

A BILL FOR AN ACT

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

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

1 Section 1. Section 389 of title 21 of the Code of the
2 Federated States of Micronesia (Annotated), as amended, is hereby
3 further amended to read as follows:

4 “Section 389. Establishment of Open Access Entity and
5 authority to acquire assets and assume liabilities and
6 obligations.

7 (1) Should the Secretary certify that it is in the
8 interests of the Federated States of Micronesia for a
9 corporation owned by the Government to be established
10 under this section in order to own and operate submarine
11 and terrestrial cable assets within the Federated States
12 of Micronesia or serving the Federated States of
13 Micronesia (the Open Access Entity), the corporation
14 shall be deemed to be established as at the vesting
15 date, and with such assets and liabilities, specified in
16 such certificate.

17 (2) The Open Access Entity shall provide
18 international and domestic connectivity for the
19 transmission of data for communications services as a

1 wholesaler but not at retail. Such connectivity shall
 2 be provided on non-discriminatory and cost-based terms.

3 (3) The assets, liabilities and obligations referred
 4 to in a certificate issued under subsection (1) or any
 5 amending or supplementary certificate issued by the
 6 Secretary may be described specifically or by class, and
 7 no objection shall be taken in any court to the accuracy
 8 or completeness of such description.

9 (4) Nothing in this section shall restrict or prevent
 10 the Open Access Entity from acquiring other assets or
 11 undertaking other activities that in the opinion of the
 12 board of the Open Access Entity are required in order to
 13 provide the services referred to in subsection (~~3~~2).

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

22 (a) all outstanding indebtedness to the United
 23 States Rural Utilities Service for the loan, known as
 24 Loan B, used to finance the procurement and construction
 25 of such cable system and FSMTC's rights therein; and

1 (b) all executory contractual obligations of
 2 FSMTC to third parties in respect of such cable system.
 3 The transfer of such interest shall have effect from
 4 such date as may be specified by the Secretary in a deed
 5 of conveyance of assets and assumption of liabilities
 6 which shall be prepared by the Secretary, and executed
 7 and delivered by FSMTC and the Open Access Entity,
 8 without delay after obtaining consent for such transfer
 9 from the United States Rural Utilities Service, which
 10 the Secretary of Justice shall use all reasonable
 11 endeavors to obtain within 180 days after the effective
 12 date of this Act. The assets, liabilities and
 13 obligations referred to in such deed may be described
 14 specifically or by class, and no objection shall be
 15 taken in any court to the accuracy or completeness of
 16 such description.

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

19 (a) FSMTC shall hold the interests to be
 20 conveyed by such deed in trust for the Open Access
 21 Entity and shall allow the Open Access Entity full and
 22 unimpaired rights of access and use of the relevant
 23 facilities and properties, and unfettered communications
 24 and relations with FSMTC's counterparties under the
 25 related executory contracts, as if such conveyance had

1 already occurred, including, but not limited to, the
 2 right to modify or install equipment and facilities on
 3 such facilities and properties.

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

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

1 has been requested and provided under this subsection,
 2 and any related payment obligations.

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

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

18 ~~{Section Rules and Regulations 391~~

19 ~~(1) In addition to the matter which are~~
 20 ~~specifically prescribed, the Authority may make such~~
 21 ~~rules and regulations as are contemplated by or~~
 22 ~~necessary for giving full effect to the provisions of~~
 23 ~~this act.~~

24 ~~(2) The rules and regulations shall be prom----- in~~
 25 ~~accordance with the Administrative Procedure Act.]~~

1 "Section 391. Efficient Use of Submarine Cable and
 2 Satellite Assets by FSMTC and the Open Access Entity.

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

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

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

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

19 (a) the Open Access Entity shall supply to
 20 FSMTC, and FSMTC shall purchase from the Open Access
 21 Entity, all of the primary international and interstate
 22 capacity requirements of FSMTC to the extent of the Open
 23 Access Entity's rights and available capacity.

24 (b) For as long as FSMTC is the only retail
 25 communications service provider in the Federated States

1 of Micronesia, the Open Access Entity shall charge, and
2 FSMTC shall pay to the Open Access Entity, on a monthly
3 basis, an amount sufficient to cover all of the Open
4 Access Entity's operating expenses and reasonable
5 reserves for contingencies.

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

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

24 (e) FSMTC shall, at the Open Access Entity's
25 request, supply the Open Access Entity with backup

1 interstate and international transit services on FSMTC's
2 satellite systems on a non-discriminatory basis at cost-
3 based pricing to enable the Open Access Entity to
4 provide services for other wholesale customers during
5 any outage or maintenance of its submarine cable
6 systems."

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

10 "Section 392. Rules and regulations.

11 (1) In addition to the matters which are specifically
12 prescribed, the Authority may make such rules and
13 regulations as are contemplated by or necessary for
14 giving full effect to the provisions of this Act.

15 (2) The rules and regulations shall be promulgated in
16 accordance with the Administrative Procedures Act."

17 Section 4. This act shall become law upon approval by the
18 President of the Federated States of Micronesia or upon its
19 becoming law without such approval.

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21 Date: 5/16/17

Introduced by: /s/ Florencio S. Harper

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Florencio S. Harper

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(by request)

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