A BILL FOR AN ACT

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

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

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

“Section 203. Powers and responsibilities of the Corporation. The Corporation has the following powers and responsibilities:

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

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

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

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

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

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

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

(8) to incur indebtedness for the purpose of expanding and improving telecommunications facilities,
to the extent and on such terms as are deemed commercially reasonable by the Corporation; and

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

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

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

"section 205. Legal capacity of the Corporation.
In performing the functions authorized under this chapter or other law of the Federated States of Micronesia, the Corporation shall have the capacity to exercise all powers normally exercised by a corporation, including, but not limited to, the following:

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

(2) to adopt and amend bylaws governing the conduct of its business and the exercise of its powers;
(3) to sue and be sued in its corporate name;

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

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

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

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

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

Section 3. Section 208 of Title 21 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 11-26 and 17-03, is hereby deleted in its entirety.
[The Corporation shall exist and operate solely for the
benefit of the public and shall be exempt from any taxes or
assessments except import taxes or assessments on any of its
property, operations, or activities. Nothing herein shall be
deemed to exempt employees and independent contractors of the
Corporation from tax liability for services rendered to the
Corporation, and the Corporation shall be liable for
employers' contributions to the Social Security System of the
Federated States of Micronesia in the manner provided by
law.]

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

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

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

“Section 301. Short title. This Act may be cited as the ‘FSM Telecommunications Act of 2014’.”

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

“Section 302. Definition. In this Act, unless the context otherwise requires:

(a) ‘access’ means the provision of access to a bottleneck facility by one licensee to another for the purpose of the second licensee providing communications services;

(b) ‘Act’ means the FSM Telecommunications Act of 2014, and where appropriate includes the rules and regulation made pursuant to this Act;

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

(d) ‘appeals panel’ means the body constituted from time to time pursuant to section 328;

(e) ‘Authority’ means the Office of the Telecommunication Regulation Authority established under section 304;
(f) ‘bottleneck facility’ means a communications facility declared by the Authority to be essential for the production of communications services which, for technical reasons or due to economies of scope and scale and the presence of sunk costs, cannot practicably be duplicated by a potential competitor in a communications market;

(g) ‘communications’ means the conveyance from one device to another of any message by means of any wire, radio, optical, electric, magnetic, electromagnetic, or similar system;

(h) ‘communications facility’ means any infrastructure, building, or switching equipment; any submarine cable landing in the Federated States of Micronesia, submarine cable landing station, or satellite transmitting facility; any location, mast site, tower, pole, trunk line, access line, duct or other underground facility; or other passive equipment that is used or is capable of being used for communications or for any operation directly connected with communications, but excluding customer equipment;

(i) ‘communications market’ means a market determined by the Authority for communications services or access;

(j) ‘communications network’ means a system that
uses electricity or electromagnetic energy for providing communications services between network termination points;

(k) ‘communications service’ means a service for the transmission of communications by means of a communications network;

(l) ‘consumer’ means a customer who contracts for a communications service that is offered on standard conditions that are of general application and not negotiated individually;

(m) ‘customer’ means a person who contracts for a communications service;

(n) ‘customer equipment’ means equipment (including cabling) that is on the customer side of the network termination point and intended to be connected to a communications network;

(o) ‘Department’ means the Department of Transportation, Communications & Infrastructure of the Government;

(p) ‘Dominant Service Provider’ means in respect of a communications market a licensee who, in the opinion of the Authority:

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

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

(g) ‘equipment’ includes any appliance, apparatus, device or accessory used or intended to be used for communications purposes;

(r) ‘exempt network’ means a communications 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 another licensee, or to access the communications services of another licensee;
(w) ‘licence’ means an operating or spectrum licence issued to a person or class of persons under this Act;
(x) ‘licensee’ means a person who holds or is registered under a licence issued under this Act;
(y) ‘market’ means a market in the Federated States of Micronesia for goods and services that, as a matter of fact and commercial common sense, are substitutable for them;
(z) ‘message’ means any sign, signal, writing, image, sound, instruction, information, or intelligence of any nature;
(aa) ‘net revenue’ means, in respect of any service provider, the gross revenue received by the service provider from the provision of communications
services and from interconnection and access, less the sum of:

