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A BILL FOR AN ACT

To further amend title 21 of the Code of the Federated States of Micronesia, as amended by Public Laws Nos. 5-7, 5-104, 7-37 and 7-99, by repealing chapter 2 in its entirety and by adding a new chapter 2 in lieu thereof, for the purpose of privatizing the Telecommunications Corporation, and for other purposes.

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

1 Section 1. Sections 201 through 231 of title 21 of the Code of the Federated
2 States of Micronesia are hereby repealed in their entirety.

3 Section 2. Title 21 of the Code of the Federated States of Micronesia is hereby
4 further amended by adding a new section 201 of chapter 2 to read as follows:

5 "Section 201. Title. This chapter may be cited as the 'Federated States of
6 Micronesia Telecommunications Privatization Act of 1994.'"

7 Section 3. Title 21 of the Code of the Federated States of Micronesia is hereby
8 further amended by adding a new section 202 of chapter 2 to read as follows:

9 "Section 202. Definitions. As used in this chapter, unless otherwise
10 specified:

11 (1) 'Board' means the Board of Directors of the Company.

12 (2) 'Company' means the Federated States of Micronesia
13 Telecommunications Company established pursuant to section 203 of this
14 chapter.

15 (3) 'Government' means the National Government of the
16 Federated States of Micronesia.

17 (4) 'President' means the President of the Federated States of
18 Micronesia.

19 (5) 'Secretary' means the Secretary of the Department of
20 Transportation and Communication of the Federated States of Micronesia.

21 (6) 'Telecommunications services' means services which include,
22 but are not limited to, telephone, telegram, telex, data transfer,
23 facsimile, videotext, and audio visual services, both as available to the
24 general public and as provided by lease arrangements for the exclusive
25 use of lessees."

1 Section 4. Title 21 of the Code of the Federated States of Micronesia is hereby
2 further amended by adding a new section 203 of chapter 2 to read as follows:

3 "Section 203. Establishment of the Company. The Federated States of
4 Micronesia Telecommunications Company is hereby established."

5 Section 5. Title 21 of the Code of the Federated States of Micronesia is hereby
6 further amended by adding a new section 204 of chapter 2 to read as follows:

7 "Section 204. Incorporation of the Company.

8 (1) The Company:

9 (a) is a body corporation with perpetual succession;

10 (b) shall have a seal;

11 (c) may enter into contracts;

12 (d) may acquire, hold, manage, charge, and dispose of

13 real, personal, and mixed property;

14 (e) may sue and be sued in its corporate name; and

15 (f) for the purposes of its functions, has all the

16 powers, functions, duties, and responsibilities of a corporation.

17 (2) To the extent that other provisions of National law are not

18 inconsistent with this chapter, they shall apply to the Company and

19 its activities."

20 Section 6. Title 21 of the Code of the Federated States of Micronesia is hereby
21 further amended by adding a new section 205 of chapter 2 to read as follows:

22 "Section 205. Objectives of the Company. The objectives of the Company
23 shall be:

24 (1) to assume responsibility for the management, operation, and

25 maintenance of domestic and international telecommunication services for

1 the Federated States of Micronesia;
2 (2) to perform in a manner that will best meet the
3 social, economic, and political needs for the people of the Federated States
4 of Micronesia in telecommunication services and to do so as efficiently
5 and economically as practicable;
6 (3) to the extent that it is reasonable and practicable,
7 to provide telecommunication services to the widest practical number of
8 users; and
9 (4) to encourage and enlist private sector participation
10 in the Company."

11 Section 7. Title 21 of the Code of the Federated States of Micronesia is hereby
12 further amended by adding a new section 206 of chapter 2 to read as follows:

13 "Section 206. Functions of the Company. The functions of the Company
14 under this chapter are to plan, establish, manage, operate, and maintain
15 domestic and international telecommunication services for the Federated
16 States of Micronesia consistent with the objectives set forth in section
17 205 of this chapter."

