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A BILL FOR AN ACT

To amend chapter 3 of title 21 of the Code of the Federated States of Micronesia (Annotated), by adding new sections 392, 393, 394, 395, and 396, 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 of title 21 of the Code of the  
2 Federated States of Micronesia (Annotated), is hereby amended by  
3 adding a new section 392, to read as follows:

4           “Section 392. Definitions. In sections 393 and 395,  
5 unless 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,  
9 occupation or use of such land or building; and

10                   (ii) all rights of any kind including powers,  
11 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;

18                   (ii) debt;

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

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

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

9           (1) The Secretary shall compile a certificate:

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

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

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

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

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

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

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

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

18                   (b) the Chair of the Board of the Open Access  
19                   Entity; and

20                   (c) the Chair of the Telecommunications  
21                   Regulatory Authority.

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

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1           whether:

2                   (a) the description of the assets and  
3                   liabilities contained in the draft certificate  
4                   appropriately describe the assets and liabilities of the  
5                   Corporation in the HANTRU-1 cable system and Pohnpei  
6                   extension;

7                   (b) the legal instruments or agreements  
8                   contained in, or attached to, the draft certificate  
9                   appropriately describe and regulate the ongoing  
10                   arrangements between the parties.

11                   (5) The Secretary may have regard to the submissions  
12                   made under subsection (4) and may make such changes to  
13                   the certificate as the Secretary considers necessary or  
14                   desirable.

15                   (6) The Secretary shall not issue the final  
16                   certificate without first obtaining any required written  
17                   consent for the transfer of the assets and liabilities  
18                   listed in the certificate from the United States Rural  
19                   Utilities Service.

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

23                   (8) The Secretary shall issue the final certificate  
24                   by publishing it on the website of the Department of  
25                   Transport, Communications and Infrastructure and provide

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1           a copy to the persons listed in subsection (3).

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

7           (10) On the vesting date:

8                   (a) the Corporation shall cease to have any  
9                   rights or interests in, or obligations regarding, the  
10                   assets and liabilities listed in the certificate issued  
11                   under subsection (8);

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

15                   (c) any legal instruments or agreements listed  
16                   in, or attached to, the certificate issued under  
17                   subsection (8) shall bind the Corporation and the Open  
18                   Access Entity and have effect in accordance with its  
19                   terms as if the agreement was entered into validly by  
20                   the Corporation and the Open Access Entity in accordance  
21                   with any requirements of the Corporation and the Open  
22                   Access Entity or any law; and

23                   (d) the Deed granting an indefeasible right of  
24                   use between the Corporation and the Open Access Entity  
25                   dated 25 January 2018, and any subsequent amendments to

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1           that Deed, shall cease to have effect. Any rights and  
2           obligations held or incurred by or to any party to the  
3           Deed up to the vesting date shall continue to be  
4           enforceable in accordance with the terms of the Deed  
5           except that any dispute relating to payments under the  
6           Deed shall be subject to section 394.

7           Section 3. Chapter 3 of title 21 of the Code of the  
8 Federated States of Micronesia (Annotated), is hereby amended by  
9 adding a new section 394, to read as follows:

10           "Section 394. Disputes to be determined by the  
11           Secretary.

12           (1) Any dispute relating to the Deed described in  
13           section 393(10)(d) and that exists between the Open  
14           Access Entity and the Corporation as at the date the  
15           Secretary issues a draft certificate under section 393  
16           shall be determined by the Secretary as follows:

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

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

22           (c) The Secretary shall issue a decision in  
23           writing in respect of the dispute no later than 30 days  
24           from the date the Secretary issues the draft  
25           certificate, or such other later date as the Secretary

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1           may specify, by giving the decision to the Chair of the  
2           Board of the Corporation and the Chair of the Board of  
3           the Open Access Entity.

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

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

8                   (a) made no later than 20 days after the  
9                   Secretary issues a decision;

10                   (b) shall be recoverable as a debt.

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

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

18           Section 4. Chapter 3 of title 21 of the Code of the  
19 Federated States of Micronesia (Annotated) is hereby amended by  
20 adding a new section 395, to read as follows:

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

22                   (1) In order to facilitate or give effect to any  
23                   arrangement that the Secretary considers is necessary or  
24                   desirable to enable the transfer of the assets and  
25                   liabilities of the Corporation in the HANTRU-1 cable

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1 system and Pohnpei extension, or to address the impact  
2 on the Corporation or a creditor of the Corporation due  
3 to the proposed transfer of the assets and liabilities  
4 of the Corporation in the HANTRU-1 cable system and  
5 Pohnpei extension, the Secretary, or any authorized  
6 representative of the Secretary, may undertake any one  
7 or more of the following:

8 (a) negotiate with, and enter into any agreement  
9 with, any party including the United States Rural  
10 Utilities Service or any other creditor of the  
11 Corporation for the purposes of restructuring any  
12 lending arrangements with the Corporation; and

13 (b) enter into new financing arrangements with  
14 any person for the purposes of refinancing any existing  
15 lending arrangements of the Corporation;

16 (c) enter into any other agreement the Secretary  
17 considers necessary or desirable to give effect to such  
18 transfer or to address such impact of the transfer.