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

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

(ab) ‘network termination point’ means the point determined by the technical rules for the purposes of this Act or, in the absence of such rules:

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

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

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

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

(ac) ‘Open Access Entity’ means a corporation established pursuant to section 389;
(ad) ‘person’ includes a public authority and any association of persons, whether incorporated or not;

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

(af) ‘President’ means the President of the Federated States of Micronesia;

(ag) ‘radio communication’ has the meaning assigned to that term in the Federated States of Micronesia Radio Communication Act of 1991, codified as Chapter 1 Title 21 of the Code of the Federated States of Micronesia;

(ah) ‘radio frequency spectrum’ means those radio frequencies comprising channels for specific radio transmission technologies usable in the Federated States of Micronesia;

(ai) ‘Secretary’ means the Secretary of the Department of Transportation, Communications & Infrastructure;

(aj) ‘sensitive information’ has the meaning given in section 322(5);

(ak) ‘service provider’ means a person who:

(i) Owns a communications network; or

(ii) Provides or is entitled to provide a communications service under a licence or exemption; or
(iii) Has applied for a licence or exemption under this Act;

(al) ‘specified communications network’ means a communications network that includes a line or radio communications link, or a series of lines or radio communications links, between two fixed points, including:

   (i) Radio communications transmission links;

   (ii) Cable transmission links; and

   (iii) Cable access networks;

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

(an) ‘universal access plan’ has the meaning given in section 367;

(ao) ‘Universal Access Special Revolving Fund’ means the Universal Access Special Revolving Fund established under section 365;

(ap) ‘user’ means any person using a communications service, regardless of whether such a person is contracted to acquire the service.

(ag) ‘wholesale services’ means services required by a licensee in order to provide communications services where such services are supplied or provided by
means of or by means that rely upon a bottleneck facility.”

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

“Section 303. General objectives

(1) The objectives of this Act are:

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

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

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

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

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

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

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

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

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

(j) Promoting the appropriate use of communications networks and communications services.”

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

“Section 304. Establishment of the Authority.

(1) There is hereby established the 'Office of the Telecommunication Regulation Authority' with the functions and powers set out in this Act.
(2) The Authority shall consist of a Chief Executive and two members, all appointed by the President.

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

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

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

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

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

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

(d) Regulate the protection of consumers, the charges levied by licensees for communications networks, and the communications services and attributes of communications services;
(e) Specify the technical standards and procedures for interconnection, the operation of communications networks, and the provision of communications services;

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

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

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

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

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

(k) Give effect to policies approved by the Authority or the President;
(l) Where required by the Secretary, represent
the Government in international conferences or
international and other organisations concerned with
communications;

(m) Advise the Government on policies and
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, 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 Executive under subsection (1) unless in the opinion of the President the person:

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

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

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

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

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

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

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

(a) Is found or declared to suffer from mental or physical incapacity;
(b) Is or has been convicted of a criminal offense involving dishonesty or corruption, or where the penalty includes imprisonment for one year or longer;
(c) Is or has been declared bankrupt or insolvent;
(d) Holds an elected office in the Federated States of Micronesia national or state government;
(e) In the case of the Chief Executive, is a staff member or officer of a department or agency of the Government; or
(f) Holds a direct or indirect financial or other interest in any service provider other than through a fund over which the person has no control or influence.

(7) The President may remove a member who is disqualified under subsection (6), or has committed a serious breach of the terms of appointment as such member.
(8) A member may resign from the Authority upon one month’s written notice to the President, or such shorter time as the President and the member may agree in writing.

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

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

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

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

“Section 307. Remuneration of members.

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

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

“Section 308. Incorporation and legal capacity of the Authority.

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

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

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

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

“Section 309. Procedure of the Authority.

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

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

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

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

“Section 310. Duty of members to disclose conflicts of interest.

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

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

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

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

(3) The disclosing member:

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

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

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

“Section 311. Chief Executive.

