326. Reconsideration of determinations,
11 decisions or orders.

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

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

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

20 (b) The reasons for which the reconsideration is
21 sought; and

22 (c) The action sought on reconsideration.

23 (3) The Authority shall, within 20 days from receipt
24 of an application under subsection (1), consider the
25 application and notify the applicant as to whether the

1 determination, decision or order will be reconsidered.

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

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

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

17 "Section 327. Appointment of experts.

18 (1) The Secretary shall establish a register of
19 experts who shall be available to act as members of an
20 appeals panel constituted under section 328. In
21 establishing and maintaining the register, the Secretary
22 shall consult with the Authority and with all service
23 providers.

24 (2) The Authority or any service provider may from
25 time to time nominate additional persons for inclusion

1 in the register. Such additional person or persons
2 shall be added to the register unless there is an
3 objection either from the Authority or any service
4 provider.

5 (3) The register of experts shall comprise at all
6 times at least three persons who collectively have
7 commercial, technical and legal expertise in the field
8 of communications.

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

11 (a) Meets the eligibility criteria to be
12 appointed a member of the Authority; or

13 (b) Has at least 10 years international
14 experience in the regulation of communications markets;
15 and

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

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

22 (6) The Authority shall act as the secretariat for
23 the appeals panel and shall publish the membership of
24 the register of experts."

25 Section 32. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by adding a new
2 section 328 under chapter 3, to read as follows:

3 "Section 328. Appeals.

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

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

8 (a) Specify the decision to which the
9 application relates;

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

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

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

24 (4) Should the parties to the decision appealed
25 against be unable to agree within 5 working days of the

1 delivery of the list, the secretariat may either
2 nominate an additional name or names from the register,
3 in which case the parties shall have a further 5 working
4 days to agree on the composition of the appeals panel,
5 or may choose the members of the appeal panel from
6 amongst the persons nominated by the secretariat.

7 (5) If more than one member is appointed to the
8 appeals panel, the secretariat shall designate one
9 member of the panel as the Chair whose opinion shall
10 determine the appeal in the event of a tie.

11 (6) The appeals panel:

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

18 (b) May determine an application on the papers
19 or convene a hearing in person or by teleconference or
20 other means that permits all those participating to
21 communicate with each other simultaneously and
22 instantaneously; and

23 (c) In all other matters, may determine its own
24 procedures as it sees fit, provided that such procedures
25 do not give one person affected by the decision an

1 advantage over any other person affected by the
2 decision.

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

5 (a) Shall take into account information
6 submitted by a party to the appeal that updates the
7 information previously provided to the Authority; and

8 (b) May, in exceptional circumstances, take into
9 account new information submitted by a party to the
10 appeal.

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

13 (9) The appeals panel shall:

14 (a) Affirm the decision under review;

15 (b) Vary the decision under review;

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

19 (d) Refer the matter back to the Authority for
20 reconsideration in such respects as the panel shall
21 specify and the Authority shall comply with any such
22 direction.

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

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

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

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

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

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

"Section 329. Licence for communications network or service.

(1) Subject to subsections (5) and (6), no person may, in the FSM or between any place in the FSM and any place outside the FSM, except in accordance with an

1 operating licence issued under this Act:

2 (a) Own or operate a specified communications
3 network; or

4 (b) Provide a communications service.

5 (2) The Authority may issue the following types of
6 operating licences pursuant to the requirements of the
7 licensing rules:

8 (a) An individual licence, to authorise the
9 ownership or operation of any specified communications
10 network and the provision of any communications service;
11 and

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

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

17 (4) A class licence shall:

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

19 (i) The terms and conditions of the
20 licence; and

21 (ii) Any applicable eligibility criteria;
22 and

23 (b) Come into force with respect to any person
24 upon registration by that person under section
25 331(1)(b).

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

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

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

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

15 "Section 330. Licensing rules for communications
16 networks or services.

17 (1) The Authority may make licensing rules
18 specifying:

19 (a) Additional exempt services and exempt
20 networks and conditions attaching to such exemption;

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

25 (c) The eligibility criteria for individual

1 licences and registration under class licences;

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

6 (e) General licence conditions which apply to
7 all operating licences.

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

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

15 "Section 331. Obtaining a licence for communications
16 networks or services.

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

19 (a) For an individual licence; or

20 (b) For registration under a class licence.

