A BILL FOR AN ACT

To repeal in their entirety Public Laws Nos. 20–13 and 20–20 pertaining to the assets and liabilities of the Open Access Entity, and to reinstate the previous language of sections 203 and 389 of title 21 of the Code of the Federated States of Micronesia (Annotated), as amended, and for other purposes.

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

Section 1. Purpose. Public Laws 20–13 and 20–20 pertain to the assets and liabilities of the Open Access Entity associated with the HANTRU1 fiber optic project. In particular the public laws mandate certain relations between the Open Access Entity and the FSM Telecommunications Corporation. The public laws were subsequently found not to be in compliance with certain conditions of the financing agreement of the project. The Open Access Entity and the FSM Telecommunications Corporation negotiated also an agreement concerning their mutual relationship. The public laws are therefore no longer necessary and may create inconsistency problems with the negotiated agreement. They therefore need to be repealed and the language reinstated previous to what it was before the amending of sections 203 and 389 of title 21 of the Code of the Federated States of Micronesia (Annotated).

Section 2. Public Laws Nos. 20–13 and 20–20 are hereby repealed in their entirety.
Section 3. Section 203 of title 21 of the Code of the Federated States of Micronesia (Annotated), as amended, is hereby further amended to read as follows:

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

(1) to operate as a provider of all telecommunications 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) where the Corporation owns or controls capacity rights on HANTRU Cable System between Pohnpei and Guam, it shall supply such services to the FSM Open Access Entity free of charge, including system access, on terms as may be demanded by the FSM Open Access Entity in order to link Chuuk to Pohnpei and Chuuk to Guam.]

Section 4. 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 counterparties 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 5. 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: 6/27/18

Introduced by: /s/ Wesley W. Simina

Wesley W. Simina