
A BILL FOR AN ACT

To further amend sections 202, 203, 205, 208, 210 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 to create a new chapter 3 in order to create a body called the Federated States of Micronesia Telecommunication Regulation Authority, setting forth the powers, duties, and prerogatives of the Authority, 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 costumer-oriented approach, and for other purposes.

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

1 Section 1. Section 202 of title 21 of the Code of the
2 Federated States of Micronesia, as amended, is hereby amended to
3 read as follows:

4 "Section 202. Establishment of Corporation. The
5 Telecommunications Corporation of the Federated States
6 of Micronesia is hereby established as a [public
7 corporation under the laws of the Federated States of
8 Micronesia. It may hereinafter be referred to as "the
9 Corporation"] shareholding company (the "Corporation")
10 with a paid-up share capital equal to the amount
11 certified by the Public Auditor to be the amount by
12 which the assets of the Corporation exceed its
13 liabilities as at the end of the last financial year of
14 the Corporation. Such share capital shall be divided
15 into paid-up common shares of such denominations as
16 shall be specified in a certificate issued by the

1 Secretary and shall be issued in equal numbers to the
2 Secretary of Finance and Administration and the
3 Secretary of the Department of Transportation,
4 Communications and Infrastructure. The shareholding
5 Secretaries shall hold the shares for and on behalf of
6 the Government."

7 Section 2. Section 203 of title 21 of the Code of the
8 Federated States of Micronesia, as amended, is hereby amended to
9 read as follows:

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

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

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

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

25 (4) to the extent practicable, to expand

1 telecommunications services to areas and communities in
2 the Federated States of Micronesia that are presently
3 not served or poorly served and to improve the quality,
4 reliability, and variety of services available to all
5 users in a manner consistent with commercial
6 reasonableness and with promoting economic development,
7 the advancement of education and health care, and the
8 preservation of the cultural identity of the people of
9 the Federated States of Micronesia;

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

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

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

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

1 (9) to provide on a reimbursable basis emergency
2 telecommunications services to governments, individuals,
3 and entities in the Federated States of Micronesia; and
4 ~~[(10) to represent the Federated States of Micronesia~~
5 ~~with regard to telecommunications matters in such~~
6 ~~international organizations and for a in which the~~
7 ~~Federated States of Micronesia is represented, subject~~
8 ~~to the policy guidance of the Government of the~~
9 ~~Federated States of Micronesia.]”~~

10 Section 3. Section 205 of title 21 of the Code of the
11 Federated States of Micronesia, as amended, is hereby amended to
12 read as follows:

13 “Section 205. Legal capacity of the Corporation. In
14 performing the functions authorized under this chapter
15 or other law of the Federated States of Micronesia, the
16 Corporation shall have the capacity to exercise all
17 powers normally exercised by a corporation, including,
18 but not limited to, the following:

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

20 (2) to adopt and amend bylaws governing the conduct of
21 its business and the exercise of its powers;

22 (3) to sue and be sued in its corporate name;

23 (4) to acquire, in any lawful manner, real, personal,
24 or mixed property, either tangible or intangible; to
25 hold, maintain, use, and operate such property; and to

1 sell, lease, or otherwise dispose of such property;
2 [~~(5)~~ to acquire and take over in any lawful manner the
3 business, property, assets, and liabilities of any
4 entity, including the Government of the Trust Territory
5 of the Pacific Islands relating to communications,]
6 [~~(6)~~](5) to borrow or raise any sum or sums of money
7 and to issue corporate bonds on such security and upon
8 such terms as may from time to time be deemed necessary
9 for the expansion and improvement of communications
10 facilities;
11 [~~(7)~~](6) to retain and terminate the services of
12 employees, agents, attorneys, auditors, and independent
13 contractors upon such terms and conditions as it may
14 deem appropriate; and
15 [~~(8)~~](7) to do all such other things as may be deemed
16 incidental to or conducive to the attainment of the
17 responsibilities of the Corporation."

18 Section 4. Section 208 of title 21 of the Code of the
19 Federated States of Micronesia, as amended by Public Laws Nos.
20 11-26 and 17-03, is hereby repealed in its entirety.

21 Section 5. Section 210 of title 21 of the Code of the
22 Federated States of Micronesia, as amended, is hereby amended to
23 read as follows:

24 "Section 210. Board of Directors - Composition.

25 (a) The Board shall be composed of five voting

1 members. One member shall be appointed by the President
2 of the Federated States of Micronesia with the advice
3 and consent of the Congress. [~~The Governor of each
4 State of the Federated States of Micronesia shall
5 appoint one member of the Board with the advice and
6 consent of the respective State legislature. The chief
7 executive officer of the Corporation shall serve ex
8 officio as a member of the Board but he shall have no
9 right to vote.]~~

10 (b) The directors of the Corporation shall be
11 persons who in the opinion of the shareholding
12 Secretaries shall be qualified to assist the Corporation
13 to operate its business, and shall be appointed and
14 removed by the shareholding Secretaries by resolution.

15 (c) Save as provided in this section, all
16 decisions relating to the operation of the Corporation
17 shall be made by or pursuant to the authority of the
18 board of directors.

19 (d) The shareholding Secretaries may, after
20 consulting with the board, by written notice to the
21 board determine the amount of dividend payable by the
22 Corporation in respect of any financial year and the
23 board shall comply with the notice.

24 (e) The board shall supply to the shareholding
25 Secretaries or to such persons or class of persons as

1 either of the Secretaries specifies such information
2 relating to the affairs of the Corporation as either of
3 those Secretaries requests after consultation with the
4 board. Such information request shall not include any
5 information relating to an individual employee or
6 customer of the Corporation.

7 (f) A shareholding Secretary may at any time, by
8 written notice to the secretary of the Corporation,
9 authorize, on such terms and conditions as are specified
10 in the notice, such person as the Secretary thinks fit
11 to act as the Secretary's representative at any or all
12 of the meetings of shareholders of the corporation. Such
13 representative may exercise the same powers on behalf of
14 the Secretary as the Secretary could exercise if present
15 in person at the meeting."

16 Section 6. Section 228 of title 21 of the Code of the
17 Federated States of Micronesia, as amended, is hereby deleted in
18 its entirety.

19 Section 7. Title 21 of the Code of the Federated States of
20 Micronesia, as amended, is hereby further amended by inserting a
21 new section 228 to read as follows:

22 "Section 232. Approval of Major Transactions:

23 (a) For the purpose of this section, a 'major
24 transaction' in relation to the Corporation means:

25 (1) The acquisition of, or an agreement to acquire,

1 whether contingent or not, assets the value of which is
2 more than half the value of the Corporation's assets
3 before the acquisition; or

4 (2) The disposition of, or an agreement to dispose of,
5 whether contingent or not, assets of the Corporation the
6 value of which is more than half the value of the
7 Corporation's assets before the disposition; or

8 (3) A transaction that has or is likely to have the
9 effect of the Corporation acquiring rights or interests
10 or incurring obligations or liabilities, including
11 contingent liabilities, the value of which is more than
12 half the value of the Corporation's assets before the
13 transaction.

14 (b) In assessing the value of any contingent
15 liability for the purposes of paragraph c of subsection
16 (a), the directors must have regard to all circumstances
17 that the directors know, or ought to know, affect or may
18 affect the value of any contingent liability, may rely
19 on estimates of the contingent liability that are
20 reasonable in the circumstances, and may take account of
21 the likelihood of the contingency occurring and any
22 claim that the Corporation is entitled to make and can
23 reasonably expect to be met to reduce or extinguish the
24 contingent liability.

25 (c) The unanimous assent of the shareholders of

1 the Corporation shall be required to any major
2 transaction."

3 Section 8. Title 21 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by creating a
5 new chapter 3 entitled: "FSM Telecommunication Authority".

6 Section 9. Title 21 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by inserting a
8 new section 301 under chapter 3, to read as follows:

9 "Section 301. Short title. This Act may be cited as
10 the 'FSM Telecommunications Act of 2013'."

