
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:

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 They therefore need to be repealed and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

16 Section 2. Public Laws Nos. 20-13 and 20-20 are
17 hereby repealed in their entirety.

1 Section 3. Section 203 of title 21 of the Code of
2 the Federated States of Micronesia (Annotated), as
3 amended, is hereby further amended to read as follows:

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

7 (1) to operate as a provider of all
8 telecommunications within the Federated States
9 of Micronesia and between points in the
10 Federated States of Micronesia and points
11 outside thereof;

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

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

20 (4) to the extent practicable, to expand
21 telecommunications services to areas and
22 communities in the Federated States of
23 Micronesia that are presently unserved or poorly
24 served and to improve the quality, reliability,
25 and variety of services available to all users

1 in a manner consistent with commercial
2 reasonableness and with promoting economic
3 development, the advancement of education and
4 health care, and the preservation of the
5 cultural identity of the people of the Federated
6 States of Micronesia;

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

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

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

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

1 (9) to provide on a reimbursable basis
2 emergency telecommunications services to
3 governments, individuals, and entities in the
4 Federated States of Micronesia[-]; and
5 ~~[(10) where the Corporation owns or controls~~
6 ~~capacity rights on HANTRU1 Cable System between~~
7 ~~Pohnpei and Guam, it shall supply such services~~
8 ~~to the FSM Open Access Entity free of charge,~~
9 ~~including system access, on terms as may be~~
10 ~~demand by the FSM Open Access Entity in order~~
11 ~~to link Chuuk to Pohnpei and Chuuk to Guam.]~~

12 Section 4. Section 389 of title 21 of the Code of
13 the Federated States of Micronesia (Annotated), as
14 amended, is hereby further amended to read as follows:

15 "Section 389. Establishment of Open Access
16 Entity and authority to acquire assets and
17 assume liabilities and obligations.

18 (1) Should the Secretary certify that it is in
19 the interests of the Federated States of
20 Micronesia for a corporation owned by the
21 Government to be established under this section
22 in order to own and operate submarine and
23 terrestrial cable assets within the Federated
24 States of Micronesia or serving the Federated
25 States of Micronesia (the Open Access Entity),

1 the corporation shall be deemed to be
2 established as at the vesting date, and with
3 such assets and liabilities, specified in such
4 certificate.

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

11 (3) The assets, liabilities and obligations
12 referred to in a certificate issued under
13 subsection (1) or any amending or supplementary
14 certificate issued by the Secretary may be
15 described specifically or by class, and no
16 objection shall be taken in any court to the
17 accuracy or completeness of such description.

18 (4) Nothing in this section shall restrict or
19 prevent the Open Access Entity from acquiring
20 other assets or undertaking other activities
21 that in the opinion of the board of the Open
22 Access Entity are required in order to provide
23 the services referred to in subsection (3[2]).

24 ~~[(5) Legal and beneficial ownership of all~~
25 ~~existing interests of Federated States of~~

1 ~~Micronesia Telecommunications Corporation~~
2 ~~(FSMTC) in the submarine cable system connecting~~
3 ~~from Pohnpei to Guam, known as the HANTRU-1~~
4 ~~cable system and Pohnpei extension, shall be~~
5 ~~transferred from FSMTC to the Open Access Entity~~
6 ~~and the Open Access Entity shall assume all~~
7 ~~obligations of FSMTC to pay and perform:~~

8 ~~(a) all outstanding indebtedness to the~~
9 ~~United States Rural Utilities Service for the~~
10 ~~loan, known as Loan B, used to finance the~~
11 ~~procurement and construction of such cable~~
12 ~~system and FSMTC's rights therein; and~~

13 ~~(b) all executory contractual obligations~~
14 ~~of FSMTC to third parties in respect of such~~
15 ~~cable system.~~

16 ~~The transfer of such interest shall have effect~~
17 ~~from such date as may be specified by the~~
18 ~~Secretary in a deed of conveyance of assets and~~
19 ~~assumption of liabilities which shall be~~
20 ~~prepared by the Secretary, and executed and~~
21 ~~delivered by FSMTC and the Open Access Entity,~~
22 ~~without delay after obtaining consent for such~~
23 ~~transfer from the United States Rural Utilities~~
24 ~~Service, which the Secretary of Justice shall~~
25 ~~use all reasonable endeavors to obtain within~~

1 ~~180 days after the effective date of this Act.~~
2 ~~The assets, liabilities and obligations referred~~
3 ~~to in such deed may be described specifically or~~
4 ~~by class, and no objection shall be taken in any~~
5 ~~court to the accuracy or completeness of such~~
6 ~~description.~~

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

10 ~~(a) FSMTC shall hold the interests to be~~
11 ~~conveyed by such deed in trust for the Open~~
12 ~~Access Entity and shall allow the Open Access~~
13 ~~Entity full and unimpaired rights of access and~~
14 ~~use of the relevant facilities and properties,~~
15 ~~and unfettered communications and relations with~~
16 ~~FSMTC's counterparties under the related~~
17 ~~executory contracts, as if such conveyance had~~
18 ~~already occurred, including, but not limited to,~~
19 ~~the right to modify or install equipment and~~
20 ~~facilities on such facilities and properties.~~

21 ~~(b) The Open Access Entity shall bear~~
22 ~~full financial responsibility for all~~
23 ~~obligations to be assumed under such deed and~~
24 ~~the Open Access Entity shall coordinate all~~
25 ~~payments to be made by the Open Access Entity to~~

1 ~~ensure the due and punctual remission of such~~
2 ~~sums to the intended beneficiaries.~~

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

24 ~~(8) In respect of the matters set out in this~~
25 ~~section 389, FSMTC and the Open Access Entity~~

1 ~~shall cooperate in good faith in working with~~
2 ~~each other and in seeking and obtaining all~~
3 ~~required approvals and consents of third~~
4 ~~parties, and in executing and delivering all~~
5 ~~agreements, instruments and acknowledgements~~
6 ~~required by such third parties to give effect to~~
7 ~~the transfer of rights and assumption of~~
8 ~~liabilities provided for hereunder. — If any~~
9 ~~dispute arises between FSMTC and the Open Access~~
10 ~~Entity with respect to the provisions or~~
11 ~~requirements of this section 389, the Secretary~~
12 ~~shall resolve the dispute and his determination~~
13 ~~shall be final.”~~

14 Section 5. This act shall become law upon approval
15 by the President of the Federated States of Micronesia or
16 upon its becoming law without such approval.

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Date: 6/27/18

Introduced by: /s/ Wesley W. Simina
Wesley W. Simina