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

23 (a) The applicant's application complies with
24 the licensing rules;

25 (b) The applicant pays any applicable

1 application fee to the Authority;

2 (c) The applicant meets the eligibility criteria
3 for the licence; and

4 (d) The licence is not of a type that is
5 restricted in number.

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

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

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

16 (a) The application for registration complies
17 with the licensing rules; and

18 (b) The applicant meets the eligibility criteria
19 for the licence.

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

24 (7) Any restrictions under other laws concerning
25 foreign investment in the Federated States of Micronesia

1 shall not apply to carrying on the business of owning or
2 operating a communications network or providing a
3 communications service by a licensee.

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

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

11 "Section 332. Spectrum Licensing Authority.

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

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

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

24 (a) Is open, non-discriminatory, competitively
25 neutral, objective and transparent;

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

5 (c) Is economically efficient and permits
6 evolution to new technologies and services."

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

10 "Section 333. Spectrum licensing rules.

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

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

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

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

24 (d) The process for submitting an application
25 for a spectrum licence including the intended timeframe

1 for the Authority to process an application;

2 (e) The eligibility criteria for a spectrum
3 licence;

4 (f) A fair and transparent method or methods of
5 selecting applicants in circumstances where applications
6 for spectrum licences exceed the available spectrum,
7 which may include a competitive tender;

8 (g) Procedures for a declaration that assigned
9 spectrum is assigned on a non-exclusive basis and the
10 making of further allocations of spectrum in the same
11 frequency band;

12 (h) Procedures for the vacation of spectrum that
13 has been assigned to any person and the assignment of
14 that spectrum to another person; and

15 (i) General licence conditions for spectrum
16 licences.

17 (2) In accordance with the Administrative Procedures
18 Act, the Authority shall promulgate appropriate rules
19 and regulation governing the use of radio frequency
20 spectrum."

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

24 "Section 334. Application for spectrum licence.

25 (1) Any person may apply to the Authority for a

1 spectrum licence for the purpose of providing
2 communications services.

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

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

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

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

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

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

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

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

24 Section 39. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 335 under chapter 3, to read as follows:

2 "Section 335. Licence conditions.

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

5 (a) Comply with this Act;

6 (b) Pay any applicable licence fees; and

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

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

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

15 "Section 336. Licence fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (a) With the consent of the licensee;

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

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

22 (i) Its licence application; or

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

25 (iii) If the licensee is insolvent, in

1 receivership, bankrupt or being wound up.

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

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

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

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

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

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

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

25 "Section 338. Commercial negotiation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 "Section 340. Disputes between licensees.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 "Section 341. Interconnection and access rules.

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

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

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

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

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

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

25 (b) Different prices are set by the appeals

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

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

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

9 "Section 342. New infrastructure.

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

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

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

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

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

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

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

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

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

1 The parties shall comply with such a direction."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (g) Designing or installing a communications

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

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

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

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

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

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

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

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

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

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

2 "Section 344. Contravention of competition provisions.

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

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

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

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

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

1 "Section 345. Industry consolidation.

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

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

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

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

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

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

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

1 subsection (3).

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

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

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

15 "Section 346. Publication of terms and conditions.

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

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

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

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

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

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

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

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

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

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

19 "Section 347. Pricing rules.

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

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

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

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

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

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

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

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

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

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

21 (5) The Authority may:

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

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

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

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

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

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

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

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

19 "Section 348. Fair dealing.

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

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

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

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

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

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

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

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

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

16 (ii) On a regular basis;

17 (iii) In a plain and simple format;

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

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

25 (b) Paid in advance for communications services,

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

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

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

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

17 "Section 349. Confidentiality of customer information.

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

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

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

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

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

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

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

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

24 (7) The Authority may make consumer protection rules
25 requiring a class of licensees to retain or not retain

1 specified information relating to customers, including
2 information about billing, beyond a specified period."

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

6 "Section 350. Confidentiality of customer
7 communications.

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

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

17 "Section 351. Access by government authorities.

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

24 Section 56. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by adding a new

1 section 352 under chapter 3, to read as follows:

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

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

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

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

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

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

24 (e) Comply with such conditions, implement such
25 procedures and provide such remedies in accordance with

1 their terms as approved by the Authority;

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

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

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

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

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

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

25 (4) Before making a determination under subsection

1 (3), the Authority shall consult with the licensee and
2 the affected consumer."