11 Section 10. Title 21 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by inserting a
13 new section 302 under chapter 3, to read as follows:

14 "Section 302. Definition. In this Act, unless the
15 context otherwise requires:

16 (a) 'access' means the provision of access to a
17 bottleneck facility by one licensee to another for the
18 purpose of the second licensee providing communications
19 services;

20 (b) 'Act' means the FSM Telecommunications Act
21 2013, and where appropriate includes the rules and
22 regulation made pursuant to this Act;

23 (c) 'affiliate' means, in relation to any one
24 person, any other person directly or indirectly
25 controlling or controlled by or under the direct or

1 indirect common control with, such specified person;

2 (d) 'appeals panel' means the body constituted
3 from time to time pursuant to section 328;

4 (e) 'Authority' means the Office of the
5 Telecommunication Regulation Authority established under
6 section 304;

7 (f) 'bottleneck facility' means a communications
8 facility declared by the Authority to be essential for
9 the production of communications services which, for
10 technical reasons or due to economies of scope and scale
11 and the presence of sunk costs, cannot practicably be
12 duplicated by a potential competitor in a communications
13 market;

14 (g) 'communications' means the conveyance from
15 one device to another of any message by means of any
16 wire, radio, optical, electric, magnetic,
17 electromagnetic, or similar system;

18 (h) 'communications facility' means any
19 infrastructure, building, or switching equipment; any
20 submarine cable landing in the Federated States of
21 Micronesia, submarine cable landing station, or
22 satellite transmitting facility; any location, mast
23 site, tower, pole, trunk line, access line, duct or
24 other underground facility; or other passive equipment
25 that is used or is capable of being used for

1 communications or for any operation directly connected
2 with communications, but excluding customer equipment;

3 (i) 'communications market' means a market
4 determined by the Authority for communications services
5 or access;

6 (j) 'communications network' means a system that
7 uses electricity or electromagnetic energy for providing
8 communications services between network termination
9 points;

10 (k) 'communications service' means a service for
11 the transmission of communications by means of a
12 communications network;

13 (l) 'consumer' means a customer who contracts for
14 a communications service that is offered on standard
15 conditions that are of general application and not
16 negotiated individually;

17 (m) 'customer' means a person who contracts for a
18 communications service;

19 (n) 'customer equipment' means equipment
20 (including cabling) that is on the customer side of the
21 network termination point and intended to be connected
22 to a communications network;

23 (o) 'Department' means the Department of
24 Transportation, Communications & Infrastructure of the
25 Government;

1 (p) 'Dominant Service Provider' means in respect
2 of a communications market and licensee who, in the
3 opinion of the Authority:

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

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

11 (q) 'equipment' includes any appliance,
12 apparatus, device or accessory used or intended to be
13 used for communications purposes;

14 (r) 'exempt network' means a communications
15 network:

16 (i) Not used to provide any communications
17 service for which a charge is imposed;

18 (ii) Wholly within one property (including a
19 ship or aircraft) or a number of properties which
20 together comprise a campus;

21 (iii) Used only for a person's private or
22 internal requirements (including the requirements of an
23 organisation's staff, a related entity or a holding
24 company, subsidiary company or associated company); or

25 (iv) Covered by an exemption under subsection

1 330(1)(a);

2 (s) 'exempt service' means a communications
3 service;

4 (i) Provided only over an exempt network; or

5 (ii) Provided in circumstances covered by an
6 exemption under section 330(1)(a);

7 (t) 'Government' means the Government of the
8 Federated States of Micronesia;

9 (u) 'Inspector' means a person appointed or
10 designated by the Authority under section 376;

11 (v) 'interconnection' means the physical and
12 logical linking of communications networks of different
13 licensees in order to allow the customers of one
14 licensee to communicate with customers of the same or
15 another licensee, or to access the communications
16 services of another licensee;

17 (w) 'licence' means an operating or spectrum
18 licence issued to a person or class of persons under
19 this Act;

20 (x) 'licensee' means a person who holds or is
21 registered under a licence issued under this Act;

22 (y) 'market' means a market in the Federated
23 States of Micronesia for goods and services that, as a
24 matter of fact and commercial common sense, are
25 substitutable for them;

1 (z) 'message' means any sign, signal, writing,
2 image, sound, instruction, information, or intelligence
3 of any nature;

4 (aa) 'net revenue' means, in respect of any
5 service provider, the gross revenue received by the
6 service provider from the provision of communications
7 services and from interconnection and access, less the
8 sum of:

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

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

17 (ab) 'network termination point' means the point
18 determined by the technical rules for the purposes of
19 this Act or, in the absence of such rules:

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

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

24 (iii) A point agreed between the customer and
25 the owner of the communications facility to which that

1 customer is connected; or

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

5 (ac) 'Open Access Entity' means a corporation
6 established pursuant to section 389;

7 (ad) 'person' includes a public authority and any
8 association of persons, whether incorporated or not;

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

12 (af) 'President' means the President of the
13 Federated States of Micronesia;

14 (ag) 'radio communication' has the meaning
15 assigned to that term in the Federated States of
16 Micronesia Radio Communication Act of 1991, codified as
17 Chapter 1 Title 21 of the Code of the Federated States
18 of Micronesia;

19 (ah) 'radio frequency spectrum' means those radio
20 frequencies comprising channels for specific radio
21 transmission technologies usable in the Federated States
22 of Micronesia;

23 (ai) 'Secretary' means the Secretary of the
24 Department of Transportation, Communications &
25 Infrastructure;

1 (aj) 'sensitive information' has the meaning given
2 in section 322(5);

3 (ak) 'service provider' means a person who:

4 (i) Owns a communications network; or

5 (ii) Provides or is entitled to provide a
6 communications service under a licence or exemption; or

7 (iii) Has applied for a licence or exemption
8 under this Act;

9 (ll) 'specified communications network' means a
10 communications network that includes a line or radio
11 communications link, or a series of lines or radio
12 communications links, between two fixed points,
13 including:

14 (i) Radio communications transmission links;

15 (ii) Cable transmission links; and

16 (iii) Cable access networks;

17 (a) 'universal access obligation' means an
18 obligation of a licensee to provide communications
19 services under a universal access policy in an eligible
20 geographic area under Section 361(1).

21 (b) 'universal access plan' has the meaning given
22 in section 367;

23 (c) 'Universal Access Special Revolving Fund'
24 means the Universal Access Special Revolving Fund
25 established under section 365;

1 (d) 'user' means any person using a
2 communications service, regardless of whether such a
3 person is contracted to acquire the service.

4 (g) 'wholesale services' means services required
5 by a licensee in order to provide communications
6 services where such services are supplied or provided by
7 means of or by means that rely upon a bottleneck
8 facility."

9 Section 11. Title 21 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by inserting a
11 new section 303 under chapter 3, to read as follows:

12 "Section 303. General objectives

13 (1) The objectives of this Act are:

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

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

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

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

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

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

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

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

20 (i) Extending access to communications services
21 to all persons in the Federated States of Micronesia, to
22 the greatest extent reasonable in the circumstances; and
23 Promoting the appropriate use of communications networks
24 and communications services."

25 Section 12. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by inserting a
2 new section 304 under chapter 3 to read as follows:

3 "Section 304. Establishment of the Authority.

4 (1) There is hereby established the 'Office of the
5 Telecommunication Regulation Authority' with the
6 functions and powers set out in this Act.

7 (2) The Authority shall consist of a Chief Executive
8 and two members, all appointed by the President.

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

13 Section 13. Title 21 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by inserting a
15 new section 305 under chapter 3 to read as follows:

16 "Section 305. Functions and powers of the Authority.

17 For the purpose of achieving the objectives referred to
18 in section 303, the Authority shall:

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

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

25 (c) Monitor and enforce compliance with

1 competition requirements and determine when industry
2 consolidation is permissible;

3 (d) Regulate the protection of consumers, the
4 charges levied by licensees for communications networks,
5 and the communications services and attributes of
6 communications services;

7 (e) Specify the technical standards and
8 procedures for interconnection, the operation of
9 communications networks, and the provision of
10 communications services;

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

14 (g) Manage the registration and allocation of
15 country code top-level domains for the Federated States
16 of Micronesia;

17 (h) Monitor and report on the development and
18 performance of the communications sector in supplying
19 services and the contribution of the communications
20 sector to the overall development of the Federated
21 States of Micronesia;

22 (i) Monitor the quality of services provided by
23 licensees and ensure that licensees conform to standards
24 specified by the Authority;

25 (j) Manage the radio frequency spectrum required

1 to provide communications services, including numbering
2 and electronic addressing, and where practicable assist
3 licensees in obtaining access to land for communications
4 networks;

5 (k) Administer universal service arrangements for
6 the supply of communications services throughout the
7 Federated States of Micronesia;

8 (l) Give effect to policies approved by the
9 Authority or the President;

10 (m) Where required by the Secretary, represent
11 the Government in international conferences or
12 international and other organisations concerned with
13 communications;

14 (n) Advise the Government on policies and
15 legislative measures in respect of communications;

16 (o) Undertake consultations on matters relating
17 to communications;

18 (p) Take enforcement action under this Act;

19 (q) Make rules and regulations as provided for
20 under this Act; and

21 (r) Perform such other functions as are
22 consistent with this Act."

23 Section 14. Title 21 of the Code of the Federated States of
24 Micronesia, as amended is hereby further amended by inserting a
25 new section 306 under chapter 3 to read as follows:

1 "Section 306. Appointment and removal of members.

2 (1) All the members of the Authority (including the
3 Chief Executive who shall be appointed as such) shall be
4 appointed by the President, from among persons appearing
5 to him to be qualified for the office for a term of 4
6 years. The President may renew the term of appointment
7 of a member for up to two additional terms of four years
8 each.

9 (2) The terms of appointment of a member shall be
10 issued by the President and shall include with
11 appropriate modifications an obligation to comply with
12 such ethics rules comparable to those applicable to
13 employees of the Public Service System from time to
14 time.

