



*The President*  
*Palikir, Pohnpei*  
*Federated States of Micronesia*

August 12, 2020

The Honorable Wesley W. Simina  
Speaker  
Twenty-First Congress  
Federated States of Micronesia  
Palikir, Pohnpei FM 96941



Dear Speaker Simina:

I am pleased to transmit the enclosed bill to amend an Act prepared by the Department of Justice under guidance from the staff of the Department of Transport Communication and Infrastructure and the Department of Finance & Administration.

The Bill is to amend certain provisions of Chapter 2 and Chapter 3 of Title 21 of the Code of the Federated States of Micronesia for the purposes of:

- vesting the Federated States of Micronesia's Hantru Cable and Pohnpei extension spur interests (the "Submarine Cable Interests") in the Federated States of Micronesia Cable Corporation Limited (the "Open Access Entity") and enabling the Secretary of Transport Communication and Infrastructure, to act on behalf of the Telecommunications Corporation of the Federated States of Micronesia to enable this to be given effect to; and
- better reflecting the different roles each of the Federated States of Micronesia Cable Corporation Limited and the Telecommunications Corporation of the Federated States of Micronesia must undertake to advance the public interest.

The Telecommunications Corporation has stated (and has engaged legal representation) it no longer wishes to be bound by the IRU Deed and intends to have the Deed annulled. The refusal to act in accordance with the terms of the IRU Deed undermines the telecommunications sector and puts at risk the Eastern Micronesia Cable project which will provide a cable connection to Kosrae. It also undermines the development of a free and open competitive and customer orientated telecommunications market and ongoing World Bank grants for the Fiber to The Home project.

The Government has accepted that the IRU Deed arrangements are not working for the benefit of the FSM and is asking Congress to establish a process for vesting the Submarine Cable Interests and the associated Rural Utilities Service debt in the Open Access Entity. It is also important that the respective roles of the Telecommunications Corporation and the Open Access Entity are further clarified so that they work together to advance the development of an open telecommunications market.



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These proposals:

- are consistent with the original intention that the Open Access entity will hold the submarine cable interests of the FSM and be responsible for the development of a modern fiber network;
- will reduce the Telecommunications Corporation debt and strengthen its balance sheet enabling it to better respond to any new operators in an open and competitive market;
- provides confidence to progress the Eastern Micronesia Cable project – the Open Access Entity will be able to effectively represents the FSM's interests in providing a submarine cable link to Kosrae;
- provide World Bank funding for the upgrade of the Hantru-1 system and the repair of the Pohnpei spur which may cost in the vicinity of \$1 million each. Currently, the Pohnpei spur is uninsured which is a major risk for Pohnpei and Chuuk connectivity;
- provide confidence to current players in the market and other persons who wish to invest in, or provide grants to, the FSM about the progress of the FSM telecommunications market;

We trust that Congress will look favorably on this Bill and act in an expedient manner to enable the National Government to proceed with implementation. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "David W. Panuelo", with a large, stylized flourish extending to the right.

David W. Panuelo  
President

Enclosures

**A BILL FOR AN ACT**

To amend chapter 3 of title 21 of the Code of the Federated States of Micronesia by adding new sections 392, 393, 394, 395, and 396 thereto in order to effectuate the transfer of the assets and liabilities of the Corporation in the HANTRU-1 cable system and Pohnpei extension to the Open Access Entity, and for other purposes.

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

1       Section 1. Chapter 3, title 21 of the Code of the  
2       Federated States of Micronesia is hereby amended, by adding a  
3       new section 392, to read as follows:

4       "Section 392. Definition. In sections 393 and 395, unless  
5       the context otherwise required:

6               (a) 'assets' without limitation, includes:

7                       (i) any estate or interest in any land or  
8                       building, including all rights of access over, occupation  
9                       or use of such land or building; and

10                      (ii) all rights of any kind including  
11                      powers, privileges, interests, leases, licenses, approvals,  
12                      consents, designations, authorizations, benefits, and  
13                      equities of any kind, whether actual, contingent, or  
14                      prospective;

15               (b) 'liabilities' includes:

16                       (i) liabilities or obligations under any  
17                       agreement;



1                   (ii) debt;  
2                   (iii) contingent liabilities; and  
3                   (iv) interests of any kind in any of the  
4           foregoing.

5       Section 2. Chapter 3, title 21 of the Code of the  
6       Federated States of Micronesia is hereby amended, by adding a  
7       new section 393, to read as follows:

8       "Section 393. Transfer of the HANTRU-1 cable system and  
9       Pohnpei extension to the Open Access Entity.

10       (1) The Secretary shall compile a certificate:

11               (a) listing all the assets and liabilities of the  
12       Corporation in the HANTRU-1 cable system and Pohnpei  
13       extension for the purpose of transferring these assets and  
14       liabilities to the Open Access Entity;

15               (b) containing a description of any new legal  
16       arrangements to be entered into between the Open Access  
17       Entity and the Corporation that the Secretary considers is  
18       necessary or desirable to give effect to either the  
19       transfer of the assets and liabilities of the Corporation  
20       in the HANTRU-1 cable system and Pohnpei extension or the  
21       practical operation of any ancillary services that relate  
22       to the assets and liabilities of the Corporation in the  
23       HANTRU-1 cable system and Pohnpei extension including any  
24       shared access rights to building or plant or the supply of  
25       utility services to such building or plant;

1           (c) containing or attaching legal instruments or  
2           agreements to give effect to any arrangements described in  
3           paragraph (b).