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

6 "Section 353. Directory assistance.

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

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

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

24 "Section 354. Quality of service.

25 (1) The Authority may make consumer protection rules

1 requiring a Dominant Service Provider to:

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

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

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

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

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

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

20 "Section 355. Technical standards.

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

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

25 (b) Customer equipment permitted to be attached

1 to licensees' communications networks.

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

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

9 "Section 356. Customer equipment standards.

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

14 (a) Does not conform to a relevant equipment
15 standard in the technical rules made under section
16 355(1);

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

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

22 (2) A licensee may:

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

25 (b) Cease or refuse to supply a communications

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

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

8 "Section 357. Numbering plan.

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

11 . (a) A numbering plan for communications
12 services;

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

16 (c) Rules regarding the assignment and use of
17 numbers;

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

24 (e) The assignment of numbers for emergency
25 services; and

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

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

5 (a) Has conducted a public consultation about
6 the inclusion of the provisions;

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

9 (c) Determines that the benefit outweighs the
10 costs of introducing number portability.

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

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

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

22 "Section 358. National emergency numbers.

23 A licensee that provides voice communications services
24 shall provide its subscribers with access to the numbers
25 specified in the numbering rules as being assigned for

1 emergency services free of charge."

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

5 "Section 360. Universal access policy.

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

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

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

16 (a) A voice calling service, either fixed or
17 mobile;

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

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

23 (d) Disaster relief services;

24 (e) Operator assistance for call set-up and
25 faults reporting; and

1 (f) Such other communications services
2 designated by the Secretary."

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

6 "Section 361. Universal access eligibility.

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

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

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

21 "Section 362. Universal access obligations.

22 (1) A licensee shall become subject to a universal
23 access obligation if:

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

1 (b) The licensee has assumed that obligation
2 under section 369.

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

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

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

21 "Section 363. Eligibility for universal access funding.

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

1 revolving fund.

2 (2) No licensee is entitled to funding from the
3 universal access special revolving fund for the
4 provision of services in a geographic area, and any
5 entitlement previously established shall cease, where a
6 substantial level of access to comparable communications
7 services is, in the opinion of the Authority, available
8 in that area from another licensee."

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

12 "Section 364. Administration of universal access
13 obligations.

14 The Authority shall ensure that universal access
15 obligations are administered in an open, transparent,
16 non-discriminatory, objective, and competitively neutral
17 manner, and are not more burdensome than necessary to
18 achieve the objectives of the universal access plan."

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

22 "Section 365. Universal access special revolving fund.

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

25 (2) The fund shall be used for the purposes in

1 accordance with the universal access plan.

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

3 (a) Any amounts transferred under section
4 319(6);

5 (b) Any amounts available under section by way
6 of spectrum license fees paid as a result of a
7 competitive tender process;

8 (c) Any grants or donations made to or for the
9 benefit of the fund;

10 (d) Appropriations made by Congress for the
11 purposes of the fund.

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

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

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

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

1 "Section 366. Universal access rules.

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

4 (a) Operation of the universal access special
5 revolving fund; and

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

8 (2) In addition to the matters set out under
9 subsection (1), the universal access rules may also
10 prescribe the:

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

13 (b) Requirements for persons entering a contract
14 with the Authority under section 369, including
15 conditions to coordinate development of communications
16 facilities with development of other infrastructure; and

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

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

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

4 "Section 367. Universal Access Plan.

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

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

14 "Section 368. Universal Access Projects.

15 The Authority shall prepare and publish one or more
16 project plans to address a universal access plan. A
17 project plan shall specify:

18 (a) The timing by which deployment of such
19 services (or communications facilities to enable such
20 services) in particular areas or segments of society of
21 the Federated States of Micronesia should take place;
22 and

23 (b) Any general requirements or specifications
24 for the provision of such communications services or
25 communications facilities."

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

4 "Section 369. Provision of universal access services.

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

9 (2) The Authority shall, before entering a contract
10 under subsection (1):

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

16 (b) If the Authority believes there would be
17 such competition, conduct a competitive tender for the
18 provision of those services or facilities in accordance
19 with the universal access rules.

