Republic of Palau
Office of the President

Tommy E. Remengesau, Jr.
President

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May 26, 2017
Serial No. 17-140

The Honorable Sabino Anastacio
Speaker of the House of Delegates
10th Olbiil Era Kelulau
Ngerulmud, Palau National Capitol
Republic of Palau 96939

Re: Telecommunications Regulatory Framework

Dear Speaker Anastacio:

I am pleased to present to you and your colleagues, for deliberation and ultimate passage, a new telecom regulatory framework for the Republic (the "**Telecom Law**"), which will replace the current telecom laws and regulations that have become out-of-date. The Telecom Law is one of several important steps required to develop an even more robust telecom sector, and thereby spur the continued development of our Republic's private and public sectors. The Telecom Law is essential to improving the telecom sector with policies that support robust industry. It is a framework in which education, health care, emergency management, and government services are enhanced and more widely distributed through equitable access.

Telecom experts uniformly agree that the improvement of the telecom market requires:

- liberalization of the market through the creation of a level playing field for market participants;
- increased public and private investment in the telecom sector; and
- the adoption of a range of supporting policies to encourage growth and ensure improvements in access to and the affordability of telecom services for the people of Palau.

Additionally, liberalization is expected to generate additional investment in infrastructure and human capital. This may take the form of privatizations, new market entrants, and/or public-private partnerships.

In response to the need to reform our telecom sector, this government engaged the World Bank to assist our Republic in the development of an appropriate telecom regulatory framework – resulting in this Telecom Law. The Telecom Law is a sweeping piece of legislation that will more effectively organize our telecommunications sector for decades to come. Some of the key functions of the Telecom Law include:

- Establishing submarine cable protection measures to ensure that the valuable and mission- critical investments being made in international infrastructure are protected. This is important to prevent service interruptions that can be lengthy and devastating to the economy (e.g. – cable cuts).
- Creating a new independent telecommunications regulator called the Palau National Telecommunications Regulatory Authority (the "Authority"). The Authority will undertake regulatory functions currently managed by the Division of Communications, and will also have additional powers to regulate the telecom sector according to market principles. The Authority's effectiveness will be enhanced by its independent nature and by having the necessary resources and structure to carry out its duties.
- Creating a level playing field, to encourage growth in the telecom retail sector. Since its inception, PNCC has not had to operate on a level playing field compared to other retail service providers in the Republic. This has created a protectionist environment where competitors lack the incentive and/or ability to make investments and compete with PNCC. However, in addition to removing the preferential treatment that PNCC has received, the Telecom Law also creates certain opportunities for PNCC by removing the mandates that have prevented it from being as competitive as it could be in a free and open market environment.

Regarding taxes, the Telecom Law puts all telecom retailers on a level playing field by removing the tax exemption for PNCC. In order to spur growth in the telecom sector and overall economy, the Telecom Law provides a tax exemption for the Belau Submarine Cable Corporation ("BSCC") that will expire on December 31, 2020. The reason for this exemption is that, for the time being, BSCC is going to be a monopoly provider of wholesale capacity, so a tax in this stage could negatively impact the entire market. However, this tax exemption is restricted to the very initial growth phase of the telecom sector, when BSCC will be most instrumental to establishing our future capacity.

In conjunction with this transmittal, **I am requesting that within thirty (30 calendar) days each of the parties copied on this transmittal provide their written comments on the proposed Telecom Law to both chambers of the OEK with a copy to the Office of the President**. The parties copied on this transmittal include telecom wholesale and retail providers, radio stations, law enforcement, prosecutors, defense attorneys, regulators, relevant state-owned enterprises, and traditional leaders.

As mentioned earlier, it is important to note that this Telecom Law is just one element of telecom sector reform, which must also include the following:

- Upgrading international connectivity infrastructure; as you know, the Republic is nearing completion of its submarine fiber-optic cable project, and expects improved fiber-optic cable internet delivery within the year.
- Upgrading domestic connectivity infrastructure; this is also happening on an encouraging scale, with telecom retailer (i.e. – PNCC, Palau Telecom, Palau Wifi) investments in anticipation of the soon-to-be-operational submarine cable. However, domestic infrastructure needs to be further improved and efficiently utilized, in order to promote growth in the telecom sector and overall economy. This Telecom Law will support future domestic infrastructure expansion by creating an improved commercial environment where investment is encouraged and valuable expenditures are not duplicated or wasted.
- Revising and establishing a modern telecom regulatory framework to provide incentives for better service, pricing, and accessibility. The current laws and regulations in our Republic are out of date, and not sufficient to yield such desired results. This Telecom Law makes great strides toward these goals, by creating a level playing field and competition that will ultimately benefit the consumer.

With all of the investment and reform taking place in our Republic, the telecom sector must be leveraged so that state-of-the-art applications, like distance learning, tele-medicine, and e-government, may be realized. For a developing island nation, these are not just luxuries, but required development drivers. My office and others in the government are working to put such applications in place, in order to take full advantage of the telecom sector reforms that the OEK and Office of the President continue to advance together.

I thank you and your colleagues for your prompt and careful consideration of this piece of legislation. President Baules has been provided with a duplicate transmittal for consideration by the Senate. My office stands ready to provide any further information that you might require. I look forward to continuing this work together. It is critical that we develop and improve our telecom sector and the overall economy.

Sincerely,

Tommy E. Remengesau, Jr.
President of the Republic of Palau

cc: Hokkons Baules
President of the Senate

Cc for comment: Division of Communications
Belau Submarine Cable Corporation
Palau National Communications Corporation
Palau Telecoms Corporation (d/b/a Palau Telecom)
Palau Wifi Corporation
All radio stations transmitting in Palau
Office of the Attorney General
Office of the Public Defender
Bureau of Public Safety
Financial Institutions Commission
Financial Institutions Unit
Council of Chiefs
Division of Marine Transportation
Palau Public Utilities Corporation
Palau National Aviation Administration
Bureau of Aviation
Bureau of Revenue and Taxation

EXHIBIT
Special Operations Loan Agreement
[*attached hereto*]

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Tommy E. Remengesau, Jr.
President of the Republic of Palau

cc: Delegate Sabino Anastacio
Speaker of the House of Delegates

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Bureau of Aviation
Bureau of Revenue and Taxation

EXHIBIT
Special Operations Loan Agreement
[*attached hereto*]

TENTH OLBIIL ERA KELULAU

[ ] Regular Session, [ ] 2017 [ ] Bill No. 10-___

A BILL FOR AN ACT

To amend and restate Title 15 of the Palau National Code to modernize and reform the telecommunications regulatory framework of the Republic.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIL ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Legislative Findings. The telecommunications market in the Republic is characterized by widespread access to reasonably-priced basic voice telephone services, but the telecommunications market remains highly concentrated and subject to a regulatory framework with significant gaps such that the availability of and access to advanced mobile telephony (voice and data) and high speed broadband services remains constrained and expensive.The purposes of this Act are to:

(1) Establish a legal framework that promotes competition and investment in the provision of high quality and reasonably-priced telecommunications services to the public;

(2) Create a new independent regulatory body to be called the Palau National Telecommunications Regulatory Authority (the "Authority");

(3) Set the powers and duties of the Authority in administering the telecommunications regulatory framework, including regulations for it to establish and implement standards and guidelines to promote investments in, development of, and enhance access to and the affordability of high speed Internet, mobile telephony (voice and data), and other services based on advanced telecommunications technologies, while safeguarding existing levels of universal access to and the affordability of basic telecommunications services in the Republic;

(4) Prevent abuses of the market position held by the operators and telecommunications services providers having dominance in a relevant telecommunications market, especially in cases where the market itself is insufficiently competitive or where market mechanisms for ensuring competition are not functioning;

(5) Establish conditions that promote the efficient use of radio frequencies spectrum and numbering resources;

(6) Promote transparency and non-discrimination in the regulatory processes for telecommunications; and

(7) Promote the overall economic development of the Republic.

Section 2. Title 15 of the Palau National Code is amended and restated in its entirety as follows:

"**Title 15**

Communications

Chapter I

General Provisions

§101 Short Title
§102 Repealer
§103 Exclusions
§104 Definitions

§101 Short Title

Title 15 of the Palau National Code may also be cited as the "*Palau National Telecommunications Act of 2017*".

§102 Repealer

The current provisions of Title 15 of the Palau National Code and any regulations promulgated pursuant thereto and the other laws of the Republic that are inconsistent with the provisions of this Act are hereby repealed.

§103 Exclusions

This Act shall not apply to:

(a) Telecommunications Networks operated, for the needs of the defense of and safety within the Republic,by the Bureau of Public Safety and anyother national agency furthering such objectives, and related Equipment used solely for these purposes;

(b) Telecommunications Networks and services networks and Equipment used to broadcast radio and/or television program services using radio frequencies intended for receipt by the

public, regardless of the technical means of transmission and whether in coded or not coded form; provided that, the provisions of Chapter V on the regulation of radio frequencies shall apply to broadcasters; and

(c) Telecommunications Services provided to and for the benefit of foreign government entities pursuant to international agreement.

§104 Definitions

(a) "**Act**" means the "*Palau National Telecommunications Act of 2017*", and, where appropriate, includes the regulations made pursuant to this Act;

(b) "**access**" means, as the context requires, the provision by one licensee to another of access to a Telecommunications Network or Telecommunications Facility for the purpose of the second licensee providing Telecommunications Services;

(c) "**Access Provider**" means a licensee that is asked by another licensee to provide it with access on a non-discriminating wholesale basis to a Telecommunications Network or a Telecommunications Facility that it owns or controls;

(d) "**Access Seeker**" means alicensee that requests access from an Access Provider;

(e) "**affiliate**" means, as the context requires, in relation to any Person, any other Person directly or indirectly controlling or controlled by or under the direct or indirect common control with, such specified Person;

(f) "**Appeals Panel**" means the body constituted from time to time pursuant to §329;

(g) "**Authority**" means the Palau National Telecommunications Regulatory Authority established under §302;

(h) "**Bottleneck Facility**" means a Telecommunications Facility declared by the Authority to be essential for the production of Telecommunications Services which, for technical reasons or due to economies of scope and scale and the presence of sunk costs, cannot practicably be duplicated by a potential competitor in a telecommunications market;

(i) "**Consumer**" means a Customer in the Republic who contracts for Telecommunications Services that are offered on standard conditions that are of general application and not negotiated individually;

(j) "**Customer**" means a Person in the Republic who contracts for Telecommunications Services;

(k) "**Customer Equipment**" means Equipment (including in-house cabling) that is on the Customer side of the Network Termination Point and intended to be connected toa Telecommunications Network;

(l) "**Division**" means the Division of Communications within the Ministry of Public Infrastructure, Industries and Commerce, or in the event of a reorganization of ministries, the successor ministryor government agency with portfolio responsibility for telecommunications;