4           (2) The certificate compiled under subsection (1) shall  
5           contain a vesting date or method for calculating such a date,  
6           being the date on which:

7           (a) such assets and liabilities shall cease to be  
8           assets and liabilities of the Corporation and become assets  
9           and liabilities of the Open Access Entity; and

10          (b) any such legal instruments or agreements described  
11          in subsection (1)(c) shall have effect in accordance with  
12          their terms on the Corporation and the Open Access Entity.

13          (3) As soon as practicable the Secretary shall provide a  
14          draft copy of the certificate compiled under subsection (1) to:

15          (a) the Chair of the Board of the Corporation;

16          (b) the Chair of the Board of the Open Access Entity;

17          and

18          (c) the Chair of the Telecommunications Regulatory  
19          Authority.

20          (4) The persons listed in subsection (3) shall have 30  
21          days, or such other later date as the Secretary may specify,  
22          from receipt of the draft certificate to provide a written  
23          submission to the Secretary on whether:

24          (a) the description of the assets and liabilities  
25          contained in the draft certificate appropriately describe

1 the assets and liabilities of the Corporation in the  
2 HANTRU-1 cable system and Pohnpei extension;

3 (b) the legal instruments or agreements contained in,  
4 or attached to, the draft certificate appropriately  
5 describe and regulate the ongoing arrangements between the  
6 parties.

7 (5) The Secretary may have regard to the submissions made  
8 under subsection (4) and may make such changes to the  
9 certificate as the Secretary considers necessary or desirable.

10 (6) The Secretary shall not issue the final certificate  
11 without first obtaining any required written consent for the  
12 transfer of the assets and liabilities listed in the certificate  
13 from the United States Rural Utilities Service.

14 (7) The Secretary shall use all reasonable endeavors to  
15 obtain any required written consent under subsection (6), after  
16 the effective date of this section.

17 (8) The Secretary shall issue the final certificate by  
18 publishing it on the website of the Department of Transport,  
19 Communications and Infrastructure and provide a copy to the  
20 persons listed in subsection (3).

21 (9) The assets and liabilities referred to in the  
22 certificate compiled under subsection (1) or issued under  
23 subsection (8) may be described specifically or by class, and no  
24 objection shall be taken in any court to the accuracy or  
25 completeness of such description.



1       (10) On the vesting date:

2               (a) the Corporation shall cease to have any rights or  
3       interests in, or obligations regarding, the assets and  
4       liabilities listed in the certificate issued under  
5       subsection (8);

6               (b) the Open Access Entity shall assume all the assets  
7       and liabilities listed in the certificate issued under  
8       subsection (8);

9               (c) any legal instruments or agreements listed in, or  
10       attached to, the certificate issued under subsection (8)  
11       shall bind the Corporation and the Open Access Entity and  
12       have effect in accordance with its terms as if the  
13       agreement was entered into validly by the Corporation and  
14       the Open Access Entity in accordance with any requirements  
15       of the Corporation and the Open Access Entity or any law;  
16       and

17               (d) the Deed granting an indefeasible right of use  
18       between the Corporation and the Open Access Entity dated 25  
19       January 2018, and any subsequent amendments to that Deed,  
20       shall cease to have effect. Any rights and obligations held  
21       or incurred by or to any party to the Deed up to the  
22       vesting date shall continue to be enforceable in accordance  
23       with the terms of the Deed except that any dispute relating  
24       to payments under the Deed shall be subject to section 394.  
25       Section 3. Chapter 3, title 21 of the Code of the

1 Federated States of Micronesia is hereby amended, by adding a  
2 new section 394, to read as follows:

3 "Section 394. Disputes to be determined by the Secretary.

4 (1) Any dispute relating to the Deed described in section  
5 393(10) (d) and that exists between the Open Access Entity and  
6 the Corporation as at the date the Secretary issues a draft  
7 certificate under section 393 shall be determined by the  
8 Secretary as follows:

9 (a) The parties shall have 10 days from the date the  
10 Secretary issues the draft certificate to provide the  
11 Secretary with written submissions on the dispute;

12 (b) The Secretary may consider the issues raised by  
13 reference to the written submissions only;

14 (c) The Secretary shall issue a decision in writing in  
15 respect of the dispute no later than 30 days from the date  
16 the Secretary issues the draft certificate, or such other  
17 later date as the Secretary may specify, by giving the  
18 decision to the Chair of the Board of the Corporation and  
19 the Chair of the Board of the Open Access Entity.

20 (2) The decision shall be final and binding on the parties  
21 in accordance with its terms.