20 (3) If the Authority considers that there is not
21 likely to be competition for the provision of the
22 communications services or communications facilities for
23 the maximum subsidy or concessional loan the Authority
24 could offer in fulfilment of the relevant project plan,
25 the Authority shall negotiate with any person the

1 Authority considers has the capability of providing
2 those services or facilities and may enter into a
3 contract for the provision of those services or
4 facilities in accordance with the project plan.

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

12 (5) The Authority shall be guided by the following
13 principles in requiring a licensee to enter into a
14 contract and specifying the terms of the contract under
15 subsection (4):

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

19 (b) The obligation to provide the relevant
20 communications services or communications facilities
21 shall not unfairly discriminate between licensees;

22 (c) The licensee shall receive reasonable
23 compensation having regard to the costs of providing the
24 communications services or communications facilities and
25 the revenues likely to be achieved from those services

1 or facilities; and

2 (d) The obligation to provide the relevant
3 communications services or communications facilities
4 shall not be more burdensome than is reasonably
5 necessary to achieve the objectives of the relevant
6 universal access plan.

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

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

14 "Section 370. Existing facilities.

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

23 (2) On receipt of a notice under subsection (1), the
24 existing provider and the parties with land rights shall
25 enter into good faith negotiations with the service

1 provider to agree on terms for the sharing of use rights
2 that will preserve competitive neutrality as between the
3 existing provider and the service provider.

4 (3) Should agreement be unable to be reached to the
5 reasonable satisfaction of the service provider, the
6 service provider may apply to the Authority for
7 assistance.

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

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

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

25 (7) The existing provider, the service provider or

1 any party with land rights may apply for reconsideration
2 under section 326 of a determination under subsection
3 (5)."

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

7 "Section 371. New facilities.

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

18 (2) Should the owner or occupier of the third party
19 land fail without reasonable excuse to provide access to
20 and use of the land under subsection (1), the Authority
21 may direct the owner or occupier to take such action as
22 the Authority deems fit in order to implement the
23 requirements of subsection (1) and the owner or occupier
24 shall comply with any such direction. A direction under
25 this subsection may include provision for defined

1 amounts by way of compensation to any of the parties
2 with land rights or may provide for compensation to be
3 determined by the Supreme Court of the Federated States
4 of Micronesia under section 373.

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

7 (a) The land concerned is residential land and
8 the access and use rights sought by a party to the
9 sharing agreement would be unreasonably intrusive on the
10 residential occupants of the land; or

11 (b) The land concerned is not residential land
12 and the provision of the access and use rights sought
13 would not be technically feasible.

14 (4) Any party to the sharing agreement or the owner
15 or occupier of the third party land may apply for
16 reconsideration under section 326 of a direction under
17 subsection (2)."

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

21 "Section 372. Land access charges.

22 (1) Charges proposed by land owners or land occupiers
23 may include:

24 (a) Actual or average administrative costs as a
25 result of a service provider being granted permission to

1 use land, and maintaining land to the extent costs
2 result from the use of the land by service providers;

3 (b) For each service provider, a pro rata share
4 (based on the percentage of total capacity used or
5 occupied) of capital improvements such as ducts,
6 fixtures and other permanent improvements to lands,
7 based on historic cost of the improvements.

8 The Authority may make rules governing a fair and
9 reasonable allocation of charges under sections 370 and
10 371."

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

14 "Section 373. Supreme Court may determine compensation.

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

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

1 "Section 374. Restoration after use.

2 If the relevant land owner or land occupier so requires,
3 the service provider shall at the end of the term of the
4 permitted use promptly remove all fixtures and other
5 improvements installed on the land at its own cost and
6 restore the land to its original condition."

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

10 "Section 375. Evidence.

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

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

24 (3) A certificate appearing to be signed by the
25 Authority and bearing the Authority's seal shall be

1 evidence of its contents without proof of the
2 signature."

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

6 "Section 376. Appointment of Inspectors.

7 (1) The Authority may appoint or designate Inspectors
8 for the purposes of verifying compliance with this Act
9 and with decisions or instruments of the Authority made
10 under this Act.

11 (2) An Inspector shall be provided with a certificate
12 of identity, which shall be presented at the request of
13 any person appearing to be in charge of any place
14 entered by the Inspector."

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

18 "Section 377. Powers of Inspector.