15 (3) The President shall not appoint a person as Chief
16 Executive under subsection (1) unless in the opinion of
17 the President the person:

18 (a) Has demonstrated experience of not less than
19 10 years in the fields of economics, law, finance,
20 business, engineering or public administration in
21 relation to the communications sector; and

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

24 (4) There shall be no requirement that the Chief
25 Executive is a citizen of the Federated States of

1 Micronesia, but preference may be given in the
2 evaluation of candidates for the position to citizens of
3 the Federated States of Micronesia where such persons
4 are otherwise qualified under subsection (2).

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

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

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

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

16 (a) Is found or declared to suffer from mental or
17 physical incapacity;

18 (b) Is or has been convicted of a criminal
19 offense involving dishonesty or corruption, or where the
20 penalty includes imprisonment for one year or longer;

21 (c) Is or has been declared bankrupt or
22 insolvent;

23 (d) Holds an elected office in the Federated
24 States of Micronesia national or state government;

25 (e) In the case of the Chief Executive, is a

1 staff member or officer of a department or agency of the
2 Government; or

3 (f) Holds a direct or indirect financial or other
4 interest in any service provider other than through a
5 fund over which the person has no control or influence.

6 (7) The President may remove a member who is
7 disqualified under subsection (6), or has committed a
8 serious breach of the terms of appointment as such
9 member.

10 (8) A member may resign from the Authority upon one
11 month's written notice to the President, or such shorter
12 time as the President and the member may agree in
13 writing.

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

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

25 (11) Any Acting Chief Executive appointed under

1 subsection (10) shall during his period of appointment
2 have and exercise all the powers of the Chief
3 Executive."

4 Section 15. Title 21 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by inserting a
6 new section 307 under chapter 3 to read as follows:

7 "Section 307. Remuneration of members.
8 The Authority shall pay to each of its members, in
9 respect of his office as such, remuneration and/or
10 allowances as prescribed by the terms of appointment of
11 such member issued by the President, and in determining
12 the remuneration and allowances to be paid under this
13 section, different provisions may be made as regards the
14 Chief Executive and the other members but not as between
15 the other members."

16 Section 16. Title 21 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by inserting a
18 new section 308 under chapter 3 to read as follows:

19 "Section 308. Incorporation and legal capacity of the
20 Authority.

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

23 (2) The Authority may sue and be sued in its corporate
24 name, may enter into contracts, and may acquire,
25 purchase, take, hold and enjoy property of every

1 description. The Authority may convey, assign,
2 surrender, yield up, charge, mortgage, lease, demise,
3 reassign, transfer or otherwise dispose of or deal with
4 any property or any interest therein vested in the
5 Authority upon such terms as it sees fit.

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

8 Section 17. Title 21 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended by inserting a
10 new section 309 under chapter 3 to read as follows:

11 "Section 309. Procedure of the Authority.

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

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

24 (3) Except as provided in subsections (1) and (2), the
25 Authority shall determine its own procedure as the

1 Authority shall consider is necessary for the equitable
2 and transparent exercise of its powers or for the
3 effective administration of the Authority."

4 Section 18. Title 21 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by inserting a
6 new section 310 under chapter 3 to read as follows:

7 "Section 310. Duty of members to disclose conflicts of
8 interest.

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

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

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

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

23 (3) The disclosing member:

24 (a) Shall not take part after the disclosure in
25 any deliberation or decision of the Authority with

1 respect to that matter; and

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

5 Section 19. Title 21 of the Code of the Federated States of
6 Micronesia, as amended, is hereby amended by inserting a new
7 section 311 under chapter 3 to read as follows:

8 "Section 311. Chief Executive. The Chief Executive
9 shall be:

10 (a) Primarily responsible for the execution of
11 the policies, and the implementation of the decisions,
12 of the Authority;

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

16 (c) The head of the staff of the Authority."

17 Section 20. Title 21 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by inserting a
19 new section 312 under chapter 3 to read as follows:

20 "Section 312. Delegation by Chief Executive.
21 The Chief Executive may, in writing, delegate any of his
22 powers and functions in his capacity as Chief Executive
23 to any of the staff of the Authority, except this power
24 of delegation."

25 Section 21. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by inserting a
2 new section 313 under chapter 3 to read as follows:

3 "Section 313. Employees of the Authority.

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

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

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

15 Section 22. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by inserting a
17 new section 314 under chapter 3 to read as follows:

18 "Section 314. Authentication of Authority's seal.

19 The Chief Executive shall by signature authenticate the
20 application of the seal of the Authority."

21 Section 23. Title 21 of the Code of the Federated States of
22 Micronesia, as amended, is hereby further amended by inserting a
23 new section 315 under chapter 3 to read as follows:

1 "Section 315. Presumption of authenticity of documents
2 issued by the Authority.
3 Any document purporting to be an instrument issued by
4 the Authority and sealed as aforesaid or signed on
5 behalf of the Authority or by the Chief Executive on
6 behalf of the Authority shall be received in evidence
7 and shall be deemed to be such an instrument without
8 further proof unless the contrary is shown."

9 Section 24. Title 21 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by inserting a
11 new section 316 under chapter 3 to read as follows:

12 "Section 316. Protection of members of the Authority.
13 No personal liability shall attach to any member or
14 staff of the Authority in respect of anything done or
15 permitted in good faith under the provisions of this
16 Act."

17 Section 25. Title 21 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by inserting a
19 new section 317 under chapter 3 to read as follows:

20 "Section 317. Government policies and international
21 conventions.

22 (1) The Secretary shall:

23 (a) Before recommending to the President any
24 general policy in relation to communications, consult
25 with the Authority, licensees and other interested

1 persons and allow a reasonable period for consultation;
2 and

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

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

7 (3) The Authority shall:

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

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

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

17 Section 26. Title 21 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by inserting a
19 new section 318 under chapter 3 to read as follows:

20 "Section 318. Exemption from income tax, customs duty
21 and import levy.

22 Notwithstanding the provisions of any other Act, the
23 income of the Authority shall be exempt from payment of
24 income tax, and the Authority shall not be liable for
25 the payment of customs duty and import levy, or any

1 other tax having a similar effect."

2 Section 27. Title 21 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by inserting a
4 new section 319 under chapter 3 to read as follows:

5 "Section 319. Annual reports, accounts and audit.

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

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

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

17 (4) The Authority shall by:

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

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

24 (c) 30 June of each year, submit to the President
25 and publish the audited accounts and an annual report on

1 its activities for the previous financial year; and

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

6 (i) Adequacy and quality of services; and

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

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

11 (a) A list of the licenses issued under this Act
12 and then in force;

13 (b) A list of the interconnection and access
14 agreements then in force;

15 (c) A summary of any material litigation
16 involving the Authority;

17 (d) A description of the activities carried out
18 during the year in respect of the universal access plan.

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

25 Section 28. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by inserting a
2 new section 320 under chapter 3 to read as follows:

3 "Section 320. Efficiency audit.

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

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

9 (a) Review the Authority's annual budget for the
10 current fiscal year and the Authority's forecasts for
11 the following two fiscal years;

12 (b) Assess whether the budget and forecasts are
13 reasonable having regard to the Authority's functions
14 under this Act; and

15 (c) Provide a report to the Authority and the
16 President outlining these findings and, if practicable,
17 recommend changes to the Authority's budget and
18 forecasts.

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

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

1 auditor.

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

12 Section 29. Title 21 of the Code of the Federated States of
13 Micronesia, as amended, is hereby further amended by inserting a
14 new section 321 under chapter 3 to read as follows:

15 "Section 321. Consultation.

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

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

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

25 (b) The way in which the Authority intends to

1 exercise that power; and

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

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

8 (4) A person shall be entitled to provide a submission
9 to the Authority in response to a notice published under
10 subsection (2). The due date to lodge such a submission
11 shall be 14 days from the date of the notice or such
12 longer period as the Authority may specify in the
13 notice.

14 (5) The Authority shall take into account any
15 submission it receives under subsection (4) by the due
16 date. The Authority is not prohibited from taking into
17 account a submission it receives after the due date.

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

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

23 (a) Publish a draft decision; and

24 (b) Provide a copy of such draft decision to
25 every person who has made a submission under subsection

1 (4), where required by this Act, or where the Authority
2 otherwise considers it appropriate.

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

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

10 (a) Publish that decision; and

11 (b) Provide a copy of such decision to every
12 person who has made a submission under subsection (4)."

13 Section 30. Title 21 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by inserting a
15 new section 322 under chapter 3 to read as follows:

16 "Section 322. Publication and use of information

17 (1) Subject to subsection (3), the Authority shall
18 publish-

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

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

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

25 (2) Where the Authority is required to publish a

1 document, the Authority:

2 (a) Shall publish the document on its website;

3 and

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

6 (3) Subject to subsections (8) and (9), neither the
7 Authority nor any agent of the Authority shall knowingly
8 publish or disclose sensitive information to any person,
9 knowingly allow sensitive information to be disclosed to
10 any person, or use sensitive information for personal
11 advantage. A breach of this prohibition by a member or
12 employee of the Authority shall be a breach of the terms
13 of appointment or employment of that person.