19 (2) In order to perform any of the functions listed  
20 in subsection (1), the Secretary, or any authorized  
21 representative of the Secretary, may act as the  
22 authorized representative for the Corporation and the  
23 following shall apply:

24 (a) the Secretary, or any authorized  
25 representative of the Secretary, may do so without any

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1 authority from the Corporation or any other person;

2 (b) the Secretary, or any authorized  
3 representative of the Secretary, may request information  
4 from the Corporation or action to be taken by the  
5 Corporation or cease to be taken, including the time  
6 period for responding to such matters, and the  
7 Corporation shall provide any information requested or  
8 take or cease to take any action requested in accordance  
9 with any required time period;

10 (c) a party dealing with the Secretary, or any  
11 authorized representative of the Secretary, need not  
12 inquire as to the concurrence of the Corporation and may  
13 rely on the Secretary, or any authorized representative  
14 of the Secretary, as an authorized representative for  
15 the Corporation even if the Corporation informs that  
16 party that the Corporation has not concurred;

17 (d) any agreement reached by the Secretary, or  
18 any authorized representative of the Secretary, when  
19 performing any of the functions listed in subsection (1)  
20 shall bind the Corporation as if the agreement was  
21 entered into validly by the Corporation and in  
22 accordance with any requirements of the Corporation or  
23 any law.

24 (3) If the Secretary, or any authorized  
25 representative of the Secretary, enters into an

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1 agreement on behalf of the Corporation under this  
2 section, the Secretary shall:

3 (a) notify the Chair of the Board of the  
4 Corporation that an agreement binding the Corporation  
5 has been entered into; and

6 (b) provide the Chair of the Board of the  
7 Corporation with a copy of that agreement.

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

11 (5) No court shall set aside an agreement entered  
12 into by the Secretary, or an authorized representative  
13 of the Secretary, on behalf of the Corporation on the  
14 grounds that it was entered into by the Secretary, or an  
15 authorized representative of the Secretary, under this  
16 section or that subsection (3) was not complied with.

17 (6) Any agreement entered into by the Secretary, or  
18 any authorized representative of the Secretary, under  
19 this section that involves the restructuring of the  
20 Corporation's debt, to the extent that it constitutes  
21 the assuming of debt, a lien or other security interests  
22 of the Corporation of the type described in section  
23 231(5), shall not be subject to the requirements of  
24 section 231(5)."

25 Section 5. Chapter 3 of title 21 of the Code of the

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1 Federated States of Micronesia (Annotated) is hereby amended by  
2 inserting a new section 396, to read as follows:

3 "Section 396. Obligations of the Open Access Entity  
4 and the Corporation.

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

7 (2) For as long as the Corporation is the only  
8 telecommunications service provider using the Open  
9 Access Entities services, the Open Access Entity shall:

10 (a) supply to the Corporation, and the  
11 Corporation shall purchase from the Open Access Entity,  
12 all of the primary international and interstate capacity  
13 requirements of the Corporation to the extent of the  
14 Open Access Entity's rights and available capacity; and

15 (b) charge to the Corporation on cost-based  
16 terms in accordance with section 389(2) of this Act, and  
17 the Corporation shall pay such charge to the Open Access  
18 Entity, on such periodic basis as the Open Access Entity  
19 determines.

20 (3) At such a time as the Open Access Entity begins  
21 supplying services to one or more licensed  
22 telecommunications service providers (other than the  
23 Corporation) then the following shall apply:

24 (a) such services shall be supplied by the Open  
25 Access Entity on a non-discriminatory basis between the

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1           Corporation and each other licensed telecommunications  
2           service provider;

3                   (b) the Open Access Entity shall charge licensed  
4           telecommunications service providers on cost-based terms  
5           in accordance with section 389(2) of this Act and on  
6           such periodic basis as the Open Access Entity  
7           determines;

8                   (c) the allocation of the Open Access Entity's  
9           costs between the Corporation and each other licensed  
10          telecommunications service provider shall be done on  
11          equitable terms, while avoiding the Open Access Entity  
12          incurring any loss; and

13                   (d) each licensed telecommunications service  
14          provider shall pay the amount charged to the Open Access  
15          Entity.

16                   (4) The arrangements set out in section 396, and such  
17          other arrangements between the Open Access Entity and  
18          the licensed telecommunications service providers, shall  
19          otherwise be subject to the oversight of the Authority.

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

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: 8/18/20 Introduced by: /s/ Florencio S. Harper  
6 Florencio S. Harper  
7 (by request)

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