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

20 (a) Enter and inspect, at any reasonable time,
21 any place owned by or under the control of a service
22 provider or a person operating a device under a licence,
23 in which the Inspector believes on reasonable grounds
24 there is any document, information, equipment, or thing
25 relevant to the enforcement of this Act, and examine the

document, information, equipment, or thing or remove it for examination or reproduction, as the case may be;

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

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

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

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

(2) Where a place referred to in subsection (1) is a residence, an Inspector shall not enter that residence without the consent of the occupier, except:
Under the authority of a warrant issued under section 378; or
Where, by reason of special circumstances, it would not

1 be practical for the Inspector to obtain a warrant.

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

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

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

14 (6) Any person who obstructs an Inspector in the
15 exercise of the powers under this Act commits an
16 offence.

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

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

23 "Section 378. Search warrant.

24 (1) A judge may issue a warrant authorizing the
25 Inspector named in it to enter a residence, subject to

1 any conditions specified in the warrant, if the judge is
2 satisfied by information on oath that:

3 (a) Entry to a residence is necessary for the
4 purpose of performing any duty of an Inspector under
5 this Act; and

6 (b) Entry to the residence has been refused, or
7 there are reasonable grounds for believing that entry
8 will be refused.

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

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

16 "Section 379. Requirement to supply information or
17 documents or give evidence.

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

23 (a) To furnish to the Authority, by writing
24 signed by that person or, in the case of a corporation
25 or other entity, by a director or competent

1 representative of the corporation or other entity,
2 within the time and in the manner specified in the
3 notice, any information or class of information
4 specified in the notice; or

5 (b) To produce to the Authority, or to a person
6 specified in the notice acting on its behalf in
7 accordance with the notice, any document or class of
8 documents specified in the notice; or

9 (c) To appear before the Authority at a time and
10 place specified in the notice to give evidence, either
11 orally or in writing, and produce any document or class
12 of documents specified in the notice.

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

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

24 "Section 380. Interception and interference.

25 (1) A licensee and any person engaged in the

1 operation or provision of a communications network or
2 service shall intercept or disclose a message,
3 communication or customer information only pursuant to a
4 warrant under the hand of a judge in connection with the
5 investigation of any criminal offence or for the
6 purposes of any criminal proceedings where the maximum
7 penalty that may be imposed by a court is at least three
8 years in prison.

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

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

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

4 (5) If the Authority believes that a person is in
5 possession of data stored in a computer system or
6 retrievable from a data storage medium, which data is
7 necessary to investigate a breach of this Act, the
8 Authority may by written notice to that person, require
9 that person to allow the Authority to:

10 (a) Access the computer system or retrieve data
11 from the data storage medium;

12 (b) Seize or similarly secure the computer
13 system or data storage medium;

14 (c) Maintain the integrity of the relevant
15 stored data; and

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

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

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

22 (1) If the Authority believes on reasonable grounds
23 that a person is engaged in conduct that may contravene
24 this Act, then for the purposes of enforcing this Act,
25 the Authority may:

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

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

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

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

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

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

"Section 382. Specific offences.

Any person commits an offence if the person:

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

(b) Intentionally, without right or with dishonest intent or otherwise wrongful, accesses the

1 whole or any part of any communications facility by
2 infringing security measures;

3 (c) Intentionally, without right or with
4 dishonest or otherwise wrongful intent, intercepts by
5 technical means a transmission not intended for that
6 person or for public reception except in accordance with
7 section 384(3);

8 (d) Intentionally, without right and with
9 dishonest or otherwise wrongful intent, damages,
10 deletes, deteriorates, alters or suppresses data carried
11 by a communications network without right, where this
12 results in serious harm;

13 (e) Intentionally, without right and with
14 dishonest or otherwise wrongful intent, seriously
15 hinders the functioning of any communications facility
16 by inputting, transmitting, damaging, deleting,
17 deteriorating, altering or suppressing data;

18 (f) Intentionally, without right and with
19 dishonest or otherwise wrongful intent, possesses,
20 produces, sells, procures for use, imports, distributes
21 or otherwise makes available a device designed or
22 adapted primarily for the purpose of committing any of
23 the offences established in paragraph (a), (b), (c), (d)
24 or (e), or a password, access code, or similar data by
25 which the whole or any part of any communications

1 facility is capable of being accessed with intent that
2 it be used for the purpose of committing any of the
3 offences established in paragraph (a), (b), (c), (d) or
4 (e);

5 (g) Intentionally and without right, uses, or
6 causes or suffers to be used, any communications
7 facility for the purpose of harassing any person,
8 including by means of a call with or without speech or
9 other sounds, data or video images;

10 (h) Deliberately damages any communications
11 facility; or

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

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

21 "Section 383. General offence.

