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A BILL FOR AN ACT

To repeal Public Laws Nos. 20-13 and 20-20 in their entirety, 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. Public Law No. 20-13 is hereby repealed in its  
2 entirety.

3           Section 2. Public Law No. 20-20 is hereby repealed in its  
4 entirety.

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

8                   "Section 389. Establishment of Open Access Entity and  
9 authority to acquire assets and assume liabilities and  
10 obligations.

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

1 date, and with such assets and liabilities, specified in  
 2 such certificate.

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

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

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

19 (5) Legal and beneficial ownership of all existing  
 20 interests of Federated States of Micronesia  
 21 Telecommunications Corporation (FSMTC) in the submarine  
 22 cable system connecting from Pohnpei to Guam, known as  
 23 the HANTRU-1 cable system and Pohnpei extension, shall  
 24 be transferred from FSMTC to the Open Access Entity and  
 25 the Open Access Entity shall assume all obligations of

1           FSMTC to pay and perform:

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

6                   (b) all executory contractual obligations of  
7           FSMTC to third parties in respect of such cable system.

8           The transfer of such interest shall have effect from  
9           such date as may be specified by the Secretary in a deed  
10           of conveyance of assets and assumption of liabilities  
11           which shall be prepared by the Secretary, and executed  
12           and delivered by FSMTC and the Open Access Entity,  
13           without delay after obtaining consent for such transfer  
14           from the United States Rural Utilities Service, which  
15           the Secretary of Justice shall use all reasonable  
16           endeavors to obtain within 180 days after the effective  
17           date of this Act. The assets, liabilities and  
18           obligations referred to in such deed may be described  
19           specifically or by class, and no objection shall be  
20           taken in any court to the accuracy or completeness of  
21           such description.

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

24                   (a) FSMTC shall hold the interests to be  
25           conveyed by such deed in trust for the Open Access

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1           Entity and shall allow the Open Access Entity full and  
2           unimpaired rights of access and use of the relevant  
3           facilities and properties, and unfettered communications  
4           and relations with FSMTC's counterparties under the  
5           related executory contracts, as if such conveyance had  
6           already occurred, including, but not limited to, the  
7           right to modify or install equipment and facilities on  
8           such facilities and properties.

9           (b) The Open Access Entity shall bear full  
10          financial responsibility for all obligations to be  
11          assumed under such deed and the Open Access Entity shall  
12          coordinate all payments to be made by the Open Access  
13          Entity to ensure the due and punctual remission of such  
14          sums to the intended beneficiaries.

15          (7) The Open Access Entity shall with immediate  
16          effect, upon written request, have unrestricted rights  
17          of shared access to and use of the existing interests of  
18          FSMTC in land, buildings, improvements and fixtures at  
19          its facilities in Pohnpei, Chuuk, Kosrae and Yap to  
20          install, improve, modify, own, operate, maintain and  
21          repair existing and new submarine cable landing stations  
22          and to interconnect with other network operators at such  
23          facilities while reasonably accommodating FSMTC's  
24          existing and intended uses of such facilities and  
25          restoring or repairing any damage caused during any

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1 works by the Open Access Entity. The Open Access Entity  
2 shall bear a proportionate share of any ground rents and  
3 site maintenance costs based on the proportionate amount  
4 of land used. The Open Access Entity and FSMTC shall  
5 document the specific premises to which access and use  
6 has been requested and provided under this subsection,  
7 and any related payment obligations.

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

20 Section 4. Section 391 of title 21 of the Code of the  
21 Federated States of Micronesia (Annotated), as amended, is hereby  
22 further amended to read as follows:

23 ~~{Section Rules and Regulations 391~~

24 ~~(1) In addition to the matter which are~~  
25 ~~specifically prescribed, the Authority may make such~~

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1 ~~rules and regulations as are contemplated by or~~  
2 ~~necessary for giving full effect to the provisions of~~  
3 ~~this act.~~

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

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

8 (1) For so long as FSMTC and the Open Access Entity  
9 are both owned or controlled by the Government, all  
10 satellite and submarine cable assets owned or controlled  
11 by either of them shall be used in an economically  
12 efficient manner, and FSMTC shall not:

13 (a) compete against the Open Access Entity in  
14 the wholesale supply of connectivity services using  
15 submarine cable or satellite assets; and

16 (b) use satellite connectivity in its provision  
17 of retail services, in lieu of using submarine cable  
18 connectivity provided by the Open Access Entity, except  
19 for backup in the event of outage or maintenance of the  
20 Open Access Entity's facilities.

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

24 (a) the Open Access Entity shall supply to  
25 FSMTC, and FSMTC shall purchase from the Open Access

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1           Entity, all of the primary international and interstate  
2           capacity requirements of FSMTC to the extent of the Open  
3           Access Entity's rights and available capacity.

4           (b) For as long as FSMTC is the only retail  
5           communications service provider in the Federated States  
6           of Micronesia, the Open Access Entity shall charge, and  
7           FSMTC shall pay to the Open Access Entity, on a monthly  
8           basis, an amount sufficient to cover all of the Open  
9           Access Entity's operating expenses and reasonable  
10          reserves for contingencies.

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

22          (d) FSMTC's use of its satellite facilities for  
23          any interstate or international transit in providing  
24          retail or wholesale services shall not in any event  
25          relieve FSMTC of its obligation to pay the Open Access

1           Entity's charges for making its submarine cable  
 2           facilities available for FSMTC's use in meeting its  
 3           requirements.

4                   (e) FSMTC shall, at the Open Access Entity's  
 5           request, supply the Open Access Entity with backup  
 6           interstate and international transit services on FSMTC's  
 7           satellite systems on a non-discriminatory basis at cost-  
 8           based pricing to enable the Open Access Entity to  
 9           provide services for other wholesale customers during  
 10           any outage or maintenance of its submarine cable  
 11           systems."

12           Section 5. Title 21 of the Code of the Federated States of  
 13 Micronesia (Annotated), as amended, is hereby further amended by  
 14 adding a new section 392 under chapter 3, to read as follows:

15           "Section 392. Rules and regulations.

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

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

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1 Section 6. This act shall become law upon approval by the  
2 President of the Federated States of Micronesia or upon its  
3 becoming law without such approval.

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5 Date: 9/25/17

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

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