(m) "**Dominant Services Provider**" means, in respect of a telecommunications market, a licensee who, in the opinion of the Authority:

(i) receives 40% or more of the total gross revenues received by all Telecommunications Services Providers in that telecommunications market; or

(ii) has a position of economic strength or controls a Bottleneck Facility in that telecommunications market that allows the licensee to behave independently of competitors or potential competitors, Consumers, or Customers;

(n) "**Equipment**" includes any appliance, apparatus, device or accessory approved by the Authority and used or intended to be used for telecommunications purposes;

(o) "**Exempt Network**" means a Telecommunications Network that is:

(i) not used to provide any Telecommunications Services for which a charge is imposed;

(ii) wholly within one discrete piece of real property (including a ship or aircraft) or a number of such properties which together comprise a campus;

(iii) used only for a Person's private or internal requirements (including the requirements of an organization's staff or an affiliate); or

(iv) covered by an exemption under §103 or §402(a)(1);

(p) "**Exempt Service**" means Telecommunications Services:

(i) provided only over an Exempt Network; or

(ii) provided in circumstances covered by an exemption under §103 or §402(a)(1);

(q) "**Government**" means the national government of the Republic;

(r) "**Inspector**" means a Person appointed or designated by the Authority under §450;

(s) "**interconnection**" means, as the context requires, the physical and logical linking of Telecommunications Networks operated by the same or different licensees in order to allow the Customers of one licensee to communicate with the Customers of the same or another licensee, or to access the Telecommunication Services of another licensee. interconnection is a specific type of two-way access implemented between Telecommunications Network operators to exchange Messages between Telecommunications Networks;

(t) "**license**" means, as the context requires, an operating or frequency license issued to a Person or class of Persons under this Act;

(u) "**licensee**" means, as the context requires, the Person that is the registered holder of a license issued under this Act;

(v) "**Managing Board**" means the governing body and executive organ of the Authority.

(w) "**Message**" means any sign, signal, writing, image, sound, instruction, information, or intelligence of any nature;

(x) "**Minister**" means, at any given time, the Minister of Public Infrastructure, Industries and Commerce, or in the event of a reorganization of ministries, the successor Minister or government employee with portfolio responsibility for telecommunications;

(y) "**Network Termination Point**" means the point determined by the regulations for the purposes of this Act or, in the absence of such regulations:

(i) the first Equipment socket in a private residence;

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

(iii) a point agreed between the Customer and the owner of the Telecommunications Facility to which that Customer is connected; or

(iv) theair side of the antenna at the Customer Equipment, where such Customer Equipment is connected to a network by means of Radio Communication;

For any submarine cable landing in the Republic, the Network Termination Point is the network interface located where the physical hand-over of capacity from the cable to licensed Telecommunications Service Providers is accomplished;

(z) "**nominal location**", of a submarine cable or cables, means the nominal location specified in the declaration of the protection zone in relation to the cable or cables.

(aa) "**OEK**" means the Olbiil Era Kelulau of the Republic;

(bb) "**Palauan Waters**" means (i) the waters of the territorial sea of the Republic; (ii) the waters of the exclusive economic zone of the Republic; (iii) the sea above that part of the continental shelf of the Republic that is beyond the limits of the exclusive economic zone.

(cc) "**Person**" means any natural person, individual, clan, association, business, partnership, company, joint venture, corporation or any other entity legally cognizable andincludes a public authority and any association of Persons, whether incorporated or not;

(dd) "**PNCC**"or "**P.N.C.C.**" means the Palau National Communications Corporation;

(ee) "**President**" means the President of the Republic;

(ff) "**Public Corporation**" means an autonomous entity wholly-owned by the Government;

(gg) "**RUS**" means the Rural Utilities Service, or its predecessor, the Rural Electrification Administration, of the government of the United States;

(hh) "**Radio Communication**" means the transmission of Messages by radio signals of all kinds between two or more points;

(ii) "**Radio Frequency Spectrum**" means those radio frequencies comprising channels for specific radio transmission technologies usable in the Republic;

(jj) "**Relevant Market**" means a market in the Republic for goods and services that, as a matter of fact and commercial common sense, are substitutable for them;

(kk) "**Relevant Telecommunications Market**" means a Relevant Market determined by the Authority for Telecommunications Services, interconnection or access;

(ll) "**Republic**" or "**Palau**" means the Republic of Palau;

(mm) "**Sensitive Information**" has the meaning given in §324(e), (f) and (h);

(nn) "**Specified Telecommunications Network**" means a Telecommunications Network that includes a line or radio communications link, or a series of lines or radio communications links, between two fixed points, including:

(i) radio communications transmission links;

(ii) cable transmission links; and

(iii) cable access networks;

(oo) "**telecommunications**" means the conveyance from one device to another of any Message by means of any wire, radio, optical, electric, magnetic, electromagnetic or similar system;

(pp) "**Telecommunications Common Carrier**" means a legal Person that provides Telecommunications Services for hire to the general public under a tariff;

(qq) "**Telecommunications Facility**" means any infrastructure, building, exchange, or switching Equipment, including microwave or mobile Equipment; any submarine cable landing in the Republic, including the submarine cable landing station and any associated man-hole, ducts, towers, racks, patch panels, cables or terrestrial extensions to reach a customer access point; any satellite transmitting or receiving infrastructure, building, and Equipment; any location, mast site, tower, pole, antenna, transmitter, receiver, translator, trunk line, man-hole, access line, termination point, duct or other underground facility; barge for cable laying / repairs; and any other passive Equipment that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications, but excluding Customer Equipment;

(rr) "**Telecommunications Network**" means a system that uses electricity or electromagnetic energy for providing Telecommunications Services between Network Termination Points;

(ss) "**Telecommunications Service**" means a service for the transmission or transport of telecommunications by means of a Telecommunications Network;

(tt) **"Telecommunications Services Provider**" means a Person that:

(i) owns a legal commercial Telecommunications Network providing access to third

parties;

(ii) provides or is entitled to provide Telecommunications Services under a license or exemption; or

(iii) has applied for a license or exemption under this Act;

(uu) "**Universal Access Obligation**" means an obligation of a licensee to provide Telecommunications Services under a universal access policy in an eligible geographic area identified under §436(a);

(vv) "**Universal Access Plan**" has the meaning given in §441;

(ww) "**Universal Access Special Revolving Fund**" means the Universal Access Special Revolving Fund established under §439;

(xx) "**user**" means, as the context requires, any Person using Telecommunications Services, regardless of whether such a Person is contracted to acquire the Telecommunications Services;

(yy) "**Wholesale Services**" means services required by a licensee in order to provide Telecommunications Services where such services are supplied by or provided over the Telecommunications Network of another licensee.

Chapter II

Corporation

§201 Creation of corporation; general provisions
§202 Board of Directors, terms, vacancies, quorums, and compensation
§203 Public meetings and official documents
§204 Appointment of general manager
§205 Powers and responsibilities of the PNCC
§206 Status of PNCC
§207 Fiscal authority of corporations; audits
§208 PNCC Fund
§209 Construction of chapter

§210 Prohibition of free or discounted services to PNCC employees

§201 Creation of corporation; general provisions

(a) There shall continue to be a Public Corporation called the Palau National Communications Corporation ("PNCC"), which shall continue to operate in the form and manner prescribed by this chapter.

(b) PNCC shall be subject to the corporate laws of the Republic to the extent that such laws do not conflict with this chapter or in any way distort the public character of the corporation.

§202 Board of Directors, terms, vacancies, quorums, and compensation

(a) The affairs of PNCC shall be managed and directed, and its corporate powers exercised, by a Board of Directors.

(b) The Board shall be composed of five members, all citizens of the Palau who shall be appointed by the President with the advice and consent of the Senate of the OEK. The Board shall designate one of its members as Chairman. The President shall have the power to remove a Board member only for cause.

(c) Board member appointments shall be for four (4) year terms.

(d) Any Board member appointed to fill a vacancy on the Board occurring prior to the expiration of the term for which his/her predecessor was appointed shall be appointed by the President, with the advice and consent of the Senate of the OEK, for the remainder of such term.

(e) So long as there shall be three (3) Board members in office, vacancies on the Board shall not impair the powers of the Board to execute the functions of PNCC, and three (3) of the Board members in office shall constitute a quorum for the transaction of the business ofthe Board. All decisions of the Board shall be by majority vote.

(f) Board members shall be entitled to compensation and per diem at established national government rates when traveling on the business of PNCC.

§203 Public meetings and official documents

(a) All meetings of the Board shall be open to the public and official documents shall be

available for public inspection and published where required by law.

(b) PNCC shall comply with transparency-related rules for the publication of tariffs and other regulatory documents enacted by the Authority pursuant to §324 of this Act.

§204 Appointment of general manager

The Board shall appoint a general manager of PNCC and shall determine his/her compensation and term of office. The general manager shall manage the operations of PNCC and shall, in accordance with policies established by the Board, retain, direct and terminate the services of employees.

§205 Powers and responsibilities of PNCC

(a) In order to achieve the objectives and to carry out the purposes and provisions of this chapter, PNCC shall have the following authority to:

(1) operate Telecommunications Networks and provide Telecommunications Services within Palau and between points in Palau and points outside thereof;

(2) operate and manage Telecommunications Services on the basis of commercially and technically accepted practices, treating all users of Telecommunications Services on equitable terms in accordance with its published tariffs, and requiring all users to pay for the Telecommunications Services provided;

(3) plan for the expansion and improvement of its Telecommunications Facilities and Telecommunications Services;

(4) expand, to the extent practicable, Telecommunication Services to areas and communities in Palau that are presently unserved or underserved and to improve the quality, reliability, and variety of Telecommunications Services available to all users in a manner consistent with commercial reasonableness and with promoting economic development, the advancement of education and health care, and the preservation of the cultural identity of the people of Palau; and

(5) provide on a reimbursable basis emergency Telecommunication Services to governments, individuals, and entities in Palau.

(b) PNCC shall be subject to the regulatory jurisdiction of the Authority.

§206 Status of PNCC

In performing its functions authorized under the laws of the Republic, PNCC shall have the capacity to exercise all powers normally exercised by a corporation, including, but not limited to, the authorities to:

(a) adopt, alter, and use a corporate seal;

(b) adopt and amend bylaws governing the conduct of its business and the exercise of its powers;

(c) sue and be sued in its corporate name, and to have succession;

(d) borrow or raise any sum or sums of money and to issue corporate bonds on such security and upon such commercially reasonable terms as may from time to time be deemed necessary for the expansion and improvement of Telecommunications Facilities;

(e) invest all surplus revenues of PNCC in the expansion and improvement of Telecommunications Facilities and Telecommunications Services;

(f) retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as it may deem appropriate; and

(g) Do all such other things as may be deemed incidental to or conducive to the attainment of the responsibilities of PNCC.