22 Save in respect of an offence under section 386, any
23 person who contravenes or fails to comply with any
24 provision or requirement of this Act, any rules made
25 under this Act, a licence issued under this Act, or any

1 direction, order or decision of the Authority or the
2 appeals panel, commits a general offence."

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

6 "Section 384. Penalties.

7 Any person who is convicted of an offence under section
8 382 or 383 is liable:

9 (a) In the case of a natural person, to a fine
10 not exceeding \$50,000 and to imprisonment for a term not
11 exceeding one year, and in the case of a continuing
12 offence, to a further fine not exceeding \$10,000 for
13 each day during which the offence continues;

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

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

23 "Section 385. Corporations or other entities.

24 Where a corporation or other entity commits an offense
25 under this Act, any director, officer, employee or agent

1 of the corporation or entity who directed, authorized,
2 assented to, acquiesced to or participated in the
3 conduct of the offence shall be a party to and guilty of
4 the offence, and shall be liable to the punishment
5 provided for that offence in respect of a natural
6 person. A corporation or other entity contravenes a
7 provision of this Act if an employee, agent or officer
8 of the corporation or entity engages in the offending
9 conduct and that person is acting within the actual or
10 apparent scope of his actual or apparent authority."

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

14 "Section 386. Forfeiture of device.

15 In the case of a conviction for an offense under this
16 Act or any rules made under this Act, any device in
17 relation to which or by means of which the offence was
18 committed may be:

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

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

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

25 "Section 387. Prosecution.

1 The Attorney General may appoint Special Assistant
2 Attorneys General, pursuant to the Attorney General's
3 Office Act 2002, to prosecute offences under this Act
4 subject to any conditions or restrictions imposed."

5 Section 90. Title 21 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by adding a new
7 section 388 under chapter 3, to read as follows:

8 "Section 388. Exclusion of liability.

9 (1) The Federated States of Micronesia, the
10 Secretary, the Authority, an Inspector, or any other
11 person exercising or performing powers or functions
12 under this Act shall not:

13 (a) Be liable in respect of any action, claim,
14 or demand that may be brought or made by any person in
15 respect of any bodily injury or damage to property or
16 any other circumstances arising from any act permitted
17 by a licence issued under this Act; and

18 (b) Be subject to any action or claim, other
19 than by way of judicial review, arising from the good
20 faith exercise or intended exercise of any functions or
21 powers under this Act.

22 (2) No licensee or person engaging in conduct
23 licensed under this Act, or an employee or agent of such
24 a person, shall be liable in any criminal proceedings or
25 in any suit for damages by reason of his having in the

1 course of his employment transmitted or conveyed by any
2 communications, or taken any part in transmitting or
3 conveying by any communications, any defamatory libel."

4 Section 91. Title 21 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by adding a new
6 section 389 under chapter 3, to read as follows:

7 "Section 389. Establishment of Open Access Entity and
8 authority to acquire assets and assume liabilities and
9 obligations.

10 (1) Should the Secretary certify that it is in the
11 interests of the Federated States of Micronesia for a
12 corporation owned by the Government to be established
13 under this section in order to own and operate submarine
14 and terrestrial cable assets within the Federated States
15 of Micronesia or serving the Federated States of
16 Micronesia (the Open Access Entity), the corporation
17 shall be deemed to be established as at the vesting
18 date, and with such assets and liabilities, specified in
19 such certificate.

20 (2) The Open Access Entity shall provide
21 international and domestic connectivity for the
22 transmission of data for communications services as a
23 wholesaler but not at retail. Such connectivity shall be
24 provided on non-discriminatory and cost-based terms.

25 (3) The assets, liabilities and obligations referred

1 to in a certificate issued under subsection (1) or any
2 amending or supplementary certificate issued by the
3 Secretary may be described specifically or by class, and
4 no objection shall be taken in any court to the accuracy
5 or completeness of such description.