14 (4) Subsection (3) shall also apply to a person who
15 publishes, discloses or uses sensitive information after
16 ceasing to be a member, employee or agent of the
17 Authority.

18 (5) Subject to subsection (8), 'sensitive information'
19 means information:

20 (a) Submitted to the Authority by a person;

21 (b) Not already in the public domain;

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

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

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

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

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

7 (6) The Authority may, by notice given to the person
8 supplying information under subsection (5) within 7 days
9 of the information being submitted, determine that the
10 information and any data derived from that information
11 is not confidential or proprietary and as of the date of
12 such notice that information shall not be 'sensitive
13 information'.

14 (7) Where information is provided to the Authority
15 voluntarily, upon receipt of a notice issued under
16 subsection (6) the submitter may within 3 days of
17 receipt by notice to the Authority withdraw the
18 information, in which case:

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

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

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

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

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

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

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

22 Section 31. Title 21 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by inserting a
24 new section 323 under chapter 3 to read as follows:

1 "Section 323. Service of notices.

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

6 (1) Delivering it to the person or to some adult
7 member or employee of that person's family at the
8 person's last known residence;

9 (2) Leaving it at that person's usual or last known
10 residence or place of business in a cover addressed to
11 the person;

12 (3) Attaching it to some conspicuous part of that
13 person's last known residence;

14 (4) Sending it by registered post addressed to that
15 person at that person's usual or last known residence or
16 place of business;

17 (5) Where the person is a body corporate:

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

21 (b) Sending it by registered post addressed to
22 the body corporate at its registered or principal
23 office."

24 Section 32. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by inserting a

1 new section 324 under chapter 3 to read as follows:

2 "Section 324. Delegation of powers to other regulatory
3 bodies.

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

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

18 Section 33. Title 21 of the Code of the Federated States of
19 Micronesia, as amended, is hereby further amended by inserting a
20 new section 325 under chapter 3 to read as follows:

21 "Section 325. Review options.

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

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

1 (b) For a review by way of appeal under section
2 328; or

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

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

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

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

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

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

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

24 Section 34. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by inserting a

1 new section 326 under chapter 3 to read as follows:

2 "Section 326. Reconsideration of determinations,
3 decisions or orders.

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

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

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

12 (b) The reasons for which the reconsideration is
13 sought; and

14 (c) The action sought on reconsideration.

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

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

25 (5) If the Authority determines to reconsider the

1 determination, decision or order, it shall comply with
2 the same procedures (such as consultation and
3 preparation of a draft decision) to be complied with
4 when the determination, decision or order was first
5 made."

6 Section 35. Title 21 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by inserting a
8 new section 327 under chapter 3 to read as follows:

9 "Section 327. Appointment of experts.

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

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

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

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

1 the person:

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

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

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

10 (5) The Secretary shall remove a person from the
11 register of experts if the person no longer meets the
12 criteria for appointment under subsection (4).

13 (6) The Authority shall act as the secretariat for the
14 appeals panel and shall publish the membership of the
15 register of experts."

16 Section 36. Title 21 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by inserting a
18 new section 328 under chapter 3 to read as follows:

19 "Section 328. Appeals.

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

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

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

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

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

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

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

23 (5) If more than one member is appointed to the
24 appeals panel, the secretariat shall designate one
25 member of the panel as the Chair whose opinion shall

1 determine the appeal in the event of a tie.

2 (6) The appeals panel:

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

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

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

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

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

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

1 appeal.

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

4 (9) The appeals panel shall:

5 (a) Affirm the decision under review;

6 (b) Vary the decision under review;

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

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

14 (10) The appeals panel shall give a copy of its
15 decision and the reasons for the decision to each person
16 affected by the decision and the Authority.

17 (11) The Authority shall publish a decision of the
18 appeals panel given to it under subsection (9).

19 (12) The costs of the appeals panel in conducting the
20 review shall be borne by the person making the
21 application for review. That person shall on filing the
22 application for review promptly pay to the secretariat
23 such amount or amounts by way of pre-payment of such
24 costs as the secretariat shall reasonably determine.

25 (13) The appeals panel may make a costs order in

1 exceptional circumstances where it considers that a
2 person other than the applicant for review has
3 materially contributed to an increase in the amount of
4 the costs of the review and if such order is made, costs
5 will be apportioned between that person and the
6 applicant.

7 (14) A decision of the appeals panel is final and
8 binding, subject to section 325(1)(c)."

9 Section 37. Title 21 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by inserting a
11 new section 329 under chapter 3 to read as follows:

12 "Section 329. Licence for communications network or
13 service.

14 (1) Subject to subsections (5) and (6), no person may,
15 in the FSM or between any place in the FSM and any place
16 outside the FSM, except in accordance with an operating
17 licence issued under this Act:

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

20 (b) Provide a communications service.

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

24 (a) An individual licence, to authorize the
25 ownership or operation of any specified communications

1 network and the provision of any communications service;
2 and

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

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

8 (4) A class licence shall:

9 (a) Be issued by the Authority setting out:

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

11 and

12 (ii) Any applicable eligibility criteria; and

13 (b) Come into force with respect to any person
14 upon registration by that person under section
15 331(1)(b).

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

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

24 (7) Operating licences shall not specify or restrict
25 the technology or network type to be used by the

1 licensee to provide communications services."

2 Section 38. Title 21 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by inserting a
4 new section 330 under chapter 3 to read as follows:

5 "Section 330. Licensing rules for communications
6 networks or services.

7 (1) The Authority may make licensing rules specifying:

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

10 (b) The process for submitting an individual
11 licence application or application for registration,
12 including the intended timeframe for the Authority to
13 process an application;

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

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

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

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

1 Section 39. Title 21 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by inserting a
3 new section 331 under chapter 3 to read as follows:

4 "Section 331. Obtaining a licence for communications
5 networks or services.

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

8 (a) For an individual licence; or

9 (b) For registration under a class licence.

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

12 (a) The applicant's application complies with the
13 licensing rules;

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

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

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

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

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

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

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

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

9 (6) The Authority shall maintain and publish a
10 register of licensees and licences. The entry in the
11 register shall be the authoritative record of the status
12 of any licence.

13 (7) Any restrictions under other laws concerning
14 foreign investment in the Federated States of Micronesia
15 shall not apply to carrying on the business of owning or
16 operating a communications network or providing a
17 communications service by a licensee.

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

22 Section 40. Title 21 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by inserting a
24 new section 332 under chapter 3, to read as follows:

1 "Section 332. Spectrum Licensing Authority.

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

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

10 (3) In performing its functions and duties and
11 exercising its powers under this section, the Authority
12 shall ensure that radio frequency spectrum is managed
13 and used in a manner that:

14 (a) Is open, non-discriminatory, competitively
15 neutral, objective and transparent;

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

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

22 Section 41. Title 21 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by inserting a
24 new section 333 under chapter 3 to read as follows:

1 "Section 333. Spectrum licensing rules.

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

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

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

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

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

17 (e) The eligibility criteria for a spectrum
18 licence;

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

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

1 frequency band;

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

5 (i) General licence conditions for spectrum
6 licences.

7 (2) In accordance with the Administrative Procedures
8 Act, the Authority shall promulgate appropriate rules
9 and regulation governing the use of radio frequency
10 spectrum."

11 Section 42. Title 21 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by inserting
13 section 334 under chapter 3 to read as follows:

14 "Section 334. Application for spectrum licence.

15 (1) Any person may apply to the Authority for a
16 spectrum licence for the purpose of providing
17 communications services.

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

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

23 (b) The applicant's application complies with the
24 spectrum licensing rules;

25 (c) The applicant pays any applicable application

1 fee to the Authority;

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

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

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

12 (3) The Authority shall publish all spectrum licences
13 issued under this Act."

14 Section 43. Title 21 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by inserting a
16 new section 335 under chapter 3 to read as follows:

17 "Section 335. Licence conditions.

18 (1) It is a condition of an operating or spectrum
19 licence that the licensee—

20 (a) Comply with this Act;

21 (b) Pay any applicable licence fees; and

22 (c) Comply with any applicable general conditions
23 imposed under this Act and any special conditions
24 imposed under subsection (2).

25 (2) The Authority may impose special operating licence

1 conditions that shall apply to an individual licensee."

2 Section 44. Title 21 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by inserting a
4 new section 336 under chapter 3 to read as follows:

5 "Section 336. Licence fees.

6 (1) The Authority shall make rules specifying the
7 annual licence fees payable by a holder of either an
8 operating or spectrum licence.

9 (2) Rules under subsection (1) shall determine annual
10 fees for operating and spectrum licences in accordance
11 with the following principles:

12 (a) The Authority shall endeavour to minimise the
13 fees payable by licensees (having regard to section
14 319(1) and the funding required for the proper discharge
15 of the functions of the Authority under this Act;

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

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

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

24 (e) Operating licence fees for individual
25 licences shall be based on a percentage of the gross

1 revenues of the licensee; and

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

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

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

11 (b) The Authority's proposed annual budget and
12 forecasts under section 319.