The Chief Executive shall be:
(a) Primarily responsible for the execution of the policies, and the implementation of the decisions, of the Authority;

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

(c) The head of the staff of the Authority.”

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

“Section 312. Delegation by Chief Executive.

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

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

“Section 313. Employees of the Authority.

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

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

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

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

“Section 314. Authentication of Authority’s seal.
The Chief Executive shall by signature authenticate the
application of the seal of the Authority.”

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

“Section 315. Presumption of authenticity of documents
issued by the Authority.
Any document purporting to be an instrument issued by
the Authority and sealed as aforesaid or signed on
behalf of the Authority or by the Chief Executive on
behalf of the Authority shall be received in evidence
and shall be deemed to be such an instrument without
further proof unless the contrary is shown.”

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

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

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

“Section 317. Government policies and international
conventions.

(1) The Secretary shall:

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

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

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

(3) The Authority shall:

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

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

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

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

“Section 318. Exemption from income tax, customs duty
and import levy.

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

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

“Section 319. Annual reports, accounts and audit.

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

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

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

(4) The Authority shall by:

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

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

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

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

   (i) Adequacy and quality of services; and

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

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

(a) A list of the licenses issued under this Act and then in force;
(b) A list of the interconnection and access agreements then in force;
(c) A summary of any material litigation involving the Authority;
(d) A description of the activities carried out during the year in respect of the universal access plan.

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

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

“Section 320. Efficiency audit.

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

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

(a) Review the Authority’s annual budget for the current fiscal year and the Authority’s forecasts for the following two fiscal years;
(b) Assess whether the budget and forecasts are
reasonable having regard to the Authority’s functions under this Act; and

(c) Provide a report to the Authority and the President outlining these findings and, if practicable, recommend changes to the Authority’s budget and forecasts.

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

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

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

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

"Section 321. Consultation.

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

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

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

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

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

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

(4) A person shall be entitled to provide a submission to the Authority in response to a notice published under subsection (2). The due date to lodge such a submission shall be 14 days from the date of the notice or such longer period as the Authority may specify in the
(5) The Authority shall take into account any
submission it receives under subsection (4) by the due
date. The Authority is not prohibited from taking into
account a submission it receives after the due date.

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

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

(a) Publish a draft decision; and

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

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

(9) After making a final decision, the Authority shall
promptly:

(a) Publish that decision; and

(b) Provide a copy of such decision to every
person who has made a submission under subsection (4).”
Section 26. Title 21 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 322 under chapter 3, to read as follows:

“Section 322. Publication and use of information

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

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

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

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

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

(a) Shall publish the document on its website;

and

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

(3) Subject to subsections (8) and (9), neither the Authority nor any agent of the Authority shall knowingly publish or disclose sensitive information to any person, knowingly allow sensitive information to be disclosed to any person, or use sensitive information for personal advantage. A breach of this prohibition by a member or employee of the Authority shall be a breach of the terms
(4) Subsection (3) shall also apply to a person who publishes, discloses or uses sensitive information after ceasing to be a member, employee or agent of the Authority.

(5) Subject to subsection (8), ‘sensitive information’ means information:

(a) Submitted to the Authority by a person;

(b) Not already in the public domain;

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

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

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

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

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

(6) The Authority may, by notice given to the person supplying information under subsection (5) within 7 days of the information being submitted, determine that the information and any data derived from that information is not confidential or proprietary and as of the date of such notice that information shall not be ‘sensitive
(7) Where information is provided to the Authority voluntarily, upon receipt of a notice issued under subsection (6) the submitter may within 3 days of receipt by notice to the Authority withdraw the information, in which case:

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

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

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

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

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

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

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

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

“Section 323. Service of notices.

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

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

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

(c) Attaching it to some conspicuous part of that
person’s last known residence:
(d) Sending it by registered post addressed to that person at that person’s usual or last known residence or place of business;

(e) Where the person is a body corporate:

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

(ii) Sending it by registered post addressed to the body corporate at its registered or principal office.”

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

“Section 324. Delegation of powers to other regulatory bodies.

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

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

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

"Section 325. Review options.