6 (4) Nothing in this section shall restrict or prevent
7 the Open Access Entity from acquiring other assets or
8 undertaking other activities that in the opinion of the
9 board of the Open access Entity are required in order to
10 provide the services referred to in subsection (3).

11 Section 92. Title 21 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by adding a new
13 section 390 under chapter 3, to read as follows:

14 "Section 390. Open Access Entity.

15 (1) The Open access Entity shall be a shareholding
16 company with a paid-up share capital equal to the amount
17 certified by the Public Auditor to be the amount by
18 which the assets of the Open Access Entity as at the
19 vesting date exceed its liabilities. Such share capital
20 shall be divided into paid-up common shares of such
21 denominations as shall be specified in the certificate
22 issued under subsection (1) and shall be issued in equal
23 numbers to the Secretary of Finance and the Secretary of
24 the Department of Transportation, Communications &
25 Infrastructure. The shareholding Secretaries shall hold

1 the shares for and on behalf of the Government.

2 (2) The directors of the Open Access Entity shall be
3 persons who in the opinion of the shareholding
4 Secretaries shall be qualified to assist the corporation
5 to operate its business, and shall be appointed and
6 removed by the shareholding Secretaries by resolution.
7 Save as provided in this section, all decisions relating
8 to the operation of the corporation shall be made by or
9 pursuant to the authority of the board of directors.

10 (3) The shareholding Secretaries may, after
11 consulting with the board, by written notice to the
12 board determine the amount of dividend payable by the
13 corporation in respect of any financial year and the
14 board shall comply with the notice.

15 (4) The board shall supply to the shareholding
16 Secretaries or to such persons or class of persons as
17 either of the Secretaries specifies such information
18 relating to the affairs of the corporation as either of
19 those Secretaries requests after consultation with the
20 board. Such information request shall not include any
21 information relating to an individual employee or
22 customer of the corporation.

23 (5) A shareholding Secretary may at any time, by
24 written notice to the secretary of the corporation,
25 authorise, on such terms and conditions as are specified

1 in the notice, such person as the Secretary thinks fit
2 to act as the Secretary's representative at any or all
3 of the meetings of shareholders of the corporation. Such
4 representative may exercise the same powers on behalf of
5 the Secretary as the Secretary could exercise if present
6 in person at the meeting.

7 (6) A 'major transaction' in relation to the
8 corporation means:

9 (a) The acquisition of, or an agreement to
10 acquire, whether contingent or not, assets the value of
11 which is more than half the value of the corporation's
12 assets before the acquisition; or

13 (b) The disposition of, or an agreement to
14 dispose of, whether contingent or not, assets of the
15 corporation the value of which is more than half the
16 value of the corporation's assets before the
17 disposition; or

18 (c) A transaction that has or is likely to have
19 the effect of the corporation acquiring rights or
20 interests or incurring obligations or liabilities,
21 including contingent liabilities, the value of which is
22 more than half the value of the corporation's assets
23 before the transaction.

24 (7) In assessing the value of any contingent
25 liability for the purposes of paragraph c of subsection

(a), the directors must have regard to all circumstances that the directors know, or ought to know, affect or may affect the value of any contingent liability, may rely on estimates of the contingent liability that are reasonable in the circumstances, and may take account of the likelihood of the contingency occurring and any claim that the corporation is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

(8) The unanimous assent of the shareholders of the corporation shall be required to any major transaction

Section 93. Title 21 of the Code of the Federated States of Micronesia is hereby amended, by inserting section 391 under chapter 3, to read as follows:

"Section 391. Rules and regulations.

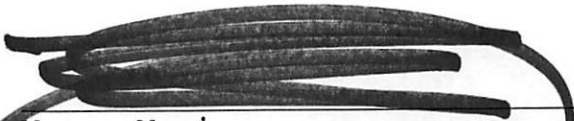
(1) In addition to the matters which are specifically prescribed, the Authority may make such rules and regulations as are contemplated by or necessary for giving full effect to the provisions of this Act.

(2) The rules and regulations shall be promulgated in accordance with the Administrative Procedures Act."

PUBLIC LAW No. 18-52

1 Section 94. This act shall become law upon approval by the
2 President of the Federated States of Micronesia or upon its
3 becoming law without such approval.

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6 April 3, 2014
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11 Manny Mori
12 President
13 Federated States of Micronesia
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