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

18 Section 45. Title 21 of the Code of the Federated States of
19 Micronesia, as amended, is hereby further amended by inserting a
20 new section 337 under chapter 3 to read as follows:

21 "Section 337. Revocation, suspension, dealing or
22 surrender of a licence.

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

25 (a) It is revoked by the Authority; or

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

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

6 (a) With the consent of the licensee;

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

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

11 (i) Its licence application; or

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

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

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

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

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

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

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

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

11 Section 46. Title 21 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by inserting a
13 new section 338 under chapter 3 to read as follows:

14 "Section 338. Commercial negotiation.

15 Subject to this Act, licensees may negotiate, agree and
16 vary agreements with one another for interconnection of
17 communications networks, access to and sharing of
18 facilities and other services, and the provision of
19 wholesale services, including the type and amount of
20 charges, in such manner and on such conditions as are
21 mutually acceptable to the licensees."

22 Section 47. Title 21 of the Code of the Federated States of
23 Micronesia, as amended, is hereby further amended by inserting a
24 new section 339 under chapter 3 to read as follows:

25 "Section 339. Interconnection and access and supply of

1 wholesale services by all licensees.

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

6 (a) Interconnection of the licensees'
7 communications networks at any economically and
8 technically feasible point of the first licensee's
9 network where interconnection would not affect the
10 security, performance or efficiency of the first
11 licensee's network;

12 (b) Conditions that maintain end-to-end
13 operability to facilitate the provision of
14 communications services by the second licensee to a
15 customer notwithstanding that the customer is directly
16 connected to the first licensee's communications
17 network;

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

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

24 (e) Subject to subsection (d), otherwise
25 reasonable conditions, including with respect to the

1 timing, quality, technical, operational and fault
2 handling terms;

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

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

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

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

25 (2) Licensees in negotiations for an interconnection

1 and access agreement must:

2 (a) Act at all times in good faith;

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

5 (c) Avoid obstructing or delaying negotiations;

6 (d) Comply with any direction given by the
7 Authority as to the conduct of the negotiations;

8 (e) Not seek to cause the other party to withhold
9 from the Authority information concerning the
10 negotiations.

11 (3) A licensee who enters an interconnection and
12 access agreement with another licensee must promptly
13 lodge a copy of the interconnection and access agreement
14 with the Authority."

15 Section 48. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by inserting a
17 **new** section 340 under chapter 3 to read as follows:

18 "Section 340. Disputes between licensees.

19 (1) If an interconnection and access agreement has not
20 been reached within 30 days of a request under section
21 339(1), the Authority may, on written request by either
22 licensee:

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

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

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

7 (a) Include the provisions referred to in section
8 339(1);

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

11 (c) Not provide for interconnection or access to
12 communications facilities or the provision of wholesale
13 services where interconnection or access or the
14 provision of wholesale services is not technically,
15 economically or legally feasible or would materially
16 adversely affect the security, performance or efficiency
17 of the first licensee's network;

18 (d) Have regard to the best interests of
19 consumers, aim to have a positive impact on competition
20 between licensees, and encourage efficient and
21 sustainable investment in communications networks and
22 services in the Federated States of Micronesia.

23 (3) The Authority must consult with both licensees and
24 provide both licensees with a draft interconnection and
25 access agreement or a draft direction before determining

1 the terms of the interconnection and access agreement or
2 making the direction.

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

7 (5) The Authority shall publish copies of all
8 interconnection and access agreements."

9 Section 49. Title 21 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by inserting a
11 new section 341 under chapter 3 to read as follows:

12 "Section 341. Interconnection and access rules.

13 (1) The Authority may make interconnection and access
14 rules specifying standard terms to apply to all
15 interconnection and access agreements, including
16 wholesale prices or pricing principles.

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

23 (3) In specifying interconnection and access prices or
24 pricing principles for interconnection and access rules
25 made under subsection (1), the Authority shall take into

1 account internationally accepted principles for
2 determining regulated prices, including methodologies
3 designed to reflect actual costs.

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

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

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

17 (5) A licensee may apply for a review under section
18 328 of any interconnection and access rules made by the
19 Authority under subsection (1)."

20 Section 50. Title 21 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by inserting a
22 new section 342 under chapter 3 to read as follows:

23 "Section 342. New infrastructure.

24 (1) A licensee who proposes to construct a new
25 communications facility to expand its communications

1 network shall at least 30 days before it plans to
2 finalise the design of the communications facility:

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

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

9 (2) A person may, within 7 days of a proposal being
10 published by the licensee, provide an expression of
11 interest in sharing the communications facility to the
12 Authority. The Authority shall promptly provide any
13 expressions of interest to the licensee who proposes to
14 construct the communications facility.

15 (3) After the expiry of the period in subsection (2),
16 the licensee who proposes to construct the
17 communications facility shall promptly provide each
18 person who has provided an expression of interest with a
19 list of the other persons who have provided an
20 expression of interest.

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

25 (a) Design characteristics of the communications

1 facility so that, to the extent practical, each such
2 person shall be able to use the communications facility
3 for their reasonably anticipated requirements; and

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

8 (5) If the design characteristics and commercial terms
9 described in subsection (4) have not been agreed within
10 14 days of the negotiations commencing, the Authority
11 may, on written request by any party to the
12 negotiations, and by written notice to each party,
13 direct the parties to take specified action to reach
14 agreement (such as to engage a mediator or arbitrator).
15 The parties shall comply with such a direction."

16 Section 51. Title 21 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by inserting a
18 new section 343 under chapter 3 to read as follows:

19 "Section 343. Prohibition of anti-competitive conduct.

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

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

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

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

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

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

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

1 access service:

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

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

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

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

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

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

22 (a) Fixes the prices or other conditions for the
23 supply of a communications service or access service;
24 Apportions, shares or allocates a communications market
25 or markets among themselves or other licensees; or

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

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

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

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

12 Section 52. Title 21 of the Code of the Federated States of
13 Micronesia, as amended, is hereby further amended by inserting a
14 new section 344 under chapter 3 to read as follows:

15 "Section 344. Contravention of competition provisions.

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

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

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

5 (4) If a licensee complies with subsection (2) in
6 relation to a notice served under subsection (1), the
7 Authority shall not take enforcement action under
8 sections 329, 330, 331, 332, 333, 334, 335, 336, 381,
9 382, 383, 384, 385, 386 or 387 of this Act in respect of
10 the conduct specified in that notice."

11 Section 53. Title 21 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by inserting a
13 new section 345 under chapter 3 to read as follows:

14 "Section 345. Industry consolidation.

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

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

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

1 shall:

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

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

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

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

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

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

25 Section 54. Title 21 of the Code of the Federated States of

1 Micronesia, as amended, is hereby further amended by inserting a
2 new section 346 under chapter 3 to read as follows:

3 "Section 346. Publication of terms and conditions.

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

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

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

13 (2) Subject to the provisions of sections 343, 344 and
14 345, the requirements of subsection (1) (b) as to
15 approval of the Authority shall not apply to:

16 (a) Any proposed reduction in a retail tariff;

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

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

22 (4) The Authority may by notice to a Dominant Service
23 Provider dispense with the requirements of subsection
24 (1) in respect of any service or market if in the
25 opinion of the Authority the state of competition in the

1 relevant market is such that tariff changes are unlikely
2 to harm competition or to be substantially detrimental
3 to consumers."

4 Section 55. Title 21 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by inserting a
6 new section 347 under chapter 3 to read as follows:

7 "Section 347. Pricing rules.

8 (1) The Authority may make pricing rules applicable to
9 a Dominant Service Provider in a communications market
10 specifying;

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

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

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

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

25 (4) Any pricing model referred to in subsection (1)

1 shall be designed to;

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

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

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

9 (5) The Authority may;

10 (a) Assess the prices charged for communications
11 services by a licensee to whom a pricing model under
12 subsection (1) applies against the relevant pricing
13 model; and

14 (b) By written notice to the licensee, determine
15 any adjustment to the prices charged by the licensee.

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

20 (7) If the Authority makes a determination to adjust
21 the prices of a licensee's communications services under
22 subsection (5);

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

25 (b) The licensee shall not charge an amount

1 greater than the adjusted price.

2 The licensee may apply for reconsideration under section
3 326 of the adjusted prices."

4 Section 56. Title 21 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by inserting a
6 new section 348 under chapter 3 to read as follows:

7 "Section 348. Fair dealing.

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

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

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

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

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

23 (3) In the case of a customer who has;

24 (a) Contracted for communications services for
25 which they will pay after usage, a licensee shall

1 provide the customer with invoices;

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

4 (ii) On a regular basis;

5 (iii) In a plain and simple format;

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

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

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

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

23 (5) The Authority may make consumer protection rules
24 regulating or prohibiting the use of a communications
25 network or communications services to provide

1 unsolicited communications."