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

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

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

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

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

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

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

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

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

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

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

“Section 326. Reconsideration of determinations, decisions or orders.

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

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

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

(b) The reasons for which the reconsideration is sought; and
(c) The action sought on reconsideration.

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

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

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

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

“Section 327. Appointment of experts.

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

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

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

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

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

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

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

(5) The Secretary shall remove a person from the register of experts if the person no longer meets the criteria for appointment under subsection (4).
(6) The Authority shall act as the secretariat for the appeals panel and shall publish the membership of the register of experts.”

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

“Section 328. Appeals.

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

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

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

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

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

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

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

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

(6) The appeals panel:

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

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

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

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

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

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

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

(9) The appeals panel shall:

(a) Affirm the decision under review;

(b) Vary the decision under review;

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

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

(10) The appeals panel shall give a copy of its
decision and the reasons for the decision to each person
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
(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 operating licence issued under this Act:

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

(b) Provide a communications service.

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

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

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

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

(4) A class licence shall:

(a) Be issued by the Authority setting out:

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

(ii) Any applicable eligibility criteria; and
(b) Come into force with respect to any person upon registration by that person under section 331(1)(b).

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

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

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

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

“Section 330. Licensing rules for communications networks or services.

(1) The Authority may make licensing rules specifying:

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

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

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

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

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

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

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

“Section 331. Obtaining a licence for communications networks or services.

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

(a) For an individual licence; or

(b) For registration under a class licence.

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

(a) The applicant’s application complies with the
licensing rules;

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

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

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

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

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

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

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

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

(6) The Authority shall maintain and publish a register of licensees and licences. The entry in the register shall be the authoritative record of the status of any licence.
(7) Any restrictions under other laws concerning foreign investment in the Federated States of Micronesia shall not apply to carrying on the business of owning or operating a communications network or providing a communications service by a licensee.

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

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

“Section 332. Spectrum Licensing Authority.

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

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

(3) In performing its functions and duties and exercising its powers under this section, the Authority shall ensure that radio frequency spectrum is managed and used in a manner that:
(a) Is open, non-discriminatory, competitively neutral, objective and transparent;

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

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

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

"Section 333. Spectrum licensing rules.

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

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

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

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

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

(e) The eligibility criteria for a spectrum
licence;

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

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

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

(i) General licence conditions for spectrum
 licences.

(2) In accordance with the Administrative Procedures
Act, the Authority shall promulgate appropriate rules
and regulation governing the use of radio frequency
spectrum.”
(1) Any person may apply to the Authority for a spectrum licence for the purpose of providing communications services.

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

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

(b) The applicant’s application complies with the spectrum licensing rules;

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

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

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

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

(3) The Authority shall publish all spectrum licences issued under this Act.”

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

   “Section 335. Licence conditions.

   (1) It is a condition of an operating or spectrum

   licence that the licensee:

       (a) Comply with this Act;

       (b) Pay any applicable licence fees; and

       (c) Comply with any applicable general conditions

   imposed under this Act and any special conditions

   imposed under subsection (2).

   (2) The Authority may impose special operating licence

   conditions that shall apply to an individual licensee.”

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

   “Section 336. Licence fees.

   (1) The Authority shall make rules specifying the

   annual licence fees payable by a holder of either an

   operating or spectrum licence.

   (2) Rules under subsection (1) shall determine annual

   fees for operating and spectrum licences in accordance

   with the following principles:

       (a) The Authority shall endeavour to minimise the

   fees payable by licensees (having regard to section

   319(1) and the funding required for the proper discharge
of the functions of the Authority under this Act;

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

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

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

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

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

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

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

or

(b) The Authority’s proposed annual budget and forecasts under section 319.

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

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

“Section 337. Revocation, suspension, dealing or surrender of a licence.

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

(a) It is revoked by the Authority; or

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

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

(a) With the consent of the licensee;

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

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

(i) Its licence application; or

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

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

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

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

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

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

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

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

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

“Section 338. Commercial negotiation.
Subject to this Act, licensees may negotiate, agree and
vary agreements with one another for interconnection of
communications networks, access to and sharing of
facilities and other services, and the provision of
wholesale services, including the type and amount of
charges, in such manner and on such conditions as are
mutually acceptable to the licensees.”