18 Section 8. Title 21 of the Code of the Federated States of Micronesia is hereby
19 further amended by adding a new section 207 of chapter 2 to read as follows:

20 "Section 207. Powers of the Company.
21 (1) Subject to this chapter, the Company has, in addition to any
22 other powers conferred by this chapter and any other law, all powers,
23 rights, privileges, and immunities that are necessary or convenient for
24 carrying out its functions.
25 (2) Without limiting the generality of subsection (1) of this

1 activities or that may be granted; provided that any such future grant of
2 authority:

3 (i) does not adversely affect the financial ability of
4 the Company to serve the outer islands; and

5 (ii) shall not permit the operation of a public switch
6 system;

7 (e) shall in accordance with the provisions of title 17,
8 the Administrative Procedures Act, set and collect rates and charges, and
9 promulgate rules and regulations, with respect to the provision of
10 telecommunication services; provided, however, that rates and charges
11 shall not be set so that for any fiscal year the anticipated annual gross
12 profit shall be more than 20 percent of anticipated annual gross
13 revenues; and provided further, that annual gross profits earned in
14 excess of 20 percent of annual gross revenues shall within the next fiscal
15 year be used by the Company either to maintain or expand its system or to
16 provide rebates to its customers; and

17 (f) shall adopt articles of incorporation and bylaws to
18 govern the operations and functions of the Company."

19 Section 9. Title 21 of the Code of the Federated States of Micronesia is hereby
20 further amended by adding a new section 208 of chapter 2 to read as follows:

21 "Section 208. Management of the Company.

22 (1) Subject to this chapter and to the articles of incorporation
23 and bylaws adopted by the Company pursuant to this chapter, the
24 Company shall be controlled and managed by a Board of Directors.

25 (2) The Board has and may exercise and perform all the powers

1 and functions of the Company under this chapter."

2 Section 10. Title 21 of the Code of the Federated States of Micronesia is hereby
3 further amended by adding a new section 209 of chapter 2 to read as follows:

4 "Section 209. The Board of Directors.

5 (1) The initial directors of the Board, which shall serve until
6 their successors are elected or appointed at the first shareholder's
7 meeting described in section 212(6) of this chapter, shall be
8 comprised of eight directors including the following: the Secretary,
9 who shall serve as the chairman of the Board, and, subject to appointment
10 and removal by the President, two attorneys, if possible, or other
11 individuals from the private sector representing consumer interests, one
12 representative from each of the four States, subject to appointment
13 and removal by the Governor of the State, and one representative
14 from the Federated States of Micronesia Telecommunications Corporation.
15 The initial Board shall meet at the call of the chairman or any four
16 directors and, subject to this chapter, the articles of incorporation, and
17 the bylaws, shall determine its own procedures. Vacancies in the initial
18 Board may be filled in the same manner as directors may be appointed.
19 The quorum for any meeting of the initial Board shall be five.

20 (2) At the shareholder's meeting described in section
21 212(6) of this chapter, and until the National Government owns less than
22 25 percent of the authorized capital stock of the Company:

23 (i) the Board shall be comprised of eight directors
24 and the quorum for any meeting of the Board shall be five;

25 (ii) the directors shall be elected by ballot at the annual

1 meeting of the shareholders, to serve for one year or until their
2 successors are elected and qualified; their term of office shall begin
3 immediately after election; and

4 (iii) every shareholder entitled to vote at any election
5 for directors of the Company shall have votes equal to the number of his
6 shares with voting rights multiplied by the number of directors to be
7 elected; and he may accumulate his votes and give one candidate all his
8 votes, or he may distribute his votes among as many candidates as he
9 thinks fit; the candidates receiving the highest number of votes up to the
10 number of directors to be elected are elected.

11 (3) At such time as the National Government owns less than
12 25 percent of the authorized capital stock of the Company*the number,
13 selection, and qualification of directors as set forth in subsection (2) of
14 this section, may be changed by the amendment of the bylaws of the
15 Company.

16 (4) If a director has a personal interest in the subject matter
17 of any question before a meeting of the Board, he shall disclose his
18 interest in the meeting and shall take no part in the deliberations (except
19 as directed by the Board) or in the decision of the Board on the question.
20 Any such disclosure shall be recorded in the minutes."

21 Section 11. Title 21 of the Code of the Federated States of Micronesia is hereby
22 further amended by adding a new section 210 of chapter 2 to read as follows:

23 "Section 210. Officers and staff.

24 (1) The officers of the Company shall be a president, vice-
25 president, secretary, and treasurer, each of whom shall be selected by the

1 directors in accordance with the bylaws. Such other officers as may be
2 deemed necessary may be selected by the directors or chosen in such a
3 manner as may be described in the bylaws. The same person may not
4 hold the position of president and secretary at the same time. The duties
5 of the officers shall be as set forth in the bylaws or by resolution of the
6 directors, not inconsistent with the bylaws or this chapter.