§207 Fiscal authority of corporation; audits

(a) PNCC shall establish and maintain records and accounts of all of its financial transactions, and shall have full charge of its financial affairs.

(b) The Public Auditor shall conduct bi-annual audits and reviews of all operations, books, records, procedures, and transactions of PNCC and report his/her findings to the President and the OEK.

(c) PNCC shall submit a detailed and itemized annual report to the OEK by no later than sixty (60) days following the end of its fiscal year.

§208 PNCC Fund

PNCC shall establish an account or accounts, to be collectively known as the “Palau National Communications Corporation Fund” into which all appropriations, funds and revenues accruing to

PNCC shall be deposited and from which all PNCC expenditures or obligations shall be made; provided, that PNCC is hereby authorized to create any additional accounts as may be required by the RUS subject to whatever conditions the RUS may by law require in order for PNCC to obtain and maintain a RUS loan.

§209 Construction of chapter

Nothing in this chapter is intended to affect the rights, obligations and responsibilities of the United States Government as Administering Authority under the Trusteeship Agreement or Secretarial Order No. 3039, and this chapter shall be construed accordingly.

§210 Prohibition of free or discounted services to PNCC employees

No officer or employee of PNCC may receive free telephone service, or any discount for such service not generally available to PNCC customers.

Chapter III

Supervisory Responsibilities for the Telecommunications Sector

§301 Transfer and assignment of policy and regulatory authority
§302 Establishment of the Palau National Telecommunications Regulatory Authority
§303 Incorporation and legal capacity of the Authority
§304 Functions, duties and powers of the Authority
§305 Organization of the Authority
§306 Powers of the Managing Board
§307 Appointment and removal of Managing Board members
§308 Remuneration of Managing Board members
§309 Procedures of the Managing Board
§310 Duty of Managing Board members to close conflicts of interest
§311 Appointment of the Director General
§312 Powers and duties of the Director General
§313 Removal of the Director General
§314 Delegation of authority

§315 Employees of the Authority
§316 Authentication of Authority's seal
§317 Presumption of authenticity of documents issued by the Authority
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§301 Transfer and assignment of policy and regulatory authority

(a) Notwithstanding any other provision of law, the Palau National Telecommunications Regulatory Authority (the "Authority") created by this chapter is hereby granted all regulatory jurisdiction and authority to supervise and monitor the performance of all Telecommunications Network operators, Telecommunications Common Carriers, and Telecommunications Services Providers in Palau in accordance with this Act and the regulations promulgated pursuant hereto.

(b) The Authority is hereby designated as the state commission for the Republic for the purpose of designating Telecommunications Common Carriers as eligible telecommunications carriers and to make related certifications regarding such carriers, and is hereby granted all regulatory jurisdiction and authority with respect to intrastate operations of carriers in Palau necessary to carry out such duties.

(c) Policy authorities retained by the Government and the Minister are set forth in §319.

§302 Establishment of the Palau National Telecommunications Regulatory Authority

(a) The Authority is hereby established as an independent regulatory body with full capacity under the law of the Republic.

(b) The Authority shall have its head office at a location to be determined by the Managing Board of the Authority (the "Managing Board"). The Authority may establish satellite offices and appoint agents at such locations in Palau and with such functions and duties as it shall determine.

(c) Except as set out in §319, the Authority shall act independently from the Government and the Minister in performing its functions and duties and exercising its powers under this Act. This independence shall be respected and no Person shall seek improperly to influence any official or employee of the Authority in the discharge of his/her duties or to interfere in the activities of the Authority, except on the execution of a specific authority or duty under the law.

(d) The Authority shall:

(1) perform its functions and exercise its powers and duties in accordance with this Act and the principles of transparency, neutrality with respect to telecommunications technologies to be applied, and proportionality in decision making;

(2) promote efficient competition in the provision of Telecommunications Networks, Telecommunications Facilities, and Telecommunications Services to enable users to obtain the maximum benefits of choice, price and quality in Telecommunications Services;

(4) promote efficient investment in advanced telecommunications technologies;

(5) promote efficient use of radio frequencies and the numbering space resource; and

(6) ensure that in similar circumstances there is no discrimination in the treatment of Telecommunications Services Providers or Telecommunications Networks and Telecommunications Services.

(e) The Authority shall establish a publicly accessible Internet website for the publication of public information and other matters required to be published under this Act.

§303 Incorporation and legal capacity of the Authority

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

(b) The Authority may sue and be sued in its corporate name, may enter into contracts, and may acquire, purchase, take, hold and enjoy property of every description. The Authority may convey, assign, surrender, yield up, charge, mortgage, lease, demise, reassign, transfer or otherwise dispose of or deal with any property or any interest therein vested in the Authority upon such terms as it sees fit.

(c) The Authority may act notwithstanding a vacancy among its members of the Managing Board other than the Chairman.

§304 Functions, duties and powers of the Authority

(a) For the purpose of achieving the objectives referred to in §302, the Authority shall:

(1) issuelicenses and supervise and enforce compliance with this Act and the conditions of licenses;

(2) regulate access to and the sharing of Telecommunications Facilities and interconnection of certain Telecommunications Networks of licensees where such matters are not agreed to by the licensees;

(3) monitor and enforce compliance with competition requirements, define Relevant Telecommunications Markets and analyze competitive conditions therein, identify licensees having dominant position in a Relevant Telecommunications Market, develop and assess whether to impose appropriate regulatory conditions on such licensees and determine when industry consolidation is permissible;

(4) regulate the protection of Consumers, the charges levied by licensees for Telecommunication Networks, the Telecommunications Services and attributes of Telecommunications Services and minimum requirements for subscriber contract terms and conditions;

(5) specify and approve technical standards and procedures for interconnection, the

operation of Telecommunications Networks and the provision of Telecommunication Services;

(6) regulate types and characteristics of Equipment which may be connected to a Telecommunications Network;

(7) monitor and report to the Minister, the President and the OEK on the development and performance of the telecommunications sector in supplying services and the contribution of the telecommunications sector to the overall development of Palau;

(8) monitor the Quality of Services (QoS) provided by licensees and ensure that licensees conform to the technical and other regulatory standards for service quality promulgated by the Authority;

(9) manage the Radio Frequency Spectrum required to provide Telecommunications Services, including numbering and electronic addressing, and where practicable and feasible respond to licensees' requests for assistance in obtaining access to land for Telecommunication Networks;

(10) administer universal service arrangements for the supply of Telecommunications Services throughout Palau;

(11) give effect to policies approved by the Minister or the President;

(12) respond to requests for information and assistance from national and international operators and Telecommunication Services Providers, including those from potential investors;

(13) where required by the Minister, represent the Government in international conferences or international and other organizations concerned with telecommunications;

(14) advise the Government on policies and legislative measures in respect of telecommunications;

(15) develop and enforce standards for the disclosure and publication of information by licensees to promote transparency in the telecommunications sector;

(16) undertake public consultations on matters relating to telecommunications;

(17) conciliatetelecommunications-related disputes between licensees where requested;

(18) specify and approve technical standards for all Equipment used in public Telecommunications Networks in Palau;

(19) take enforcement action under this Act;

(20) make rules and regulations as provided for under this Act; and

(21) perform such other functions as are consistent with this Act.

(b) In addition to the matters which are specifically prescribed in this Act, the Authority may make such rules and regulations as are contemplated by or necessary for giving full effect to the provisions hereof.

(c) Rules and regulations shall be promulgated in accordance with the Palau Administrative Procedure Act, 6 PNCA §§ 101 – et seq. (the "Administrative Procedures Act").

§305 Organization of the Authority

The Authority shall have a five-member Managing Board consisting of a Chairman and four (4) members appointed by the President and confirmed by the Senate of the OEK, and a management consisting of a Director General and staff.

§306 Powers of the Managing Board

(a) The Managing Board is the executive organ of the Authority.

(b) The Managing Board shall have the authority to:

(1) adopt the resolutions of the Authority;

(2) enact the regulations of the Authority in accordance with the Administrative Procedures Act;

(3) appoint the Director General of the Authority in compliance with this Act;

(4) approve the annual financial plan and final statement of annual accounts;

(5) approve the annual work plan of the Authority;

(6) monitor the implementation of the annual financial and work plans of the Authority;

(7) prepare and issue the annual report of the Authority and to submit reports, recommendations and suggestions on the telecommunications sector to the

Minister, the President, the OEK, and other public bodies; and

(8) cooperate with other state bodies and institutions, units of local self-government and non-governmental organizations and associations.

§307 Appointment and removal of Managing Board members

(a) All the members of the Managing Board (including the Chairman, who shall be appointed as such) shall be appointed by the President, with the advice and consent of the Senate of the OEK, from among persons appearing to him/her to be qualified for the office for a term of four (4) years. The President may renew the term of appointment of a member for up to two (2) additional terms of four (4) years each.

(b) In order to establish staggered terms, the first members shall be divided as equally as possible into two groups plus the Chairman. The Chairman shall serve a term of four (4) years. One group of two members shall serve an initial term of three (3) years. Another group of two members shall serve an initial term of two (2) years. Thereafter, each year the President shall renew the terms of appointment or appoint new members to fill the expiring terms, with each member so appointed to hold office for a term of four (4) years, except that in the event of a vacancy or in the case of a newly-appointed member, the member may be appointed to a shorter term as may be appropriate to maintain the balance of staggered terms.

(c) The terms of appointment of a member shall include, with appropriate modifications being made, an obligation to comply with such ethics rules comparable to those applicable to employees of the National Public Service System pursuant to the National Public Service System Act from time to time.

(d) The President shall not appoint a person as Chairman under subsection (a) unless in the opinion of the President the person:

(1) has demonstrated experience of not less than eight (8) years in the fields of economics, law, finance, business, engineering (with a preference for a background in information technology or telecommunications engineering), and/or public administration in relation to the telecommunications sector; and

(2) isnot disqualified for appointment under subsection (g).

(e) The Chairman and the additional members shall be citizens of the Republic.

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

(1) has demonstrated experience in the fields of economics, law, finance, business, engineering (with a preference for a background in information technology or telecommunications engineering), and/or public administration in relation to the telecommunications sector; and

(2) is not disqualified for appointment under subsection (g).

(g) A person shall be disqualified from becoming or remaining a member of the Managing Board if that person:

(1) is found or declared to suffer from mental or physical incapacity;

(2) is or has been convicted of a criminal offense involving dishonesty or corruption, or where the penalty includes imprisonment for one (1) year or longer;

(3) is or has been declared bankrupt or insolvent;

(4) holds an elected office in the Government;

(5) in the case of the Chairman, is a staff member or officer of a department or agency of the Government; or

(6) holds a direct or indirect financial or other interest in any Telecommunications Services Provider other than through a fund over which the person has no control or influence.

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

(i) A member may resign from the Managing Board upon one month’s written notice to the President, or such shorter time as the President and the member may agree in writing.