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

“Section 339. Interconnection and access and supply of
wholesale services by all licensees.

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

(a) Interconnection of the licensees’
communications networks at any economically and
technically feasible point of the first licensee’s
network where interconnection would not affect the
security, performance or efficiency of the first
licensee’s network;

(b) Conditions that maintain end-to-end
operability to facilitate the provision of
communications services by the second licensee to a
customer notwithstanding that the customer is directly
connected to the first licensee’s communications
network;

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

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

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

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

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

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

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

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

(a) Act at all times in good faith;

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

(c) Avoid obstructing or delaying negotiations;

Comply with any direction given by the Authority as to the conduct of the negotiations;

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

(3) A licensee who enters an interconnection and access agreement with another licensee must promptly lodge a copy of the interconnection and access agreement with the Authority.”
Section 44. Title 21 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 340 under chapter 3, to read as follows:

"Section 340. Disputes between licensees.

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

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

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

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

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

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

(c) Not provide for interconnection or access to communications facilities or the provision of wholesale services where interconnection or access or the provision of wholesale services is not technically,
(d) Have regard to the best interests of consumers, aim to have a positive impact on competition between licensees, and encourage efficient and sustainable investment in communications networks and services in the Federated States of Micronesia.

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

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

(5) The Authority shall publish copies of all interconnection and access agreements.”
interconnection and access agreements, including
wholesale prices or pricing principles.

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

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

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

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

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

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

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

"Section 342. New infrastructure.

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

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

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

(2) A person may, within 7 days of a proposal being
published by the licensee, provide an expression of
interest in sharing the communications facility to the
Authority. The Authority shall promptly provide any
expressions of interest to the licensee who proposes to
construct the communications facility."
(3) After the expiry of the period in subsection (2), the licensee who proposes to construct the communications facility shall promptly provide each person who has provided an expression of interest with a list of the other persons who have provided an expression of interest.

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

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

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

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

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

"Section 343. Prohibition of anti-competitive conduct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Section 344. Contravention of competition provisions.

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

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

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

(4) If a licensee complies with subsection (2) in relation to a notice served under subsection (1), the Authority shall not take enforcement action under sections 329, 330, 331, 332, 333, 334, 335, 336, 337, 382, 383, 384, 385, 386 or 387 of this Act in respect of the conduct specified in that notice.”

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

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

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

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

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

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

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

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

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

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

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

“Section 346. Publication of terms and conditions.

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

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

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

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

(a) Any proposed reduction in a retail tariff;

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

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

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

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

“Section 347. Pricing rules.

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

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

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

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

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

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

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

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

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

(5) The Authority may:

(a) Assess the prices charged for communications
services by a licensee to whom a pricing model under
subsection (1) applies against the relevant pricing
model; and
(b) By written notice to the licensee, determine any adjustment to the prices charged by the licensee.

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

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

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

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

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

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

“Section 348. Fair dealing.

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

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

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

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

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

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

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

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

(ii) On a regular basis;

(iii) In a plain and simple format;

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

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

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

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

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

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

“Section 349. Confidentiality of customer information.

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

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

(b) Shall apply appropriate security safeguards
to prevent the collection, use, maintenance or
disclosure of such information without the customer’s
consent.
(2) A licensee may disclose a customer’s name, address and telephone number in a printed or electronic directory or as provided for in the consumer protection rules, provided that a licensee shall permit customers on request to have their name omitted from such directory.

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

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

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

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

(7) The Authority may make consumer protection rules requiring a class of licensees to retain or not retain specified information relating to customers, including
Section 54. Title 21 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 350 under chapter 3, to read as follows:

“Section 350. Confidentiality of customer communications.
A licensee shall take all reasonable steps to ensure the confidentiality of its customers’ communications except as permitted by law and shall not, without the prior consent of the customer, divulge any information concerning the customer’s communications unless required by law or authorized by the Authority.”