7 (2) The Company may employ such other employees,
8 consultants, and advisors on such terms and conditions as it deems
9 necessary and convenient for the performance of the functions of the
10 Company."

11 Section 12. Title 21 of the Code of the Federated States of Micronesia is hereby
12 further amended by adding a new section 211 of chapter 2 to read as follows:

13 "Section 211. Vesting of real personal, and mixed property. As of
14 January 1, 1995, all real, personal, and mixed property of the
15 Federated States of Micronesia Telecommunications Corporation,
16 including without limitation, all monies lying in the Telecommunications
17 Revolving Fund created under section 1 of Public Law No. 3-27, shall
18 vest absolutely in the Company; and all assets and liabilities, rights,
19 duties, and obligations, and all contracts and agreements of the
20 Government relating to telecommunication service and existing on
21 January 1, 1995, including the telecommunication grants made available
22 under sections 215(a) and 215(b) of the Compact of Free Association,
23 shall stand transferred to and vest in the Company as of said date."

24 Section 13. Title 21 of the Code of the Federated States of Micronesia is hereby
25 further amended by adding a new section 212 of chapter 2 to read as follows:

1 "Section 212. Authorized capital stock; Privatization.

2 (1) The initial Board shall on or before September 30, 1994,
3 obtain an appraisal of the value, as of June 30, 1994, of the property
4 transferred under section 211 of this chapter.

5 (2) The appraised value determined under subsection (1) of
6 this section shall constitute the aggregate par value of the initial
7 authorized capital stock of the Company. The par value of each share shall
8 be \$10.00.

9 (3) Of the initial authorized capital stock, 25 percent shall be
10 issued to the Government as soon as practicable.

11 (4) The remaining 75 percent of the initial authorized capital
12 stock shall, as soon as practicable, be made available for purchase by the
13 public for cash on such terms and conditions as authorized by the Board;
14 provided, however:

15 (a) the purchase price per share shall not be less than
16 the par value;

17 (b) only citizens of the Federated States of Micronesia
18 shall be permitted to purchase or own shares; and

19 (c) no person, other than the Government, shall be
20 permitted to purchase or own more than one percent of the authorized
21 capital stock; provided, however, if one year after the initial offering of
22 stock any of the initial authorized stock remains unsold, then the Congress
23 of the Federated States of Micronesia may authorize the purchase and
24 ownership by any citizen of the Federated States of Micronesia of up to
25 two percent of the authorized capital stock; and if two years after the

1 initial offering of stock any of the initial authorized stock remains unsold,
2 then the Congress of the Federated States of Micronesia may authorize the
3 purchase and ownership by any citizen of the Federated States of
4 Micronesia of up to three percent of the authorized capital stock.

5 (5) Monies received by the Company with respect to the sale of
6 capital stock under subsection (4) of this section, shall, to the extent of
7 the value of the stock sold, be paid into the General Fund of the Federated
8 States of Micronesia or otherwise credited to the Government as soon as
9 practicable after their receipt.

10 (6) As soon as practicable, but in any event within 60
11 days after the initial issuance of the stock purchased pursuant to
12 subsection (4) of this section, the Board shall call for and hold a meeting
13 of the shareholders to elect new directors.

14 (7) Until the Government owns less than 25 percent of the
15 authorized capital stock, the amount of the authorized capital stock can
16 only be amended with the consent of the Government.

17 (8) Each share of stock of the Company shall be entitled to one
18 vote stand by any shareholder election or action for any purpose;
19 provided, however, shareholders shall be permitted to accumulate their
20 votes in the election of directors.

21 (9) Only persons in whose names shares entitled to vote stand
22 on the stock records of the Company on the day of any meeting of the
23 shareholders shall be entitled to vote at such meeting, unless some other
24 day be fixed by the Board for the determination of shareholders of record,
25 and then on such other day; provided, however, until the initial

1 authorized capital stock is fully sold to the private sector, the President
2 or his designee shall be entitled to vote the shares remaining unsold."

3 Section 14. Title 21 of the Code of the Federated States of Micronesia is hereby
4 further amended by adding a new section 213 of chapter 2 to read as follows:

5 "Section 213. Accounts and records.