(j) If any member of the Managing Board dies or ceases to hold office before the expiration of the term for which he/she was appointed, the term of office of his/her successor shall be so fixed as to expire at the end of the first-mentioned term.

(k) The President may appoint a person as Acting Chairman of the Authority on an interim basis where the Chairman has not yet been appointed, or has ceased to hold office and a replacement has not been appointed, or during a period of temporary absence or incapacity. Any Acting Chairman appointed under this subsection (k) shall, during his/her period of appointment, have and exercise all the powers of the Chairman.

§308 Remuneration of Managing Board members

The Authority shall pay to each of its members of its Managing Board, in respect of his/her office as such, remuneration and/or allowances as prescribed by the terms of appointment of such member issued by the President, and in determining the remuneration and allowances to be paid under this section, different provisions may be made as regards the Chairman and the other members but not as between the other members.

§309 Procedures of the Managing Board

(a) Where no additional members have been appointed to the Managing Board, the Chairman shall exercise all the functions and powers of the Authority.

(b) Where additional members have been appointed, the functions and powers of the Managing Board shall be exercised by a quorum comprising the Chairman and one other member. Each member of the Managing Board, including the Chairman, shall have one vote and a simple majority of votes shall be required to dispose of any item of business. In the event of a tie, the Chairman shall cast an additional deciding vote.

(c) The Managing Board shall meet at least once per month, or more often as required upon the call of the Chairman.

(d) Minutes shall be taken of every Managing Board meeting containing record of all matters discussed, all decisions taken, and all votes. Meeting minutes shall be published on the Authority website at least seven (7) days prior to the next monthly meeting, provided that the Managing Board shall redact such material from the minutes as required by §324 prior to their publication.

(e) Managing Board meetings shall be open to the public except for executive sessions held to discuss personnel matters or matters where commercial proprietary information will be

disclosed.

(f) Except as provided in subsections (a) through (e), the Authority shall by resolution determine its own procedure as the Authority shall consider is necessary for the equitable and transparent exercise of its powers or for the effective administration of the Authority.

§310 Duty of Managing Board members to disclose conflicts of interest

(a) A member of the Managing Board who is in any way directly or indirectly interested in a matter before the Managing Board shall, as soon as possible after the relevant circumstances have come to his/her knowledge, disclose the nature of his/her interest to the Managing Board. If the Chairman is the sole member, the Chairman shall disclose the nature of the interest to the President.

(b) Any disclosure made under subsection (a) shall be recorded:

(1) in the minutes of the next meeting of the Managing Board where there are additional members; and

(2) by the Chairman confirming in writing to the President the nature of his/her conflict of interest where the Chairman is the sole member.

(c) The disclosing member:

(1) shall not take part after the disclosure in any deliberation or decision of the Managing Board with respect to that matter; and

(2) shall be disregarded, for the purpose of constituting a quorum of the Managing Board, for any such deliberation or decision.

§311 Appointment of the Director General

(a) The Managing Board appoints the Director General by way of a public tender.

(b) The Director General shall hold a university degree in the field of engineering (with a preference for a background in information technology or telecommunications engineering), law, economics, or finance with professional experience of more than five (5) years in telecommunications and organizational and managing abilities. There shall be no requirement that the Director General is a citizen of the Republic.

(c) The Managing Board shall appoint the Director General no later than 30 days before the

expiration of the mandate of his/her predecessor.

(d) The Director General, and his/her spouse or unmarried partner, and direct relations up to and including the second branch, may not be members of or hold, in the aggregate, the majority of interests or shares, directly or indirectly, in any entity directly subject to the jurisdiction of the Authority. Furthermore, the Director General, and his/her spouse or unmarried partner, may not hold a direct or indirect financial or other interest in any Telecommunications Services Provider other than through a fund over which the person has no control or influence.

(e) The Director General shall be engaged by the Authority as a professional full-time employee of the Authority.

§312 Powers and duties of the Director General

(a) The Director General is primarily responsible for the:

(1) execution of the policies, and the implementation of the decisions, of the Authority; and

(2) supervision and day-to-day management of the affairs of the Authority and its staff.

(b) In performing his/her duties, he/she is authorized to:

(1) execute contracts on behalf of the Authority;

(2) issue decisions and other acts for the enforcement of this Act;

(3) issue decisions in an administrative procedure of first instance;

(4) prepare proposed regulations and other acts for adoption by the Managing Board;

(5) appoint persons to managing positions in the Authority;

(6) appoint inspectors for telecommunications;

(7) delegate powers within the scope of his/her jurisdiction; and

(8) perform other activities assigned to him by the Managing Board.

(c) The Director General shall attend and participate in Managing Board meetings, where he/she shall not have the right to vote.

(d) The term of office of the Director General shall be for five (5) years, and he/she may be reappointed for one (1) additional consecutive term of office.

(e) When the term of office of the Director General has terminated, if the procedure for the appointment of a new Director General has not been completed, the Director General shall continue in office until the appointment of a new Director General for up to a term not longer than six (6) months.

(f) The Director General may resign from his/her position, which resignation should be provided in writing.

§313 Removal of the Director General

(a) The Director General may be dismissed by the Managing Board only in the following cases (with at least 90 calendar days notice for cases (1) – (3), and with no notice period required for cases (4) (5) and (6):

(1) upon his/her request;

(2) if he/she cannot perform his/her duties for reasons of illness lasting longer than three (3) months;

(3) acceptance of a position or practice that is incompatible with his/her functions of a Director General;

(4) upon his/her conviction of a crime punishable by a prison sentence of more than six (6) months; or

(5) abuse of his/her position; and

(6) upon a vote of 80% of the Managing Board.

(b) The Director General shall be exempt from the National Public Service System Act.

(c) The Director General, against whom a dismissal proceeding has commenced by the Managing Board, shall be informed of the proceeding in advance and shall have the right to see the evidence upon which the proceeding is grounded and to present a defense before the Managing Board.

§314 Delegations of authority

(a) The Managing Board may, in writing, delegate any of its executive functions not enumerated in subsection 306(b) to the Director General, except this power of delegation.

(b) The Director General (except as otherwise expressly limited by the Managing Board) may,

in writing, delegate any of his/her powers and functions in his/her capacity as Director General to any of the staff of the Authority, except this power of delegation.

§315 Employees of the Authority

(a) The Authority may employ such persons necessary for the efficient performance of its functions and powers as the Director General may determine.

(b) The hiring authority for staff is held by the Director General.

(c) The terms of employment shall include an obligation to comply with ethics rules adopted by the Authority that shall be comparable with appropriate modifications to those applicable to employees of the National Public Service System pursuant to the National Public Service System Act from time to time.

(d) Except as provided in subsection (c), the employees of the Authority shall be exempt from the National Public Service System Act.

§316 Authentication of Authority's seal

The Chairman and the Director General, within the scope of his/her delegated authorities, shall by signature authenticate the application of the seal of the Authority.

§317 Presumption of authenticity of documents issued by the Authority

Any document purporting to be an instrument issued by the Authority and sealed as aforesaid, or signed on behalf of the Authority by the Chairman or the Director General acting within the scope of his/her delegated authorities, shall be received in evidence and shall be deemed to be such an instrument without further proof unless the contrary is shown.

§318 Protection of Managing Board members

No personal liability shall attach to any member of the Managing Board or staff of the Authority in respect of anything done or permitted in good faith under the provisions of this Act and the Managing Board may take all necessary action, including the taking out of insurance, to indemnify and hold members and staff harmless in such cases.

§319 Powers and duties of the Minister

(a) The Minister shall have the following responsibilities and functions pursuant to this Act:

(1) formulation, determination, and monitoring of the general policy for the

telecommunications sector in Palau, with a view to ensuring, amongst other objectives, the utilization of the sector to promote national economic and social development;

(2) negotiation and execution, on behalf of the Republic, of international telecommunications treaties and agreements between sovereign countries and international organizations and bodies;

(3) issuance of appropriate orders in the event of a declared war, natural disaster, or other state of emergency prescribing measures that must be implemented by all licensed Telecommunications Network operators and Telecommunications Services Providers to manage the response to the event;

(4) representation of the Republic, as required and in conjunction with the Authority, at proceedings of international organizations and forums on matters relating to telecommunications; and

(5) in consultation with the Authority, the development and designation of universal access policies and objectives.

(b) Before recommending to the President any general policy in relation to telecommunications, the Minister shall consult with the Authority, licensees and other interested persons and allow a reasonable period for consultation and, upon the President making such a policy, notify the Authority in writing. The Authority shall publish policies notified to it under this subsection.

(c) The Authority shall give effect to a Government policy notified under subsection (b), to the extent possible, consistent with this Act, and having regard to obligations under any convention to which the Republic of Palau is a party.

(d) Subject to subsection (e) of this section, the Minister shall, in writing, from time to time notify the Authority and express his/her views on the general policy direction of the Government in respect of the telecommunication sector.

(e) Except as provided herein, the Minister shall have no power to direct the Authority in respect of the performance of its functions and powers under this Act.

§320 Exemption from income tax, customs duty and import levy

Notwithstanding the provisions of any other Act, the income of the Authority shall be exempt from payment of income tax, and the Authority shall not be liable for the payment of customs duty and import levy, or any other tax having a similar effect.

§321 Annual reports, accounts and audit

(a) The Authority shall be funded on an annual basis by license fees and other fees it is entitled to charge under this Act, from grants and donations, and from moneys appropriated by the OEK.

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

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

(d) The Authority shall by:

(1) 31 March of each year, cause its accounts for the previous financial year to be audited by the Public Auditor;

(2) 31 May of each year, submit to the President and publish the audited accounts and an annual report on its activities for the previous financial year;

(3) 30 June of each year, submit to the President and the OEK an annual report on all significant matters relating to the performance and efficiency of the telecommunications sector, with particular reference to the:

(i) adequacy and Quality of Services (QoS);

(ii) the state of competition in the sector; and

(iii) contribution of the telecommunications sector to economic development of Palau; and

(4) by the 2nd Tuesday of July of each year, submit its annual budget for the following financial year and forecasts for the following two financial years to the President for inclusion in the national budget process;

(e) The annual report of the Authority shall include:

(1) a list of the licenses issued under this Act and then in force, together with the names, addresses, and other contact details for all individual licensees;

(2) a list of the interconnection and access agreements then in force;

(3) a summary of any material litigation involving the Authority;

(4) a description of the activities carried out during the year in respect of the Universal Access Plan; and

(5) The results and actions taken in response to any efficiency audit of the Authority undertaken pursuant to §322.

(f) The Authority shall transfer to the Universal Access Special Revolving Fund any monies that it receives under this Act in excess of its approved budget and forecast funding needs, unless the Minister directs the Authority to retain or otherwise transfer such excess funds.

§322 Efficiency Audit

(a) The President may, at any time, direct the Public Auditor to undertake an efficiency audit of the Authority.