2 Section 57. Title 21 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by inserting a
4 new section 349 under chapter 3 to read as follows:

5 "Section 349. Confidentiality of customer information.

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

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

10 (b) Shall apply appropriate security safeguards
11 to prevent the collection, use, maintenance or
12 disclosure of such information without the customer's
13 consent.

14 (2) A licensee may disclose a customer's name, address
15 and telephone number in a printed or electronic
16 directory or as provided for in the consumer protection
17 rules, provided that a licensee shall permit customers
18 on request to have their name omitted from such
19 directory.

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

24 (4) A licensee shall permit a customer to inspect its
25 records regarding a communications service provided to

1 that customer and shall promptly correct or remove
2 information that is shown to be incorrect.

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

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

11 (7) The Authority may make consumer protection rules
12 requiring a class of licensees to retain or not retain
13 specified information relating to customers, including
14 information about billing, beyond a specified period."

15 Section 58. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by inserting a
17 new section 350 under chapter 3 to read as follows:

18 "Section 350. Confidentiality of customer
19 communications.

20 A licensee shall take all reasonable steps to ensure the
21 confidentiality of its customers' communications except
22 as permitted by law and shall not, without the prior
23 consent of the customer, divulge any information
24 concerning the customer's communications unless required
25 by law or authorized by the Authority."

1 Section 59. Title 21 of the Code of the Federated States of
2 Micronesia, as amended, is hereby further amended by inserting a
3 new section 351 under chapter 3 to read as follows:

4 "Section 351. Access by government authorities.
5 Nothing in sections 349 to 350 shall be interpreted to
6 prohibit or infringe upon the rights of government
7 authorities under the laws of the Federated States of
8 Micronesia to exercise such rights to access otherwise
9 confidential information or communications in a lawful
10 manner."

11 Section 60. Title 21 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by inserting a
13 new section 352 under chapter 3 to read as follows:

14 "Section 352. Terms of service, complaints and
15 disputes.

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

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

25 (b) Submit such conditions, procedures and

1 remedies, or proposed amendments to the Authority for
2 its approval;

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

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

11 (e) Comply with such conditions, implement such
12 procedures and provide such remedies in accordance with
13 their terms as approved by the Authority;

14 (f) Report to the Authority on the types and
15 volumes of consumer complaints and disputes, the
16 application of complaints procedures and manner in which
17 complaints have been resolved; and

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

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

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

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

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

12 (4) Before making a determination under subsection
13 (3), the Authority shall consult with the licensee and
14 the affected consumer."

15 Section 61. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by inserting a
17 new section 353 under chapter 3 to read as follows:

18 "Section 353. Directory assistance.

19 (1) The Authority may make consumer protection rules
20 requiring a licensee or class of licensees to establish
21 and provide customers with directory assistance services
22 on conditions prescribed in those rules, requiring
23 licensees to co-operate for the provision of directory
24 assistance services, and providing for the costs of
25 providing directory assistance services to be shared

1 between licensees whose customers may access the
2 service.

3 (2) In this section, 'directory assistance services'
4 means such services to provide access to a customer's
5 name, telephone number and such other information about
6 a customer as is set out in the consumer protection
7 rules."

8 Section 62. Title 21 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further mended by inserting a
10 new section 354 under chapter 3 to read as follows:

11 "Section 354. Quality of service.

12 (1) The Authority may make consumer protection rules
13 requiring a Dominant Service Provider to;

14 (a) Establish key performance indicators for the
15 quality of its service to users, which may be required
16 to comply with minimum standards set out in the consumer
17 protection rules;

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

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

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

24 (2) If a licensee fails to make performance indicators
25 as required by consumer protection rules made under

1 subsection (1), the Authority may issue performance
2 indicators and the licensee shall comply with such
3 indicators."

4 Section 63. Title 21 of the Code of the Federated States of
5 Micronesia, as amended, is hereby further amended by inserting a
6 new section 355 under chapter 3 to read as follows:

7 "Section 355. Technical standards.

8 (1) The Authority may make technical rules specifying
9 technical standards for;

10 (a) Interconnection of licensees' communications
11 networks; and

12 (b) Customer equipment permitted to be attached
13 to licensees' communications networks.

14 (2) In making the technical rules the Authority may
15 apply, adopt, or incorporate, with or without
16 modification, any standard as it exists at a particular
17 time or from time to time."

18 Section 64. Title 21 of the Code of the Federated States of
19 Micronesia, as amended, is hereby further amended by inserting a
20 new section 356 under chapter 3 to read as follows:

21 "Section 356. Customer equipment standards.

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

1 (a) Does not conform to a relevant equipment
2 standard in the technical rules made under section
3 355(1);

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

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

9 (2) A licensee may;

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

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

17 Section 65. Title 21 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by inserting a
19 new section 357 under chapter 3 to read as follows:

20 "Section 357. Numbering plan.

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

23 (a) A numbering plan for communications services;

24 (b) Annual fees for the right to use allocated
25 numbers in order to recover the costs of the

1 administration of the numbering plan;

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

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

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

12 (f) Requirements for the allocation of priority,
13 quality and capacity for calls to emergency services.

14 (2) The Authority may make numbering rules specifying
15 provisions for number portability if the Authority:

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

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

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

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

1 Authority for approval.

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

5 Section 66. Title 21 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by inserting a
7 new section 358 under chapter 3 to read as follows:

8 "Section 358. National emergency numbers.

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

13 Section 67. Title 21 of the Code of the Federated States of
14 Micronesia, as amended, is hereby further amended by inserting a
15 new section 359 under chapter 3 to read as follows:

16 "Section 359. Domain names.

17 (1) Subject to subsection (4), the Authority shall
18 assume responsibility and thereafter be responsible for
19 the registration and allocation of all country code top-
20 level domains for the Federated States of Micronesia.

21 (2) The Authority may make orders, determinations or
22 directions relating to the registration and allocation
23 of domains.

24 (3) The Authority:

25 (a) May make rules, guidelines and procedures for

1 the registration and allocation of domains under its
2 responsibility including without limitation in relation
3 to applications, transfers, complaints and dispute
4 resolution;

5 (b) Shall ensure that its rules, guidelines and
6 procedures are transparent and non-discriminatory; and

7 (c) May charge reasonable fees to cover its costs
8 for the provision of its services.

9 (4) The assumption of responsibility for the
10 registration and allocation of domains by the Authority
11 shall be subject to the requisite approvals and consents
12 of the Internet Corporation for Assigned Names and
13 Numbers.

14 (5) The Authority shall comply with the procedures and
15 conditions of and agreements with the Internet
16 Corporation for Assigned Names and Numbers."

17 Section 68. Title 21 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by inserting a
19 new section 360 under chapter 3 to read as follows:

20 "Section 360. Universal access policy.

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

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

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

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

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

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

13 (d) Disaster relief services;

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

16 (f) Such other communications services designated
17 by the Secretary."

18 Section 69. Title 21 of the Code of the Federated States of
19 Micronesia, as amended, is hereby further amended by inserting a
20 new section 361 under chapter 3 to read as follows:

21 "Section 361. Universal access eligibility.

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

1 universal access policy.

2 (2) The Secretary shall invite proposals from
3 licensees or prospective licensees to introduce or
4 improve communications services described in section
5 360(3), and shall take into account such proposals in
6 identifying eligible universal access areas under
7 subsection (1)."

8 Section 70. Title 21 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended by inserting a
10 new section 362 under chapter 3 to read as follows:

11 "Section 362. Universal access obligations.

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

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

16 (b) The licensee has assumed that obligation
17 under section 369.

18 (2) The Authority may enforce a universal access
19 obligation by giving notice to the licensee concerned
20 requiring that licensee to take any action or meet any
21 timetable described in that notice and in the reasonable
22 opinion of the Authority required to comply with that
23 obligation.

24 (3) The Authority may defer the commencement of a
25 universal access obligation for such period and to such

1 an extent as the Authority deems fit where the Authority
2 is satisfied that the licensee concerned is building
3 network facilities at its cost in an area subject to the
4 universal access policy or the licensee has voluntarily
5 undertaken to provide additional communications services
6 or to construct additional network facilities at its
7 cost in such an area."

8 Section 71. Title 21 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended by inserting a
10 new section 363 under chapter 3 to read as follows:

11 "Section 363. Eligibility for universal access funding.

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

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

23 Section 72. Title 21 of the Code of the Federated States of
24 Micronesia, as amended, is hereby further amended by inserting a
25 new section 364 under chapter 3 to read as follows:

1 "Section 364. Administration of universal access
2 obligations.

3 The Authority shall ensure that universal access
4 obligations are administered in an open, transparent,
5 non-discriminatory, objective, and competitively neutral
6 manner, and are not more burdensome than necessary to
7 achieve the objectives of the universal access plan."

8 Section 73. Title 21 of the Code of the Federated States of
9 Micronesia, as amended, is hereby further amended by inserting a
10 new section 365 under chapter 3 to read as follows:

11 "Section 365. Universal access special revolving fund.