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

“Section 351. Access by government authorities.
Nothing in sections 349 to 350 shall be interpreted to prohibit or infringe upon the rights of government authorities under the laws of the Federated States of Micronesia to exercise such rights to access otherwise confidential information or communications in a lawful manner.”

Section 56. Title 21 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 352 under chapter 3, to read as follows:
“Section 352. Terms of service, complaints and disputes.

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

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

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

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

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

(e) Comply with such conditions, implement such procedures and provide such remedies in accordance with their terms as approved by the Authority;
(f) Report to the Authority on the types and volumes of consumer complaints and disputes, the application of complaints procedures and manner in which complaints have been resolved; and

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

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

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

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

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

(4) Before making a determination under subsection (3), the Authority shall consult with the licensee and
Section 57. Title 21 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 353 under chapter 3, to read as follows:

“Section 353. Directory assistance.

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

(2) In this section, ‘directory assistance services’ means such services to provide access to a customer’s name, telephone number and such other information about a customer as is set out in the consumer protection rules.”

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

“Section 354. Quality of service.

(1) The Authority may make consumer protection rules requiring a Dominant Service Provider to:
(a) Establish key performance indicators for the quality of its service to users, which may be required to comply with minimum standards set out in the consumer protection rules;

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

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

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

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

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

“Section 355. Technical standards.

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

(a) Interconnection of licensees’ communications networks; and

(b) Customer equipment permitted to be attached to licensees’ communications networks.
(2) In making the technical rules the Authority may apply, adopt, or incorporate, with or without modification, any standard as it exists at a particular time or from time to time.”

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

“Section 356. Customer equipment standards.

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

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

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

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

(2) A licensee may:

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

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

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

"Section 357. Numbering plan.

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

(a) A numbering plan for communications services;

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

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

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

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

(f) Requirements for the allocation of priority, quality and capacity for calls to emergency services."
(2) The Authority may make numbering rules specifying provisions for number portability if the Authority:

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

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

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

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

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

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

“Section 358. National emergency numbers.

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

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

“Section 360. Universal access policy.

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

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

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

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

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

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

(d) Disaster relief services;

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

(f) Such other communications services designated by the Secretary.”
Section 64. Title 21 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 361 under chapter 3, to read as follows:

“Section 361. Universal access eligibility.

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

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

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

“Section 362. Universal access obligations.

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

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

(b) The licensee has assumed that obligation under section 369."
(2) The Authority may enforce a universal access obligation by giving notice to the licensee concerned requiring that licensee to take any action or meet any timetable described in that notice and in the reasonable opinion of the Authority required to comply with that obligation.

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

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

“Section 363. Eligibility for universal access funding

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

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

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

“Section 364. Administration of universal access
obligations.
The Authority shall ensure that universal access
obligations are administered in an open, transparent,
non-discriminatory, objective, and competitively neutral
manner, and are not more burdensome than necessary to
achieve the objectives of the universal access plan.”

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

“Section 365. Universal access special revolving fund.

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

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

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

(a) Any amounts transferred under section 319(6);
(b) Any amounts available under section by way of
spectrum license fees paid as a result of a competitive
tender process;

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

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

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

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

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

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

“Section 366. Universal access rules.

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

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

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

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

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

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

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

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

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

The Authority shall, upon receipt from the Secretary of a list of geographic areas that are eligible under the universal access policy for the application of universal access obligations and funding under the universal access policy, prepare and publish a universal access plan.”

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

“Section 368. Universal Access Projects.

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

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

(b) Any general requirements or specifications for the provision of such communications services or communications facilities.”

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

“Section 369. Provision of universal access services.
(1) The Authority may contract with a person to provide a subsidy or concessional loan for the provision of communications services or communications facilities in accordance with a project plan.

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

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

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

(3) If the Authority considers that there is not likely to be competition for the provision of the communications services or communications facilities for the maximum subsidy or concessional loan the Authority could offer in fulfilment of the relevant project plan, the Authority shall negotiate with any person the Authority considers has the capability of providing those services or facilities and may enter into a contract for the provision of those services or facilities in accordance with the project plan.
(4) If after attempting to negotiate under subsection (3) the Authority considers agreement cannot be reached, the Authority may by written notice require a licensee to enter into a specified contract with the Authority for the provision of the relevant communications services or communications facilities for a subsidy or concessional loan.