(b) On being directed to undertake an efficiency audit, the Public Auditor shall within three (3) months:

(1) review the Authority's annual budget for the current fiscal year and the Authority's forecasts for the following two fiscal years;

(2) assess whether the budget and forecasts are reasonable having regard to the Authority's functions under this Act; and

(3) provide a report to the Authority and the President outlining these findings and, if practicable, recommend changes to the Authority's budget and forecasts.

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

(d) The Authority shall fully cooperate in the conduct of the efficiency audit by providing assistance including giving access to and full disclosure of documents and financial records of the Authority to the relevant auditor.

(e) If a report under subsection (b) concludes that the Authority's budget or forecasts are not

reasonable having regard to the functions of the Authority under this Act, the Authority shall provide views on that conclusion to the President within three (3) months. After considering the views of the Authority and the Public Auditor, the President shall either affirm the Authority's budget and forecasts or direct the Authority to modify the budget or forecasts, and the Authority shall promptly comply with such direction.

(f) The Authority shall include in its annual report to the President and the OEK under §321 a report on the results of and any actions taken in response to an efficiency audit conducted pursuant to this section.

§323 Public consultation

(a) The Authority shall carry out such consultations as are required by this Act. The Authority may also carry out such other consultations with interested Persons as it deems appropriate in the circumstances.

(b) Where this Act requires the Authority to conduct a public consultation, it shall publish a written notice in English and Palauan specifying:

(1) the power which the Authority intends to exercise;

(2) the way in which the Authority intends to exercise that power; and

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

(c) Where this Act requires the Authority to conduct consultation with a particular Person, the Director General shall also provide the written notice specified in subsection (b) to that Person.

(d) A Person shall be entitled to provide a submission to the Authority in response to a notice published under subsection (b). The due date to lodge such a submission shall be fourteen (14) days from the date of the notice or such longer period as the Authority may specify in the notice.

(e) The Authority shall take into account any submission it receives under subsection (d) by the due date. The Authority is not prohibited from taking into account a submission it receives after the due date.

(f) Subject to §324, the Authority shall make publicly available a copy of any submission it

receives under subsection (d).

(g) The Authority shall, before making a final decision:

(1) publish a draft decision; and

(2) provide a copy of such draft decision to every Person who has made a submission under subsection (d), where required by this Act or where the Authority otherwise considers it appropriate.

(h) If the Authority issues a draft decision, subsections (b) to (f) shall apply to the draft decision, as if references to the written notice provided under subsection (b) were references to the draft decision.

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

(a) publish that decision; and

(b) provide a copy of such decision to every Person who has made a submission under subsection (d).

§324 Publication and use of information

(a) Subject to subsection (c), the Authority shall publish:

(1) all rules or other instruments made under this Act;

(2) alllicenses and exemptions issued under this Act, including the names, addresses, and other contact details of individual licensees and the names and addresses of exempted entities;

(3) all minutes of its meetings of the Managing Board; and

(4) such other documents it is required to publish under this Act.

(b) Where the Authority is required to publish a document, the Authority:

(1) shall publish the document on its website;

(2) post a notice in English and Palauan, which shall summarize the document and direct interested parties to the website or the office of the Authority to see a full copy, at the President’s Office, at the Judiciary Building, at the OEK and at the Post Office; and

(3) may publish the document in such other manner as the Authority considers

appropriate.

(c) Subject to subsections (h) and (i), neither the Authority nor any agent of the Authority shall knowingly publish or disclose Sensitive Information to any Person, knowingly allow Sensitive Information to be disclosed with any Person, or use Sensitive Information for personal advantage. A breach of this prohibition by a member of the Managing Board or employee of the Authority shall be a breach of the terms of appointment or employment of that person.

(d) Subsection (c) shall also apply to a person who publishes, discloses or uses Sensitive Information after ceasing to be a member of the Managing Board, employee or agent of the Authority.

(e) Subject to subsection (h), 'Sensitive Information' means information that is submitted to the Authority by a Person, where the information:

(1) is not already in the public domain; and

(2) has been designated as confidential or proprietary by that Person because:

(i) the Person has a legal obligation to keep the information confidential;

(ii) the information is commercially sensitive to the Person;

(iii) disclosure would compromise effective competition in a telecommunications market; or

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

(f) The Authority may, by notice given to the Person supplying information under subsection (e) within seven (7) days of the information being submitted, determine that the information and any data derived from that information is not confidential or proprietary and as of the date of such notice that information shall not be 'Sensitive Information'.

(g) Where information is provided to the Authority voluntarily, upon receipt of a notice issued under subsection (f) the submitter may within three (3) days of receipt by notice to the Authority withdraw the information, in which case:

(1) the Authority shall not have regard to the information; and

(2) subsections (c) and (d) shall apply as if the information were Sensitive Information.

(h) ‘Sensitive Information’ does not include the terms of an interconnection and access agreement, including prices for interconnection and access services.

(i) The Authority may aggregate Sensitive Information in such a manner that the identity of the provider of the Sensitive Information is not readily apparent and:

(1) publish such information in reports concerning the state of a telecommunications market in Palau; and

(2) provide such information to other Persons for the purposes of research or the preparation and publication of reports for non-commercial purposes concerning telecommunications markets including such telecommunications markets in Palau.

(j) Where sensitive material is contained in a document that is required to be published under this Act, the Authority shall redact such material from the document prior to the publication and include a statement of the reason for the redaction in its place.

(k) The Authority may, in the course of taking any action or making any decision in regard to an interconnection or access dispute, supply any Sensitive Information provided by a party to that dispute to representatives of another party to the dispute where the Authority is satisfied that the confidentiality of the information is protected by legal privilege or that other steps have been taken to ensure that the use of that information is restricted to the proper conduct of the dispute.

§325 Service of notices

Unless otherwise expressly provided in this Act, any document required or authorized by this Act to be provided to or served on any Person, may be provided or served on the Person concerned by:

(a) delivering it to the Person or, if a natural person, to some adult member or employee of that person’s family at the person’s last known residence;

(b) leaving it at that Person’s usual or last known residence or, if applicable, place of business in a cover addressed to the Person;

(c) attaching it to some conspicuous part of that Person’s last known residence;

(d) sending it by registered post addressed to that Person at that Person’s usual or last known residence or, if applicable, place of business; and

(e) where the person is a body corporate;

(i) delivering it to the secretary or other similar officer of the body corporate at its registered or principal office; or

(ii) sending it by registered post addressed to the body corporate at its registered or principal office.

§326 Review options

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

(1) for reconsideration of the determination, decision or order under §327;

(2) for an administrative appeal of the determination, decision or order under §329; or

(3) for judicial appeal to the courts of the Republic on the basis of an error of law.

(b) Notwithstanding subsection (a), a Person may not apply for judicial appeal in respect of a determination, decision, or order of the Authority:

(1) if the Person has not applied for reconsideration or administrative appeal of the determination, decision or order under §327 and §329; or

(2) if the Person has applied for reconsideration or administrative appeal and the Managing Board of the Authority or the Appeals Panel has not yet made a decision as to whether to reconsider or overturn the determination, decision or order.

(c) Unless a stay is ordered by the courts of the Republic, the filing of an application under subsection (a)(3) does not prevent a determination, decision or order of the Authority from having full force and effect.

§327 Reconsideration of determinations, decisions or orders

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

(b) An application under subsection (a) must specify:

(1) the determination, decision or order of the Authority to which the application relates;

(2) the reasons for which the reconsideration is sought; and

(3) the action sought on reconsideration.

(c) The Authority shall, within thirty (30) days from receipt of an application under subsection (a), consider the application and notify the applicant as to whether the determination, decision or order will be reconsidered.

(d) If, within thirty (30) days after the filing of an application for reconsideration, the applicant has not received a response to the application, the Authority shall be deemed to have affirmed the determination, decision or order in respect of which the application for reconsideration was made.

(e) If the Authority determines to reconsider the determination, decision or order, it shall comply with the same procedures (such as consultation and preparation of a draft decision) to be complied with when the determination, decision or order was first made.

§328 Appointment of experts

(a) The Authority shall establish a register of experts who shall be available to act as members of an Appeals Panel constituted under §329. In establishing and maintaining the register, the Minister shall consult with the Authority and with all Telecommunications Service Providers.

(b) The Authority or any Telecommunications Service Provider may, from time to time, nominate additional persons for inclusion in the register. Such additional person or persons shall be added to the register unless there is an objection either from the Authority or any Telecommunications Service Provider.

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

(d) A person may be included in the register only if the person:

(1) meets the eligibility criteria to be appointed a member of the Managing Board; or

(2) has at least ten (10) years international experience in the regulation of telecommunications markets; and

(3) is not a member, officer, employee, agent or consultant of the Authority and has not been such a person for at least 12 months.

(e) There is no requirement that a person must be a citizen of the Republic to be eligible to be included in the register of experts.

(f) The Minister shall remove a person from the register of experts if the person no longer meets the criteria for appointment under subsection (d).

(g) The Authority shall act as the secretariat for the Appeals Panel and shall publish the membership of the register of experts.

§329 Administrative Appeals

(a) Any Person may apply to the secretariat of the Appeals Panel for a review of a decision of the Authority where expressly permitted by this Act.

(b) An application under subsection (a) must:

(1) specify the decision to which the application relates;

(2) specify the reasons why the review is sought and the outcome sought from the Appeals Panel; and

(3) be submitted to the secretariat within fourteen (14) days of publication of the decision or after that period with the consent of the secretariat.

(c) On receipt of a valid and complete application for review under subsection (a), the secretariat shall select from the register not less than two (2) persons whom the secretariat considers are suitably qualified to form the Appeals Panel. The secretariat shall notify the parties to the decision appealed against, including the Authority, of those names and invite the parties to agree on the person or persons from amongst those names to be chosen to form the Appeals Panel.

(d) Should the parties to the decision appealed against be unable to agree within five (5) working days of the delivery of the list, the secretariat may either nominate an additional name or names from the register, in which case the parties shall have a further five (5) working days to agree on the composition of the Appeals Panel, or may choose the members of the appeal panel from amongst the persons nominated by the secretariat.

(e) If more than one member is appointed to the Appeals Panel, the secretariat shall designate one member of the panel as the Chair whose opinion shall determine the appeal in the event of a tie.

(f) The Appeals Panel:

(1) shall give a copy of the application for review to Persons affected by the decision under review and any other Person who made a submission to the Authority in a consultation relating to the decision under review, and invite such Persons to make submissions;

(2) may make a determination on an application based upon the application itself and the documents submitted in support thereof, or may convene a hearing in person, by teleconference, or other means that permits all participating parties to communicate with each other simultaneously and instantaneously; and

(3) in all other matters, may determine its own procedures as it sees fit, provided that such procedures do not give one person affected by the decision an advantage over any other person affected by the decision.