22 (3) Any payment required to be made one party to the other  
23 as a result of the Secretary's decision, shall be:

24 (a) made no later than 20 days after the Secretary  
25 issues a decision;



1           (b) shall be recoverable as a debt.

2           (4) A failure by one party to make a submission in  
3 accordance with subsection (1)(a) shall not delay, prevent nor  
4 invalidate the Secretary's decision under subsection (1)(c).

5           (5) Any terms of the Deed relating to disputes and dispute  
6 resolution between the parties shall not apply to a dispute that  
7 is subject to section 394."

8           Section 4. Chapter 3 of Title 21 of the Code of the  
9 Federated States of Micronesia is hereby amended, by adding a  
10 new section 395, to read as follows:

11           "Section 395. Secretary's power to negotiate.

12           (1) In order to facilitate or give effect to any  
13 arrangement that the Secretary considers is necessary or  
14 desirable to enable the transfer of the assets and liabilities  
15 of the Corporation in the HANTRU-1 cable system and Pohnpei  
16 extension, or to address the impact on the Corporation or a  
17 creditor of the Corporation due to the proposed transfer of the  
18 assets and liabilities of the Corporation in the HANTRU-1 cable  
19 system and Pohnpei extension, the Secretary, or any authorized  
20 representative of the Secretary, may undertake any one or more  
21 of the following:

22           (a) negotiate with, and enter into any agreement with,  
23 any party including the United States Rural Utilities  
24 Service or any other creditor of the Corporation for the  
25 purposes of restructuring any lending arrangements with the

1       Corporation; and

2               (b) enter into new financing arrangements with any  
3       person for the purposes of refinancing any existing lending  
4       arrangements of the Corporation;

5               (c) enter into any other agreement the Secretary  
6       considers necessary or desirable to give effect to such  
7       transfer or to address such impact of the transfer.

8       (2) In order to perform any of the functions listed in  
9       subsection (1), the Secretary, or any authorized representative  
10      of the Secretary, may act as the authorized representative for  
11      the Corporation and the following shall apply:

12              (a) the Secretary, or any authorized representative of  
13      the Secretary, may do so without any authority from the  
14      Corporation or any other person;

15              (b) the Secretary, or any authorized representative of  
16      the Secretary, may request information from the Corporation  
17      or action to be taken by the Corporation or cease to be  
18      taken, including the time period for responding to such  
19      matters, and the Corporation shall provide any information  
20      requested or take or cease to take any action requested in  
21      accordance with any required time period;

22              (c) a party dealing with the Secretary, or any  
23      authorized representative of the Secretary, need not  
24      inquire as to the concurrence of the Corporation and may  
25      rely on the Secretary, or any authorized representative of

1 the Secretary, as an authorized representative for the  
2 Corporation even if the Corporation informs that party that  
3 the Corporation has not concurred;

4 (d) any agreement reached by the Secretary, or any  
5 authorized representative of the Secretary, when performing  
6 any of the functions listed in subsection (1) shall bind  
7 the Corporation as if the agreement was entered into  
8 validly by the Corporation and in accordance with any  
9 requirements of the Corporation or any law.

10 (3) If the Secretary, or any authorized representative of  
11 the Secretary, enters into an agreement on behalf of the  
12 Corporation under this section, the Secretary shall:

13 (a) notify the Chair of the Board of the Corporation  
14 that an agreement binding the Corporation has been entered  
15 into; and

16 (b) provide the Chair of the Board of the Corporation  
17 with a copy of that agreement.

18 (4) The Corporation shall, on receipt of an agreement  
19 provided under subsection (3)(b), give effect to the terms of  
20 that agreement.

21 (5) No court shall set aside an agreement entered into by  
22 the Secretary, or an authorized representative of the Secretary,  
23 on behalf of the Corporation on the grounds that it was entered  
24 into by the Secretary, or an authorized representative of the  
25 Secretary, under this section or that subsection (3) was not



1 complied with.

2 (6) Any agreement entered into by the Secretary, or any  
3 authorized representative of the Secretary, under this section  
4 that involves the restructuring of the Corporation's debt, to  
5 the extent that it constitutes the assuming of debt, a lien or  
6 other security interests of the Corporation of the type  
7 described in section 231(5), shall not be subject to the  
8 requirements of section 231(5)."

9 Section 5. Chapter 3, Title 21 of the Code of the  
10 Federated States of Micronesia is hereby amended, by inserting a  
11 new section 396, to read as follows:

12 "Section 396. Obligations of the Open Access Entity and the  
13 Corporation.

14 (1) On and from the vesting date established under section  
15 393, the following provisions shall apply.

16 (2) For as long as the Corporation is the only  
17 telecommunications service provider using the Open Access  
18 Entities services, the Open Access Entity shall:

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

24 (b) charge to the Corporation on cost-based terms in  
25 accordance with section 389(2) of this Act, and the

1 to the oversight of the Authority.

2 (5) All payments required to be made under this section  
3 shall be recoverable as a debt."

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

7  
8 Date: \_\_\_\_\_

9 \_\_\_\_\_  
10 Florencio S. Harper

11 Floor Leader

12 (by request)