6 (1) In respect to its assets and transactions, the Company shall
7 maintain accounts and records in accordance with generally accepted
8 accounting principals consistently applied.

9 (2) The Company shall engage an independent auditor to
10 complete an audit of the accounts and records of the Company within 90
11 days after the end of each fiscal year.

12 (3) The Company shall, as soon as practicable after the close of
13 each fiscal year, submit the financial statements of the Company and the
14 auditor's report to the Congress and the President of the Federated States
15 of Micronesia."

16 Section 15. Title 21 of the Code of the Federated States of Micronesia is hereby
17 further amended by adding a new section 214 of chapter 2 to read as follows:

18 "Section 214. Revenue; Authorized investments.

19 (1) The revenue of the Company shall not be treated as revenue
20 of the Government and may be expended for the purposes of the Company
21 pursuant to procedures adopted by the Board.

22 (2) The Company may invest any of its monies in excess of the
23 amounts necessary for meeting the immediate requirements of the
24 Company in investment grade time certificates of deposit, bonds, notes,
25 prime commercial paper, or other low-risk investments."

1 Section 16. Title 21 of the Code of Federated States of Micronesia is hereby
2 further amended by adding a new section 215 of chapter 2 to read as follows:

3 "Section 215. Payment of dividends.

4 (1) Except as otherwise provided by law, the Board of the
5 Company may pay dividends on its outstanding shares in cash,
6 property, or its own shares, only from the profits and earned surplus of
7 the Company and only when the Company does not have a loss and the
8 payment of a dividend would not create a capital deficit.

9 (2) For purposes of the payment of the dividends, the
10 Government will be deemed to be the owner of any shares of the initially
11 authorized capital stock which have not been purchased by the public."

12 Section 17. Title 21 of the Code of the Federated States of Micronesia is hereby
13 further amended by adding a new section 216 of chapter 2 to read as follows:

14 "Section 216. Taxation. Goods imported by the Company for the
15 provision of telecommunication services shall not be subject to any tax,
16 rate, charge, impost or duty under any other law; provided, however, that
17 upon the resale of any such goods, the Company will be liable for and shall
18 pay the then applicable tax, rate, charge, impost or duty on the
19 depreciated value of the goods."

20 Section 18. Title 21 of the Code of the Federated States of Micronesia is hereby
21 further amended by adding a new section 217 of chapter 2 to read as follows:

22 "Section 217. Acquisition of land for the Company.

23 (1) Where any land or interest in land is required for the
24 purposes of the Company, the Company shall comply with applicable State
25 and National laws.

1 (2) The compensation payable for land acquired under
2 subsection (1) of this section shall be paid by the Company."

3 Section 19. Title 21 of the Code of the Federated States of Micronesia is hereby
4 further amended by adding a new section 218 of chapter 2 to read as follows:

5 "Section 218. Transition provision.

6 (1) All acts, transactions, matters, and things done,
7 determined, or entered into by the Federated States of Micronesia
8 Telecommunications Corporation established under the Federated States of
9 Micronesia Telecommunications Act of 1981, section 1 of Public Law No.
10 2-10, shall be deemed to have been done, determined, and entered into by
11 the Company.

12 (2) All assets, liabilities, rights, and obligations existing
13 immediately before the effective date of this act are transferred to and
14 are assets, liabilities, rights, and obligations of the Company.

15 (3) The Board of Directors and officers of the Federated States
16 of Micronesia Telecommunications Corporation immediately before the
17 effective date of this act shall continue their duties until the initial Board
18 of the Company has been appointed and has had time to organize.

19 (4) The acts, transactions, matters, and things done,
20 determined, or entered into by the Government with respect to the
21 Federated States of Micronesia Telecommunications Corporation shall be
22 deemed to have been done, determined and entered into by the Government
23 with respect to the Government."

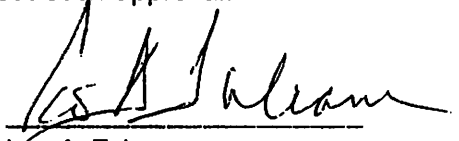
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C.B. NO. 8-226

1 Section 20. This act shall become law upon approval by the President of the
2 Federated States of Micronesia or upon its becoming law without such approval.

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4 Date: Feb. 28, 1994

Introduced by: 
Leo A. Falcam

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