(g) An appeal shall be by way of rehearing on the evidence before the Authority. The Appeals Panel:

(1) shall take into account information submitted by a party to the appeal that updates the information previously provided to the Authority; and

(2) may, in exceptional circumstances, take into account new information submitted by a party to the appeal.

(h) The Appeals Panel may stay the operation of the decision while considering the application.

(i) The Appeals Panel shall:

(1) affirm the decision under review;

(2) vary the decision under review;

(3) set aside the decision under review and make their own decision, which shall be treated as a decision of the Authority; or

(4) refer the matter back to the Authority for reconsideration in such respects as the

panel shall specify and the Authority shall comply with any such direction.

(j) The Appeals Panel shall provide a copy of its decision and the reasons for the decision to each Person affected by the decision and the Authority.

(k) The Authority shall publish the decision of the Appeals Panel provided to it under subsection (j).

(l) The costs of the Appeals Panel in conducting the review shall be borne by the Person making the application for review. That Person shall, upon filing the application for review, promptly pay to the secretariat such amount or amounts by way of pre-payment of such costs as the secretariat shall reasonably determine.

(m) The Appeals Panel may make a costs order in exceptional circumstances where it considers that a Person other than the applicant for review has materially contributed to an increase in the amount of the costs of the review and if such order is made, costs will be apportioned between that Person and the applicant.

(n) A decision of the Appeals Panel is final and binding, subject to §326(a)(3).

Chapter IV

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§**401** **License for Telecommunications Networks or Services**

(a) Subject to subsections (e) and (f), no Person may, in Palau or between any place in Palau and any place outside Palau, except in accordance with an operating license issued under this Act:

(1) own or operate a Specified Telecommunications Network; or

(2) provide a Telecommunications Service.

(b) The Authority may issue the following types of operating licenses pursuant to the requirements of the licensing rules:

(1) an individual license, to authorize the ownership or operation of any Specified Telecommunications Network and the provision of any Telecommunications Service; and

(2) a class license, to authorize the provision of any Telecommunications Service.

(c) The Authority shall issue an individual license to a specified Person for a specified period but not exceeding twenty (20) years.

(d) A class license shall:

(1) be issued by the Authority setting out:

(i) the terms and conditions of the license; and

(ii) any applicable eligibility criteria; and

(2) comeinto force with respect to any Person upon registration by that Person under a class license issued under section 403(a)(2).

(e) Nolicense shall be required under subsection (a) to own or operate an Exempt Network or to provide an Exempt Service, subject to compliance with any conditions set out in the licensing rules.

(f) No additional license under this Act shall be required for the construction or ownership of a Specified Telecommunications Network where the operator of that Specified Telecommunications Network already holds the required operating license.

(g) Operating licenses shall not specify or restrict the technology or network type to be used by the licensee to provide Telecommunication Services.

(h) Notwithstanding the foregoing, for reasons of national security, the Authority may, after consulting with the Minister, restrict the number of individual licenses issued for the establishment of submarine cables or Telecommunications Network infrastructure in Palau.

§402 Licensing rules for Telecommunications Networks or Services

(a) The Authority may make licensing rules specifying:

(1) additional Exempt Services and Exempt Networks and conditions attaching to such exemption;

(2) the process for submitting an individual license application or application for registration, including the intended time frame for the Authority to process an application:

(3) The eligibility criteria for individual licenses and registration under class licenses;

(4) A fair and transparent method or methods of selecting applicants in circumstances where applications for licenses may exceed the restrictions set out in subsection (b); and

(5) General license conditions which apply to all operating licenses.

(b) The licensing rules may set out restrictions or limitations on the issuance or scope of licenses necessary to give effect to the objectives of this Act, including promoting competitive telecommunications markets.

§403 Obtaining a license for Telecommunications Networks or Services

(a) Any Person may, in accordance with the licensing rules, apply to the Authority:

(1) for an individual license; or

(2) for registration under a class license.

(b) The Authority shall promptly issue an individual license to an applicant provided that:

(1) the applicant’s application complies with the licensing rules;

(2) the applicant pays any applicable application fee to the Authority;

(3) the applicant meets the eligibility criteria for the license; and

(4) thelicense is not of a type that is restricted in number.

(c) An applicant for an individual license may combine that application with an application for a radio frequency license. In such case, the Authority shall progress the two applications in concert and issue the licenses together or under such arrangement as the Authority and the applicant agree.

(d) The Authority must provide reasons for any refusal to issue an individual license to an applicant.

(e) The Authority shall promptly register an applicant under a class license provided that:

(1) the application for registration complies with the licensing rules; and

(2) the applicant meets the eligibility criteria for the license.

(f) The Authority shall maintain and publish a register of licensees and licenses. The entry in the register shall be the authoritative record of the status of any license.

(g) Any restrictions under other laws concerning foreign investment in the Republic shall not apply to carrying on the business of owning or operating a Telecommunications Network or providing a Telecommunications Service by a licensee.

(h) Except as set out in this section, an operating license shall not discharge the licensee from any obligation to obtain any other licenses, permits or approvals required by law.

§404 Radio frequency licensing by the Authority

(a) The Authority shall have sole responsibility for licensing the use and in allocating and assigning the Radio Frequency Spectrum for the provision of Telecommunications Services in Palau.

(b) No Person may use radio frequencies in a manner that is inconsistent with an allocation and assignment of radio frequencies by the Authority under this section.

(c) In performing its functions and duties and exercising its powers under this section, the Authority shall ensure that Radio Frequency Spectrum is managed and used in a manner that:

(1) is open, non-discriminatory, competitively neutral, objective and transparent;

(2) is consistent with any applicable international treaties, commitments, recommendations or standards legally binding on the Republic; and

(3) is economically efficient and permits evolution to new technologies and services.

§405 Radio frequency licensing rules

(a) The Authority may make radio frequency licensing rules relating to the use of Radio Frequency Spectrum for the provision of Telecommunications Services specifying:

(1) the types of frequency licenses that may be issued in relation to spectrum blocks or particular frequencies;

(2) the technical requirements that apply to the use of parts of the Radio Frequency Spectrum or particular frequency licensees;

(3) the parts of the Radio Frequency Spectrum for which a frequency license may only be issued following a request for applications published by the Authority;

(4) the process for submitting an application for a frequency license including the intended timeframe for the Authority to process an application;

(5) the eligibility criteria for a frequency license;

(6) a fair and transparent method or methods of selecting applicants in circumstances where applications for frequency licenses exceed the available frequencies, which may include a competitive tender under §409;

(7) procedures for a declaration that assigned frequencies are assigned on a non-exclusive basis and the making of further allocations of frequencies in the same frequency band;

(8) prohibitions against warehousing, hoarding or other uses of assigned frequencies for anticompetitive purposes;

(9) procedures for the vacation of frequencies that has been assigned to any Person and the assignment of those frequencies to another Person; and

(10) general license conditions for frequency licenses.

(b) In accordance with the Administrative Procedures Act, the Authority shall promulgate appropriate rules and regulation governing the use of the Radio Frequency Spectrum.

§406 Application for radio frequency license

(a) Any Person may apply to the Authority for a frequency license for the purpose of providing Telecommunication Services.

(b) The Authority shall issue a frequency license to an applicant provided that:

(1) if required, the application has been made pursuant to and consistent with a request for applications published by the Authority;

(2) the applicant’s application complies with the radio frequency licensing rules;

(3) the applicant pays any applicable application fee to the Authority;

(4) the applicant meets the eligibility criteria for the license;

(5) the application is consistent with the spectrum plan and any other spectrum planning instruments made by the Authority or the Division; and

(6) in circumstances where a method of selecting applicants is specified in the radio frequency licensing rules and the applications for licenses exceed the available spectrum, the applicant has been selected in accordance with those rules.

(b) The Authority shall decide to refuse to issue a frequency license if it determines that:

(1) the applicant has had a frequency license revoked in the last five (5) years;

(2) assignment of radio frequencies would not be in accordance with the efficient use of the Radio Frequency Spectrum; or

(3) the signal of radio Equipment would cause unavoidable harmful interference to other radio Equipment, receivers or electrical or electronic systems.

(c) The Authority shall publish all frequency licenses issued under this Act on its website.

§407 License conditions

(a) No license issued under this chapter shall create any right beyond the terms, conditions, and periods of the license.

(b) It is a condition of an operating or frequency license that the licensee:

(1) comply with this Act;

(2) pay any applicable license fees; and

(3) comply with any applicable general conditions imposed under this Act and any special conditions imposed under subsection (d).

(c) Each individual license issued by the Authority under this Act shall contain a general condition that the license holder shall comply with the applicable regulations promulgated by the Authority under this Act.

(d) The Authority may impose special operating license conditions that shall apply to an individual licensee.

§408 License fees

(a) The Authority shall make rules specifying the annual license fees payable by a holder of

either an operating or frequency license.

(b) Rules under subsection (a) shall determine annual fees for operating and frequency licenses in accordance with the following principles:

(1) the Authority shall endeavor to minimize the fees payable by licensees, having regard to §321(a) and the funding required for the proper discharge of the functions of the Authority under this Act;

(2) the method of determining such fees shall be transparent;

(3) operating license fees should aim to reflect the relative cost to the Authority of monitoring and enforcing compliance by licensees with the provisions in the Act;

(4) subject to subsections (5) and (6), license fees shall be determined on the same basis for all licensees holding the same category of license;

(5) operating license fees for individual licenses shall be based on a percentage of the gross revenues of the licensee; and

(6) operating license fees for class licenses shall be a fixed sum.

(c) The total projected annual operating license fees payable by all licensees in a year shall be designed to recover the administrative and other allowable costs of the Authority and shall not exceed the lesser of:

(1) five percent (5%) of the gross revenues of all licensees generated from the provision of retail Telecommunications Services and interconnection, access, and other Wholesale Services in Palau in the prior financial year of the Authority; or

(2) the Authority's proposed annual budget and forecasts under §321.

§409 Spectrum tenders

(a) Where the Authority, after soliciting and taking into account the views and opinions of interested parties and stakeholders, determines that interest in using a particular band of the Radio Frequency Spectrum to provide Telecommunications Services could exceed the availability of radio frequencies in that band and thereby hinder the efficient use thereof, a public tender shall be conducted for the award of an operating license together with a radio frequency license for the use of those frequencies.

(b) Public tenders shall be managed by the Authority.

(c) The decision initiating a public tender shall contain a full description of the:

(1) allocation of the radio frequencies which are subject to the public tender, which shall be made in accordance with the Frequency Allocation Plan and Frequency Utilization Plan under §503;

(2) Telecommunications Services to be provided by the licensee;

(3) conditions, requirements and qualifications to be met by bidders, which must comply with relevant valid legislation and pertinent regulations on land use planning and zoning;

(4) criteria for selection of the most favorable bid, the method of their application, and other possible restrictions to be taken into account in the evaluation of bids;

(5) deadline and manner of submission of bids;

(6) address, place and date, and time of public opening of bids;

(7) place, time and contact person whom the interested parties may obtain the tender documentation from, the price of tender documentation, and the method of payment for such documentation;

(8) contact person whom the bidders can obtain additional information from; and

(9) interval within which the bidders will be informed of the decision made.

