A BILL FOR AN ACT

To amend sections 389 and 391, and insert a new section 392, under Chapter 3 of title 21 of the Code of the Federated States of Micronesia (Annotated) as amended, pertaining to assets and liabilities of the Open Access Entity, and for other purposes.

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

Section 1. Section 389 of title 21 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended 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]2).

(5) Legal and beneficial ownership of all existing interests of Federated States of Micronesia Telecommunications Corporation (FSMTC) in the submarine cable system connecting from Pohnpei to Guam, known as the HANTRU-1 cable system and Pohnpei extension, shall be transferred from FSMTC to the Open Access Entity and the Open Access Entity shall assume all obligations of FSMTC to pay and perform:

(a) all outstanding indebtedness to the United States Rural Utilities Service for the loan, known as Loan B, used to finance the procurement and construction of such cable system and FSMTC’s rights therein; and
(b) all executory contractual obligations of FSMTC to third parties in respect of such cable system. The transfer of such interest shall have effect from such date as may be specified by the Secretary in a deed of conveyance of assets and assumption of liabilities which shall be prepared by the Secretary, and executed and delivered by FSMTC and the Open Access Entity, without delay after obtaining consent for such transfer from the United States Rural Utilities Service, which the Secretary of Justice shall use all reasonable endeavors to obtain within 180 days after the effective date of this Act. The assets, liabilities and obligations referred to in such deed may be described specifically or by class, and no objection shall be taken in any court to the accuracy or completeness of such description.

(6) Pending the effective date of the deed referred to in section 389(5), with immediate effect:

(a) FSMTC shall hold the interests to be conveyed by such deed in trust for the Open Access Entity and shall allow the Open Access Entity full and unimpaired rights of access and use of the relevant facilities and properties, and unfettered communications and relations with FSMTC’s counterparts under the related executory contracts, as if such conveyance had
already occurred, including, but not limited to, the right to modify or install equipment and facilities on such facilities and properties.

(b) The Open Access Entity shall bear full financial responsibility for all obligations to be assumed under such deed and the Open Access Entity shall coordinate all payments to be made by the Open Access Entity to ensure the due and punctual remission of such sums to the intended beneficiaries.

(7) The Open Access Entity shall with immediate effect, upon written request, have unrestricted rights of shared access to and use of the existing interests of FSMTC in land, buildings, improvements and fixtures at its facilities in Pohnpei, Chuuk, Kosrae and Yap to install, improve, modify, own, operate, maintain and repair existing and new submarine cable landing stations and to interconnect with other network operators at such facilities while reasonably accommodating FSMTC’s existing and intended uses of such facilities and restoring or repairing any damage caused during any works by the Open Access Entity. The Open Access Entity shall bear a proportionate share of any ground rents and site maintenance costs based on the proportionate amount of land used. The Open Access Entity and FSMTC shall document the specific premises to which access and use
has been requested and provided under this subsection, and any related payment obligations.

(8) In respect of the matters set out in this section 389, FSMTC and the Open Access Entity shall cooperate in good faith in working with each other and in seeking and obtaining all required approvals and consents of third parties, and in executing and delivering all agreements, instruments and acknowledgements required by such third parties to give effect to the transfer of rights and assumption of liabilities provided for hereunder. If any dispute arises between FSMTC and the Open Access Entity with respect to the provisions or requirements of this section 389, the Secretary shall resolve the dispute and his determination shall be final.”

Section 2. Section 391 of title 21 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

{Section Rules and Regulations 391

(1) In addition to the matter 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 Procedure Act.}
“Section 391. Efficient Use of Submarine Cable and Satellite Assets by FSMTC and the Open Access Entity.

(1) For so long as FSMTC and the Open Access Entity are both owned or controlled by the Government, all satellite and submarine cable assets owned or controlled by either of them shall be used in an economically efficient manner, and FSMTC shall not:

(a) compete against the Open Access Entity in the wholesale supply of connectivity services using submarine cable or satellite assets; and

(b) use satellite connectivity in its provision of retail services, in lieu of using submarine cable connectivity provided by the Open Access Entity, except for backup in the event of outage or maintenance of the Open Access Entity’s facilities.

(2) Without limiting the generality of subsection (1), so long as FSMTC and the Open Access Entity are both owned or controlled by the Government:

(a) the Open Access Entity shall supply to FSMTC, and FSMTC shall purchase from the Open Access Entity, all of the primary international and interstate capacity requirements of FSMTC to the extent of the Open Access Entity’s rights and available capacity.

(b) For as long as FSMTC is the only retail communications service provider in the Federated States
of Micronesia, the Open Access Entity shall charge, and
FSMTC shall pay to the Open Access Entity, on a monthly
basis, an amount sufficient to cover all of the Open
Access Entity’s operating expenses and reasonable
reserves for contingencies.

(c) At such time as the Open Access Entity
begins supplying service to other wholesale customers in
the Federated States of Micronesia, such services shall
be supplied on a non-discriminatory basis as between
FSMTC and such other wholesale customers, and the
allocation of the Open Access Entity’s costs between
FSMTC and such other customers shall be established by
the Open Access Entity with a view to a fair and
reasonable allocation of its costs, while avoiding the
Open Access Entity incurring any loss, subject to the
oversight of the Authority.

(d) FSMTC’s use of its satellite facilities for
any interstate or international transit in providing
retail or wholesale services shall not in any event
relieve FSMTC of its obligation to pay the Open Access
Entity’s charges for making its submarine cable
facilities available for FSMTC’s use in meeting its
requirements.

(e) FSMTC shall, at the Open Access Entity’s
request, supply the Open Access Entity with backup
interstate and international transit services on FSMTC’s satellite systems on a non-discriminatory basis at cost-based pricing to enable the Open Access Entity to provide services for other wholesale customers during any outage or maintenance of its submarine cable systems."

Section 3. Title 21 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended by adding a new section 392 under chapter 3, to read as follows:

"Section 392. 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 4. 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: 5/16/17  Introduced by: /s/ Florencio S. Harper

Florencio S. Harper
(by request)