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

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

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

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

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

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

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

“Section 370. Existing facilities.

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

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

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

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

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

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

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

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

“Section 371. New facilities.

(1) Should an agreement be reached under section 342 to share a new communications facility (a ‘sharing agreement’), a party to the sharing agreement may, by notice to the other parties to that agreement and to the owner or occupier of third party land, require that the owner or occupier of the third party land provide access to and use of that land to the extent required to give effect to the sharing agreement and on the same terms and conditions as those enjoyed by other parties to that agreement.

(2) Should the owner or occupier of the third party land fail without reasonable excuse to provide access to and use of the land under subsection (1), the Authority may direct the owner or occupier to take such action as the Authority deems fit in order to implement the requirements of subsection (1) and the owner or occupier shall comply with any such direction. A direction under this subsection may include provision for defined amounts by way of compensation to any of the parties with land rights or may provide for compensation to be determined by the Supreme Court of the Federated States of Micronesia under section 373.
(3) It shall be a reasonable excuse under subsection (2) that:

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

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

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

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

“Section 372. Land access charges.

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

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

(b) For each service provider, a pro rata share (based on the percentage of total capacity used or
occupied) of capital improvements such as ducts, fixtures and other permanent improvements to lands, based on historic cost of the improvements. The Authority may make rules governing a fair and reasonable allocation of charges under sections 370 and 371.”

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

“Section 373. Supreme Court may determine compensation.

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

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

“Section 374. Restoration after use.

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

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

“Section 375. Evidence.

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

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

(3) A certificate appearing to be signed by the Authority and bearing the Authority’s seal shall be evidence of its contents without proof of the signature.”

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

“Section 376. Appointment of Inspectors.

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

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

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


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

(a) Enter and inspect, at any reasonable time, any place owned by or under the control of a service provider or a person operating a device under a licence, in which the Inspector believes on reasonable grounds there is any document, information, equipment, or thing 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
be practical for the Inspector to obtain a warrant.
(3) For the purposes of subsection (2)(b), special
circumstances include circumstances in which the delay
arising from obtaining a warrant would result in danger
to human life or safety or the loss or destruction of

evidence.

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

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

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

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

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

“Section 378. Search warrant.

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

(a) Entry to a residence is necessary for the
purpose of performing any duty of an Inspector under
this Act; and
(b) Entry to the residence has been refused, or there are reasonable grounds for believing that entry will be refused.

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

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

“Section 379. Requirement to supply information or documents or give evidence.

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

(a) To furnish to the Authority, by writing signed by that person or, in the case of a corporation or other entity, by a director or competent representative of the corporation or other entity, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
(b) To produce to the Authority, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice; or

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

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

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

“Section 380. Interception and interference.

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

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

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

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

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

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

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

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

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

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

“Section 381. Real-time collection of data.

(1) If the Authority believes on reasonable grounds that a person is engaged in conduct that may contravene this Act, then for the purposes of enforcing this Act, 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
whole or any part of any communications facility by
infringing security measures;

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

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

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

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

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

(h) Deliberately damages any communications facility; or

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

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

“Section 383. General offence.

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

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

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

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

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

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

"Section 385. Corporations or other entities.

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

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

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

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

(b) Disposed of as the Authority may direct.”

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

“Section 387. Prosecution.
The Attorney General may appoint Special Assistant Attorneys General, pursuant to the Attorney General’s Office Act 2002, to prosecute offences under this Act subject to any conditions or restrictions imposed.”

Section 90. Title 21 of the Code of the Federated States of
Micronesia, as amended, is hereby further amended by adding a new section 388 under chapter 3, to read as follows:

“Section 388. Exclusion of liability.

(1) The Federated States of Micronesia, the Secretary, the Authority, an Inspector, or any other person exercising or performing powers or functions under this Act shall not:

(a) Be liable in respect of any action, claim, or demand that may be brought or made by any person in respect of any bodily injury or damage to property or any other circumstances arising from any act permitted by a licence issued under this Act; and

(b) Be subject to any action or claim, other than by way of judicial review, arising from the good faith exercise or intended exercise of any functions or powers under this Act.