(d) The Authority shall publish decisions issued pursuant to subsection (c) of this section in accordance with the publication procedures applicable to its final decisions and in such other manner as may be determined.

(e) Proceeds of spectrum tenders shall be deposited in the Universal Service Special Revolving Fund after the deduction of the direct costs incurred by the Authority for the conduct of the tender and other incurred or prospective management and administrative costs related to the issuance of the license and other tasks related to the implementation of the tender results.

§410 Revocation, suspension, dealing or surrender of a license

(a) An operating or frequency license continues in effect until:

(1) it is revoked by the Authority; or

(2) the expiration of any term specified in the license.

(b) The Authority may revoke or suspend an individual license or registration of a Person under a class license for a Telecommunications Network or Telecommunications Service:

(1) withthe consent of the licensee;

(2) if the licensee is in material breach of a license condition; or

(3) if the licensee has made false or misleading statements to the Authority in:

(i) its license application;

(ii) information submitted to the Authority under this Act; or

(iii) if the licensee is insolvent, in receivership, bankrupt or being wound up.

(c) Subject to subsection (d), the Authority may revoke or suspend a frequency license:

(1) in the circumstances specified in subsections (b)(1) to (2); or

(2) if it is necessary to implement a variation to the spectrum plan or any other spectrum planning instrument made by the Authority and is consistent with international spectrum planning or the international obligations of the Republic, provided that in the case of the required migration from one frequency spectrum band to another, an existing licensee in good standing shall be entitled to a license for the use of equivalent radio frequencies in the new band.

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

(e) A licensee may surrender alicense (other than a class license) by notice to the Authority.

(f) A license is personal to the licensee and must not be assigned, transferred, sub-licensed or otherwise dealt with without the Authority's written consent.

§411 Commercial negotiation

Subject to this Act, licensees may negotiate, agree and vary agreements with one another for interconnection of Telecommunication Networks, access to and sharing of Telecommunications Facilities and other services, and the provision of Wholesale Services, including the type and

amount of charges, in such manner and on such conditions as are mutually acceptable to the licensees.

§412 Interconnection

(a) An Access Provider must, on written request from an Access Seeker, promptly negotiate an interconnection agreement providing for the following, as the case may be:

(1) interconnection of the licensees' Telecommunications Networks at any economically and technically feasible point in the Access Provider's Telecommunications Network where interconnection would not affect the security, performance or efficiency of the Access Provider's Telecommunications Network;

(2) conditions that maintain end-to-end operability to facilitate the provision of Telecommunications Services by the second licensee to a Customer notwithstanding that the Customer is directly connected to the first licensee's Telecommunications Network;

(3) the standard terms contained in the interconnection rules enacted by the Authority;

(4) subject to subsection (3) hereof, otherwise reasonable conditions, including with respect to timing, Quality of Service (QoS), technical, operational and fault handling terms;

(5) conditions that do not unfairly discriminate between licensees and are no less favorable to the Access Seeker than those the Access Provider provides for its own Telecommunications Services or those of its affiliates;

(6) the provision on a timely basis by each licensee of information, including technical specifications and commercially relevant information reasonably required for interconnection and the operation of Telecommunication Services for each licensee's customers; and

(7) a commitment from each licensee not to disclose or use information received from the other licensee in connection with the interconnection and access agreement for any purpose other than that for which it was supplied.

(b) A licensee who enters an interconnection agreement with another licensee must promptly

submit a copy of the interconnection agreement to the Authority.

§413 Access to Networks

(a) Where an Access Provider owns or controls a Bottleneck Facility, it must, on written request from an Access Seeker, promptly negotiate an access agreement providing for the following, as the case may be:

(1) access to its Telecommunications Facilities, Telecommunications Networks, telecommunications software and Telecommunications Services, in a manner that is sufficiently unbundled, including co-location, to enable the Access Seeker to access the Telecommunications Facilities and Wholesale Services that it reasonably requires in order to provide Telecommunication Services to its Customers;

(2) the provision of Wholesale Services on comparable terms to the terms on which the Access Provider provides such services for use in its own retail operations or those of its affiliates;

(3) conditions that maintain end-to-end operability to facilitate the provision of Telecommunication Services by the Access Seeker to it regardless of how the connection to the network is configured;

(4) the standard terms contained in the access rules enacted by the Authority under §416;

(5) subject to subsection (4) hereof, otherwise reasonable conditions, including with respect to the timing, Quality of Service (QoS), technical, operational and fault handling terms;

(6) conditions that do not unfairly discriminate between licensees and are no less favorable to the Access Seeker than those the Access Providerprovides for its own Telecommunications Services or those of its affiliates;

(7) the provision on a timely basis by each licensee of information, including technical specifications and commercially relevant information reasonably required for interconnection and the operation of Telecommunications Services for each

licensee's Customers; and

(8) a commitment from each licensee not to disclose or use information received from the other licensee in connection with the interconnection and access agreement for any purpose other than that for which it was supplied.

(b) A licensee who enters an access agreement with another licensee must promptly lodge a copy of the access agreement with the Authority.

§414 Transparency in interconnection and access

(a) Licensees in negotiations for an interconnection and access agreement must:

(1) act at all times in good faith;

(2) promptly provide information reasonably requested by the other party;

(3) avoid obstructing or delaying negotiations;

(4) comply with any direction given by the Authority as to the conduct of the negotiations; and

(5) not seek to cause the other party to withhold from the Authority information concerning the negotiations.

(b) The Authority may instruct specific telecommunications licensees that are Dominant Services Providers to ensure transparency with regard to interconnection and/or access by requiring them to publish specific information relating to technical specifications, network characteristics, and conditions for use, prices and other information relating to interconnection and/or access in advance.

(c) Any telecommunications licensee that is a Dominant Services Provider in a Relevant Telecommunications Market is obliged, within thirty (30) days from the date when the decision determining them to be a Dominant Services Provider is issued, to submit to the Authority a proposed reference offer for interconnection and a reference offer for access to its Telecommunications Network, which must sufficiently unbundle the elements of its Telecommunications Network in order that other telecommunications licensees requesting specific service relating to interconnection or access not to pay for the use of Telecommunications Network elements that are not necessary for the service requested.

(d) A reference interconnection offer and the reference access offer must describe the services offered by the Dominant Services Provider in relation to interconnection and/or access, separated into discrete components in accordance with market needs and conditions, including the prices relating thereto. If such reference offer is not in compliance with the provisions of this Act, the Authority shall have the right to request amending of the offer. The Dominant Services Provider shall be obliged to act according to the request of the Authority pertaining to the amending of the proposed reference offer within thirty (30) days from the date of receiving the request.

(e) The reference offers of paragraphs (c) and (d) of this section shall be approved by the Authority within thirty (30) days from their submission and the telecommunications licensee shall publish the reference offer within five (5) days from the date of receiving the approval by the Authority.

(f) The Authority shall, with a regulation based on this Act, prescribe the level of detail of information to be published from the reference offers, as well as the manner of publication.

(g) A Dominant Services Provider shall not retreat from the terms of the approved reference offer while executing approved agreements on interconnection and/or access.

(h) The Authority may request a Dominant Services Provider to make changes in the approved reference offer, i.e. to prepare and submit updated reference offers as commanded by the market conditions, i.e. by the regulation in accordance with this Act, but the telecommunications licensees may also do so at their own initiative.

§415 Disputes between licensees

(a) If an interconnection and access agreement has not been reached within thirty (30) days of a request under §412(a), the Authority may, on written request by either licensee:

(1) determine the terms of the interconnection and access agreement including the terms contemplated by §412(a); or

(2) direct the licensees to take specified action to reach agreement (such as to engage a mediator or arbitrator), by written notice to both licensees, and the licensees shall comply with such a direction.

(b) An interconnection and access agreement determined by the Authority must:

(1) include the provisions referred to in §412(a);

(2) apply the interconnection and access terms specified in the interconnection and access rules;

(3) notprovide for interconnection or access to Telecommunications Facilities or the provision of Wholesale Services where interconnection or access or the provision of Wholesale Services is not technically, economically or legally feasible or would materially adversely affect the security, performance or efficiency of the Access Provider's Telecommunications Network; and

(4) have regard to the best interests of Consumers, aim to have a positive impact on competition between licensees and encourage efficient and sustainable investment in Telecommunication Networks and Telecommunications Services in Palau.

(c) The Authority must consult with both licensees and provide both licensees with a draft interconnection and access agreement or a draft direction before determining the terms of the interconnection and access agreement or making the direction.

(d) A licensee may apply for reconsideration under §327 or for a review under §329 of the Act of the terms of any interconnection and access agreement determined by the Authority that applies to it.

(e) The Authority shall publish copies of all interconnection and access agreements.

§416 Interconnection and access rules

(a) The Authority shall make interconnection and access rules specifying standard terms to apply to all interconnection and access agreements, including wholesale prices and other pricing principles.

(b) The interconnection and access rules made under subsection (a) may designate mandatory services, including roaming services, which licensees must provide between interconnected Telecommunications Networks and which must be included in interconnection and access agreements.

(c) In specifying interconnection and access prices or pricing principles for interconnection

and access rules made under subsection (a), the Authority shall take into account internationally accepted principles for determining regulated prices, including methodologies designed to reflect actual costs.

(d) The Authority may determine interim interconnection and access prices, based on benchmarking against cost-based prices set by regulators in comparable countries, to apply to all interconnection and access agreements, including agreements that have been agreed between the parties or have been determined by the Authority or the Appeals Panel. Such interim prices shall apply until:

(1) interconnection and access prices or pricing principles are made under subsection (a); or

(2) different prices are set by the Appeals Panel on a rehearing of the Authority's decision as to interim prices.

(e) A licensee may apply for a review under §327 of any interconnection and access rules made by the Authority under subsection (a).

§417 Passive infrastructure sharing

(a) The Authority may make regulations establishing a regime requiring the sharing of passive infrastructure between and among telecommunications licensees in circumstances where passive infrastructure sharing would bring the proposed construction and deployment of telecommunications infrastructure and Telecommunications Facilities into compliance with land use planning, zoning, or sustainable development requirements then in effect under any applicable national or state policy, law, or ordinance.

(b) Passive infrastructure regulations shall be consistent with guidelines and strategic objectives of the National Master Development Plan (PNMDP), or any subsequent national infrastructure plan, and shall ensure compliance with state zoning legislation or other land use plans adopted pursuant to applicable law.