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

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

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

17 (a) Any amounts transferred under section 319(6);

18 (b) Any amounts available under section by way of
19 spectrum license fees paid as a result of a competitive
20 tender process;

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

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

25 (4) The Authority shall cause to be maintained books

1 of account and records in accordance with general
2 accounting principles for funds administered by the
3 Government in respect of the fund and any monies paid
4 into or out of the fund.

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

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

11 Section 74. Title 21 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by inserting a
13 new section 366 under chapter 3 to read as follows:

14 "Section 366. Universal access rules.

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

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

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

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

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

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

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

7 (3) The universal access rules shall provide that a
8 tender process conducted by the Authority under section
9 369 shall require that the Authority select the
10 compliant tender that in the opinion of the Authority
11 best serves the purposes of the universal access plan
12 and provides the lowest cost solution commensurate with
13 the outcomes to be achieved."

14 Section 75. Title 21 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by inserting a
16 new section 367 under chapter 3 to read as follows:

17 "Section 367. Universal Access Plan.

18 The Authority shall, upon receipt from the Secretary of
19 a list of geographic areas that are eligible under the
20 universal access policy for the application of universal
21 access obligations and funding under the universal
22 access policy, prepare and publish a universal access
23 plan."

24 Section 76. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by inserting a

1 new section 368 under chapter 3 to read as follows:

2 "Section 368. Universal Access Projects.

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

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

11 (b) Any general requirements or specifications
12 for the provision of such communications services or
13 communications facilities."

14 Section 77. Title 21 of the Code of the Federated States of
15 Micronesia, as amended, is hereby further amended by inserting a
16 new section 369 under chapter 3 to read as follows:

17 "Section 369. Provision of universal access services.

18 (1) The Authority may contract with a person to
19 provide a subsidy or concessional loan for the provision
20 of communications services or communications facilities
21 in accordance with a project plan.

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

24 (a) Consider whether there is likely to be
25 competition for the subsidy or concessional loan offered

1 under subsection (1) for the provision of communications
2 services or communications facilities in accordance with
3 the project plan; and

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

8 (3) If the Authority considers that there is not
9 likely to be competition for the provision of the
10 communications services or communications facilities for
11 the maximum subsidy or concessional loan the Authority
12 could offer in fulfilment of the relevant project plan,
13 the Authority shall negotiate with any person the
14 Authority considers has the capability of providing
15 those services or facilities and may enter into a
16 contract for the provision of those services or
17 facilities in accordance with the project plan.

18 (4) If after attempting to negotiate under subsection
19 (3) the Authority considers agreement cannot be reached,
20 the Authority may by written notice require a licensee
21 to enter into a specified contract with the Authority
22 for the provision of the relevant communications
23 services or communications facilities for a subsidy or
24 concessional loan.

25 (5) The Authority shall be guided by the following

1 principles in requiring a licensee to enter into a
2 contract and specifying the terms of the contract under
3 subsection (4):

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

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

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

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

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

24 Section 78. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by inserting a

1 new section 370 under chapter 3 to read as follows:

2 "Section 370. Existing facilities.

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

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

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

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

25 (5) Should the actions of the Authority under

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

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

13 (7) The existing provider, the service provider or any
14 party with land rights may apply for reconsideration
15 under section 326 of a determination under subsection
16 (5)."

17 Section 78. Title 21 of the Code of the Federated States of
18 Micronesia, as amended, is hereby further amended by inserting a
19 new section 371 under chapter 3 to read as follows:

20 "Section 371. New facilities.

21 (1) Should an agreement be reached under section 342
22 to share a new communications facility (a 'sharing
23 agreement'), a party to the sharing agreement may, by
24 notice to the other parties to that agreement and to the
25 owner or occupier of third party land, require that the

1 owner or occupier of the third party land provide access
2 to and use of that land to the extent required to give
3 effect to the sharing agreement and on the same terms
4 and conditions as those enjoyed by other parties to that
5 agreement.

6 (2) Should the owner or occupier of the third party
7 land fail without reasonable excuse to provide access to
8 and use of the land under subsection (1), the Authority
9 may direct the owner or occupier to take such action as
10 the Authority deems fit in order to implement the
11 requirements of subsection (1) and the owner or occupier
12 shall comply with any such direction. A direction under
13 this subsection may include provision for defined
14 amounts by way of compensation to any of the parties
15 with land rights or may provide for compensation to be
16 determined by the Supreme Court of the Federated States
17 of Micronesia under section 373.

18 (3) It shall be a reasonable excuse under subsection
19 (2) that:

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

24 (b) The land concerned is not residential land
25 and the provision of the access and use rights sought

1 would not be technically feasible.

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

6 Section 79. Title 21 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by inserting a
8 new section 372 under chapter 3 to read as follows:

9 "Section 372. Land access charges.

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

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

16 (b) For each service provider, a pro rata share
17 (based on the percentage of total capacity used or
18 occupied) of capital improvements such as ducts,
19 fixtures and other permanent improvements to lands,
20 based on historic cost of the improvements.

21 (2) The Authority may make rules governing a fair and
22 reasonable allocation of charges under sections 370 and
23 371."

24 Section 80. Title 21 of the Code of the Federated States of
25 Micronesia, as amended, is hereby further amended by inserting a

1 new section 373 under chapter 3 to read as follows:

2 "Section 373. Supreme Court may determine compensation.

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

11 Section 81. Title 21 of the Code of the Federated States of
12 Micronesia, as amended, is hereby further amended by inserting a
13 new section 374 under chapter 3 to read as follows:

14 "Section 374. Restoration after use.

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

20 Section 82. Title 21 of the Code of the Federated States of
21 Micronesia, as amended, is hereby further amended by inserting a
22 new section 375 under chapter 3 to read as follows:

23 "Section 375. Evidence.

24 (1) A document appearing to be signed by the Secretary
25 or on behalf of the Authority shall be evidence of the

1 official character of the person appearing to have
2 signed it and, in the case of the Authority, of its
3 issuance by the Authority and, if the document appears
4 to be a copy of a decision or report, shall be evidence
5 of its contents.

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

12 (3) A certificate appearing to be signed by the
13 Authority and bearing the Authority's seal shall be
14 evidence of its contents without proof of the
15 signature."

16 Section 83. Title 21 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by inserting a
18 new section 376 under chapter 3 to read as follows:

19 "Section 376. Appointment of Inspectors.

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

24 (2) An Inspector shall be provided with a certificate
25 of identity, which shall be presented at the request of

1 any person appearing to be in charge of any place
2 entered by the Inspector."

3 Section 84. Title 21 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by inserting a
5 new section 377 under chapter 3 to read as follows:

6 "Section 377. Powers of Inspector.

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

8 (a) Enter and inspect, at any reasonable time,
9 any place owned by or under the control of a service
10 provider or a person operating a device under a licence,
11 in which the Inspector believes on reasonable grounds
12 there is any document, information, equipment, or thing
13 relevant to the enforcement of this Act, and examine the
14 document, information, equipment, or thing or remove it
15 for examination or reproduction, as the case may be;

16 (b) Enter any place on which the Inspector
17 believes on reasonable grounds there is any radio
18 transmitting device or interference-causing equipment,
19 and examine any radio transmitting device or
20 interference-causing equipment, logs, books, reports,
21 data, records, documents, or other papers, and remove
22 such information, document, device, equipment, or thing
23 for examination or reproduction, as the case may be;

24 (c) Make use of or cause to be made use of, any
25 data processing network or computer at the place, to

1 examine any data contained in or available to the
2 network or computer;

3 (d) Retain, remove, or reproduce or cause to be
4 reproduced any such data whether in electronic or hard
5 copy form; and

6 (e) Make use of any copying equipment or means of
7 communication located at the place.

8 (2) Where a place referred to in subsection (1) is a
9 residence, an Inspector shall not enter that residence
10 without the consent of the occupier, except:

11 (a) Under the authority of a warrant issued under
12 section 378; or

13 (b) Where, by reason of special circumstances, it
14 would not be practical for the Inspector to obtain a
15 warrant.

16 (3) For the purposes of subsection (2)(b), special
17 circumstances include circumstances in which the delay
18 arising from obtaining a warrant would result in danger
19 to human life or safety or the loss or destruction of
20 evidence.

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

25 (5) Every person who is required to hold a licence

1 under this Act shall exhibit the licence for inspection
2 on demand by the Authority or an Inspector.

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

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

9 Section 85. Title 21 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by inserting a
11 new section 378 under chapter 3 to read as follows:

12 "Section 378. Search warrant.

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

17 (a) Entry to a residence is necessary for the
18 purpose of performing any duty of an Inspector under
19 this Act; and

20 (b) Entry to the residence has been refused, or
21 there are reasonable grounds for believing that entry
22 will be refused.

23 (2) In executing a warrant issued under this section,
24 an Inspector shall not use force unless the Inspector is
25 accompanied by a police officer and the use of force is

1 specifically authorised in the warrant."