(2) No licensee or person engaging in conduct licensed under this Act, or an employee or agent of such a person, shall be liable in any criminal proceedings or in any suit for damages by reason of his having in the course of his employment transmitted or conveyed by any communications, or taken any part in transmitting or conveying by any communications, any defamatory libel.”

Section 91. Title 21 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new
section 389 under chapter 3, to read as follows:

“Section 389. Establishment of Open Access Entity and authority to acquire assets and assume liabilities and obligations.

(1) Should the Secretary certify that it is in the interests of the Federated States of Micronesia for a corporation owned by the Government to be established under this section in order to own and operate submarine and terrestrial cable assets within the Federated States of Micronesia or serving the Federated States of Micronesia (the Open Access Entity), the corporation shall be deemed to be established as at the vesting date, and with such assets and liabilities, specified in such certificate.

(2) The Open Access Entity shall provide international and domestic connectivity for the transmission of data for communications services as a wholesaler but not at retail. Such connectivity shall be provided on non-discriminatory and cost-based terms.

(3) The assets, liabilities and obligations referred to in a certificate issued under subsection (1) or any amending or supplementary certificate issued by the Secretary may be described specifically or by class, and no objection shall be taken in any court to the accuracy or completeness of such description.
(4) Nothing in this section shall restrict or prevent the Open Access Entity from acquiring other assets or undertaking other activities that in the opinion of the board of the Open access Entity are required in order to provide the services referred to in subsection (3).

Section 92. Title 21 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by adding a new section 390 under chapter 3, to read as follows:

"Section 390. Open Access Entity.

(1) The Open access Entity shall be a shareholding company with a paid-up share capital equal to the amount certified by the Public Auditor to be the amount by which the assets of the Open Access Entity as at the vesting date exceed its liabilities. Such share capital shall be divided into paid-up common shares of such denominations as shall be specified in the certificate issued under subsection (1) and shall be issued in equal numbers to the Secretary of Finance and the Secretary of the Department of Transportation, Communications & Infrastructure. The shareholding Secretaries shall hold the shares for and on behalf of the Government.

(2) The directors of the Open Access Entity shall be persons who in the opinion of the shareholding Secretaries shall be qualified to assist the corporation to operate its business, and shall be appointed and
removed by the shareholding Secretaries by resolution.

Save as provided in this section, all decisions relating to the operation of the corporation shall be made by or pursuant to the authority of the board of directors.

(3) The shareholding Secretaries may, after consulting with the board, by written notice to the board determine the amount of dividend payable by the corporation in respect of any financial year and the board shall comply with the notice.

(4) The board shall supply to the shareholding Secretaries or to such persons or class of persons as either of the Secretaries specifies such information relating to the affairs of the corporation as either of those Secretaries requests after consultation with the board. Such information request shall not include any information relating to an individual employee or customer of the corporation.

(5) A shareholding Secretary may at any time, by written notice to the secretary of the corporation, authorise, on such terms and conditions as are specified in the notice, such person as the Secretary thinks fit to act as the Secretary’s representative at any or all of the meetings of shareholders of the corporation. Such representative may exercise the same powers on behalf of the Secretary as the Secretary could exercise if present
in person at the meeting.

(6) A ‘major transaction’ in relation to the corporation means:

(a) The acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the corporation’s assets before the acquisition; or

(b) The disposition of, or an agreement to dispose of, whether contingent or not, assets of the corporation the value of which is more than half the value of the corporation’s assets before the disposition; or

(c) A transaction that has or is likely to have the effect of the corporation acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than half the value of the corporation’s assets before the transaction.

(7) In assessing the value of any contingent 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.”

Section 94. This act shall become law upon approval by the
President of the Federated States of Micronesia or upon its
becoming law without such approval.

Date: 3/24/14

Introduced by: /s/ Florencio S. Harper
Florencio S. Harper
(by request)