2 Section 86. Title 21 of the Code of the Federated States of
3 Micronesia, as amended, is hereby further amended by inserting a
4 new section 379 under chapter 3 to read as follows:

5 "Section 379. Requirement to supply information or
6 documents or give evidence.

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

12 (a) To furnish to the Authority, by writing
13 signed by that person or, in the case of a corporation
14 or other entity, by a director or competent
15 representative of the corporation or other entity,
16 within the time and in the manner specified in the
17 notice, any information or class of information
18 specified in the notice; or

19 (b) To produce to the Authority, or to a person
20 specified in the notice acting on its behalf in
21 accordance with the notice, any document or class of
22 documents specified in the notice; or

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

1 of documents specified in the notice.

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

10 Section 87. Title 21 of the Code of the Federated States of
11 Micronesia, as amended, is hereby further amended by inserting a
12 new section 380 under chapter 3 to read as follows:

13 "Section 380. Interception and interference.

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

22 (2) A licensee and any person engaged in the operation
23 or provision of a communications network or service
24 shall ensure its communications networks and services
25 are capable of interception under subsection (1) and

1 shall facilitate such interception as reasonably
2 directed by the police or other services directly
3 employed by the Government for national security.

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

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

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

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

25 (b) Seize or similarly secure the computer system

1 or data storage medium;

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

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

6 Section 88. Title 21 of the Code of the Federated States of
7 Micronesia, as amended, is hereby further amended by inserting
8 section 381 under chapter 3 to read as follows:

9 "Section 381. Real-time collection of data.

10 (1) If the Authority believes on reasonable grounds
11 that a person is engaged in conduct that may contravene
12 this Act, then for the purposes of enforcing this Act,
13 the Authority may:

14 (a) Collect or record through the application of
15 technical means; and

16 (b) Compel a licensee, by written notice to that
17 person, within its existing technical capability:

18 (i) To collect or record through the
19 application of technical means; or

20 (ii) To assist the Authority in the
21 collection or recording of, traffic and content data, in
22 real-time, associated with specified communications.

23 (2) The Authority may, in a notice issued under
24 subsection (1), oblige the licensee or person to keep
25 confidential the fact of the execution of the power

1 provided for in this section and any information
2 relating to it."

3 Section 89. Title 21 of the Code of the Federated States of
4 Micronesia, as amended, is hereby further amended by inserting a
5 new section 382 under chapter 3 to read as follows:

6 "Section 382. Specific offences.

7 Any person commits an offence if the person:

8 (1) Fraudulently, maliciously, or with dishonest or
9 otherwise wrongful intent, obtains any communications
10 service without payment of a lawful price for that
11 service;

12 (2) Intentionally, without right or with dishonest
13 intent or otherwise wrongful, accesses the whole or any
14 part of any communications facility by infringing
15 security measures;

16 (3) Intentionally, without right or with dishonest or
17 otherwise wrongful intent, intercepts by technical means
18 a transmission not intended for that person or for
19 public reception except in accordance with section
20 384(3);

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

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

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

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

22 (8) Deliberately damages any communications facility;
23 or

24 (9) Knowingly makes any false statement of a material
25 fact (or knowingly omits to state a material fact

1 necessary in order to make the statements made, in the
2 light of the circumstances under which they were made,
3 not misleading) to the Authority, an Inspector or an
4 appeals panel."

5 Section 90. Title 21 of the Code of the Federated States of
6 Micronesia, as amended, is hereby further amended by inserting a
7 new section 383 under chapter 3 to read as follows:

8 "Section 383. General offence.
9 Save in respect of an offence under section 386, any
10 person who contravenes or fails to comply with any
11 provision or requirement of this Act, any rules made
12 under this Act, a licence issued under this Act, or any
13 direction, order or decision of the Authority or the
14 appeals panel, commits a general offence."

15 Section 91. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by inserting a
17 new section 384 under chapter 3 to read as follows:

18 "Section 384. Penalties.
19 Any person who is convicted of an offence under section
20 382 or 383 is liable:

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

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

7 Section 92. Title 21 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by inserting a
9 new section 385 under chapter 3 to read as follows:

10 "Section 385. Corporations or other entities.
11 Where a corporation or other entity commits an offense
12 under this Act, any director, officer, employee or agent
13 of the corporation or entity who directed, authorized,
14 assented to, acquiesced to or participated in the
15 conduct of the offence shall be a party to and guilty of
16 the offence, and shall be liable to the punishment
17 provided for that offence in respect of a natural
18 person. A corporation or other entity contravenes a
19 provision of this Act if an employee, agent or officer
20 of the corporation or entity engages in the offending
21 conduct and that person is acting within the actual or
22 apparent scope of his actual or apparent authority."

23 Section 93. Title 21 of the Code of the Federated States of
24 Micronesia, as amended, is hereby further amended by inserting a
25 new section 386 under chapter 3, to read as follows:

1 "Section 386. Forfeiture of device.

2 In the case of a conviction for an offense under this
3 Act or any rules made under this Act, any device in
4 relation to which or by means of which the offence was
5 committed may be:

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

8 (b) Disposed of as the Authority may direct."

9 Section 94. Title 21 of the Code of the Federated States of
10 Micronesia, as amended, is hereby further amended by inserting a
11 new section 387 under chapter 3 to read as follows:

12 "Section 387. Prosecution.

13 The Attorney General may appoint Special Assistant
14 Attorneys General, to prosecute offences under this Act
15 subject to any conditions or restrictions imposed."

16 Section 95. Title 21 of the Code of the Federated States of
17 Micronesia, as amended, is hereby further amended by inserting a
18 new section 388 under chapter 3 to read as follows:

19 "Section 388. Exclusion of liability.

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

24 (a) Be liable in respect of any action, claim, or
25 demand that may be brought or made by any person in

1 respect of any bodily injury or damage to property or
2 any other circumstances arising from any act permitted
3 by a licence issued under this Act; and

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

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

15 Section 96. Title 21 of the Code of the Federated States of
16 Micronesia, as amended, is hereby further amended by inserting
17 section 389 under chapter 3 to read as follows:

18 "Section 389. Establishment of Open Access Entity and
19 authority to acquire assets and assume liabilities and
20 obligations.

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

1 of Micronesia or serving the Federated States of
2 Micronesia (the Open Access Entity), the corporation
3 shall be deemed to be established as at the vesting date,
4 and with such assets and liabilities, specified in such
5 certificate.

6 (2) The certificate issued under subsection (1) may
7 specify the terms on which ownership or the benefits
8 thereof of any submarine or terrestrial cable assets
9 owned or controlled by the Federated States of Micronesia
10 Telecommunications Corporation (FSMTC) or any
11 shareholding held by FSMTC or any of its subsidiaries or
12 affiliates in any company that shall own any such cable
13 assets shall be vested in the Open Access Entity together
14 with such liabilities or other obligations or the burden
15 thereof in respect of such assets.

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

21 (4) The assets, liabilities and obligations referred
22 to in a certificate issued under subsection (1) or any
23 amending or supplementary certificate issued by the
24 Secretary may be described specifically or by class, and
25 no objection shall be taken in any court to the accuracy

1 or completeness of such description.

2 (5) Nothing in this section shall restrict or prevent
3 the Open Access Entity from acquiring other assets or
4 undertaking other activities that in the opinion of the
5 board of the Open access Entity are required in order to
6 provide the services referred to in subsection (3)."

7 Section 97. Title 21 of the Code of the Federated States of
8 Micronesia, as amended, is hereby further amended by inserting a
9 new section 390 under chapter 3 to read as follows:

10 "Section 390. Open Access Entity.

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

23 (2) The directors of the Open Access Entity shall be
24 persons who in the opinion of the shareholding
25 Secretaries shall be qualified to assist the corporation

1 to operate its business, and shall be appointed and
2 removed by the shareholding Secretaries by resolution.
3 Save as provided in this section, all decisions relating
4 to the operation of the corporation shall be made by or
5 pursuant to the authority of the board of directors.

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

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

19 (5) A shareholding Secretary may at any time, by
20 written notice to the secretary of the corporation,
21 authorise, on such terms and conditions as are specified
22 in the notice, such person as the Secretary thinks fit
23 to act as the Secretary's representative at any or all
24 of the meetings of shareholders of the corporation. Such
25 representative may exercise the same powers on behalf of

1 the Secretary as the Secretary could exercise if present
2 in person at the meeting.

3 (6) A 'major transaction' in relation to the
4 corporation means:

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

9 (b) The disposition of, or an agreement to
10 dispose of, whether contingent or not, assets of the
11 corporation the value of which is more than half the
12 value of the corporation's assets before the
13 disposition; or

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

20 (7) In assessing the value of any contingent liability
21 for the purposes of paragraph c of subsection (a), the
22 directors must have regard to all circumstances that the
23 directors know, or ought to know, affect or may affect
24 the value of any contingent liability, may rely on
25 estimates of the contingent liability that are

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