§418 Prohibition of anti-competitive conduct

(a) A licensee shall not engage in conduct having the purpose or effect, or likely to have the effect, of substantially lessening competition in a telecommunications market, and no

provision of a contract or agreement having such purpose or effect, or likely to have such effect, will be enforceable.

(b) Without limiting subsection (a), conduct has the purpose, effect or likely effect of substantially lessening competition in a telecommunications market if it directly or indirectly involves any of the following:

(1) supplying a Telecommunications Service at a price below cost for a substantial period of time for the purpose or with the effect or likely effect of limiting competition in a telecommunications market;

(2) cross-subsidizing a Telecommunications Service in a competitive telecommunications market from a Telecommunications Service that is supplied in a telecommunications market that is not competitive;

(3) imposing restrictions on the other Persons that a Person may deal with in a telecommunications market or otherwise hindering the willingness of a supplier to provide goods or services to another licensee, without legitimate commercial justification;

(4) reducing the margin of profit available to a competing licensee in a retail telecommunications market by engaging in a anticompetitive margin squeeze at the wholesale or retail level in circumstances where the Wholesale Service or access service:

(i) is not supplied in a competitive telecommunications market;

(ii) is necessary as a matter of commercial necessity for the competitor to provide the retail service; and

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

(5) pre-emptively acquiring scarce facilities or resources, including land and radio frequencies, that are required or likely to be required by another licensee for the operation of its business, for the purpose of restricting the use of the Telecommunications Facilities or resources by the other licensee; or

(6) designing or installing a Telecommunications Facility or Telecommunications Network with the purpose of preventing or hindering another licensee from acquiring interconnection or access.

(c) The sale by a telecommunication licensee of a Telecommunications Service in a market where it is the Dominant Services Provider (the "non-competitive service") shall not be sold on the condition that the buyer may only purchase the service as part of a bundle containing one or more additional Telecommunications Services that are sold by the telecommunication licensee on a competitive basis (the "competitive service(s)"), or on the condition that the buyer may not purchase any competitive service from another telecommunication licensee provider. The issue of whether the non-competitive and the competitive services are separate shall be determined in a proceeding conducted by the Authority and shall be based on an analysis of consumer demand for the non-competitive service, the technological feasibility of providing the two services separately, industry practice in other similar markets, and other relevant factors.

(d) Without limiting subsection (a), an arrangement between two or more licensees has the effect or likely effect of reducing competition in a telecommunications market if it directly or indirectly:

(1) fixes the prices or other conditions for the supply of a Telecommunications Service or access service;

(2) apportions, shares or allocates a telecommunications market or markets among themselves or other licensees; or

(3) prevents, restricts or limits the supply or acquisition of a Telecommunications Service or access service to or from a Person or class of Persons.

(e) The Authority may exempt conduct from the prohibition in subsection (a) if the Authority is satisfied that the conduct:

(1) will or is likely to create efficiencies for the supply of TelecommunicationsServices which are greater than any potential detriments; and

(2) will not eliminate competition in respect of a substantial part of such

Telecommunications Services.

§419 Contravention of competition provisions

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

(b) A licensee specified in the notice under subsection (a) shall comply with the notice within such time period and on such conditions as is specified in the notice.

(c) A licensee specified in a notice issued under subsection (a) may apply for reconsideration under §327 seeking relief including setting the notice aside or varying any conditions specified in the notice.

(d) If a licensee complies with subsection (b) in relation to a notice served under subsection (a), the Authority shall not take enforcement action under this Act in respect of the conduct specified in that notice.

§420 Industry consolidation

(a) A licensee shall not acquire or obtain an interest in shares or assets related to Telecommunications Facilities or the provision of Telecommunications Services of another licensee without the prior written consent of the Authority.

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

(c) A licensee who wishes to acquire, directly or indirectly, shares in or assets of another licensee shall:

(1) apply to the Authority for consent to the acquisition;

(2) disclose to the Authority such information as the Authority may require concerning any affiliate of the licensee; and

(3) provide the Authority with such additional information as the Authority may request for the purposes of determining the effect or likely effect of the proposed

acquisition on competition in a telecommunications market.

(d) The Authority may make rules specifying the form and information required for an application under subsection (c).

(e) The Authority shall consent to an application lodged under subsection (c) unless it is satisfied, after consultation with the licensee proposing to make the acquisition, that the proposed acquisition would have the effect or likely effect of reducing competition in a telecommunications market.

(f) A licensee may apply for reconsideration under §327 of a decision of the Authority not to consent to an application it has provided under subsection (c).

§421 Publication of terms and conditions

(a) Before offering a Telecommunications Service to the public, or altering the terms of any such Telecommunications Service, a Dominant Services Provider shall:

(1) publish on its website and make available for inspection at its offices, the terms and conditions (including the price) for that Telecommunications Service in clear and simple terms; and

(2) provide a copy to the Authority at least ten (10) business days prior to the announcement of the tariff.

(b) Subject to the provisions of §418 through §420, the requirements of subsection (a)(2) as to approval of the Authority shall not apply to:

(1) any proposed reduction in a retail tariff; or

(2) the inclusion in an offer of a price discount either on a time-bound basis or to an objectively identifiable group of Consumers.

(c) If the Authority does not take action to intervene within the time period set forth in subsection (b), the tariff may take effect. If the Authority determines that the proposed tariff requires further review and analysis it shall notify the Dominant Services Provider that the effectiveness date of the tariff is suspended pending the conduct of the Authority review, provided that the review shall be completed by no later than thirty (30) days from the date of the notice of suspension.

(d) The Authority shall publish its decisions made under subsection (c).

(e) The Authority may, by notice to a Dominant Services Provider, dispense with the requirements of subsection (a) in respect of any Telecommunications Service or telecommunications market if in the opinion of the Authority the state of competition in the Relevant Telecommunications Market is such that tariff changes are unlikely to harm competition or to be substantially detrimental to Consumers.

§422 Pricing rules

(a) The Authority shall make pricing rules applicable to a Dominant Services Provider in a Relevant Telecommunications Market where the prices for the Telecommunications Services in such Relevant Telecommunications Market exceed the prices that would exist in a competitive market where prices are set on the basis of economically efficient costs.

(b) Pricing rules established under subsection (a) shall specify:

(1) theTelecommunications Services to which this section applies; and

(2) the methodology to be applied by the Dominant Services Provider in assessing the prices that it will charge for those Telecommunication Services.

(c) Any methodology for pricing adopted by the Authority pursuant to subsection (a) shall:

(1) identify the relationship between the Telecommunications Service prices of a Dominant Services Provider and the reasonably economically efficient costs of providing that Telecommunications Service;

(2) promote efficient and sustainable investment in Telecommunication Networks and Telecommunications Services in Palau; and

(3) reasonably protect the interests of Consumers and other licensees.

(d) If the Authority adopts pricing rules under this section, the licensee shall not charge a price for its Telecommunications Services greater than the maximum price as determined by the methodology contained in the pricing rules.

(e) Before making pricing rules under subsection (a), the Authority shall consult with the Dominant Services Provider.

(f) A Dominant Services Provider affected by pricing rules made under subsection (a) may

apply for reconsideration under §327 of the designation of the licensee as a Dominant Services Provider or the pricing methodology specified by the Authority in pricing rules issued under subsection (a).

(g) The Authority shall publish and notify the licensee of its determination, reconsideration of which may be applied for by the licensee under §327.

(h) Where a licensee subject to pricing rules for a Relevant Telecommunications Market issued under subsection (a) files a petition and in a proceeding demonstrates to the satisfaction of the Authority that it is no longer a Dominant Services Provider, the Authority shall repeal or adjust the pricing rules that are the subject of the petition.

§423 Fair dealing

(a) A licensee shall only charge a Customer for the specific Telecommunications Services or Equipment that the Customer has ordered, and a Customer shall have no liability to pay for any Telecommunications Services or Equipment that it has not ordered.

(b) A Dominant ServicesProvider shall provide all its Customers the same terms and conditions for each Telecommunications Service offering, unless:

(1) more favorable terms are offered to an objectively identifiable group of Customers;

(2) differences are otherwise objectively justifiable, to the satisfaction of the Authority; or

(3) the Authority gives prior approval to the terms of the Telecommunications Service offering, including the differences.

(c) In the case of a Customer who has:

(1) contracted for Telecommunication Services for which they will pay after usage, a licensee shall provide the Customer with invoices:

(i) in writing, which writings may be transmitted electronically if the Customer consents thereto;

(ii) on a regular basis;

(iii) in a plain and simple format;

(iv) with accurate and itemized information about the Telecommunications

Services provided and the corresponding amounts due; and

(v) that clearly indicate the method of calculation of prices for any Telecommunications Service for which invoices are based on the length of calls or other measure or usage; and

(2) Paid in advance for telecommunication services, the licensee shall permit the Customer, upon request, to review the amount of the prepayment that has been consumed and the amount remaining.

(d) A licensee shall not make or cause to be made any claim or representation about the availability, price or quality of its Telecommunications Services or Equipment or those of a competing licensee if the licensee knows or reasonably ought to know that the statement or claim is false or misleading in any material respect.

(e) The Authority may make consumer protection rules regulating or prohibiting the use of a Telecommunications Network or Telecommunications Services to provide unsolicited telecommunications.

§424 Confidentiality of Customer information

(a) Subject to subsections (b) and (c), a licensee:

(1) shall not, without a Customer's consent, collect, use, maintain or disclose information about a Customer for any purpose; and

(2) shall apply appropriate security safeguards to prevent the collection, use, maintenance or disclosure of such information without the Customer's consent.

(b) A licensee may disclose a Customer's name, address and telephone number in a printed or electronic directory or as provided for in the consumer protection rules, provided that a licensee shall permit Customers on request to have their name omitted from such directory.

(c) A licensee shall ensure that information it discloses or retains concerning a Customer is accurate and complete for the purposes for which it is to be used.

(d) A licensee shall permit a Customer to inspect its records regarding a Telecommunications Service provided to that Customer and shall promptly correct or remove information that is shown to be incorrect.

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

(f) A licensee shall, upon request, disclose to a Customer the purpose of requesting or collecting any information about that Customer, and shall not use or maintain information about Customers for undisclosed purposes.

(g) The Authority may make consumer protection rules requiring a class of licensees to retain or not retain specified information relating to Customers, including information about billing, beyond a specified period.

§425 Confidentiality of Customer communications

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

§426 Access by government authorities

Nothing in §424 or §425 shall be interpreted to prohibit or infringe upon the rights of government authorities under the laws of the Republic to exercise such rights to access otherwise confidential information or communications in a lawful manner.

§427 Terms of service, complaints and disputes

(a) The Authority may make consumer protection rules requiring licensees to take any of the following steps in a telecommunications market:

(1) establish fair and reasonable standard conditions for the provision of Telecommunications Services to Consumers, including procedures for dealing with complaints from and disputes with Consumers, and provision for Consumers' remedies (including refunds and compensation) where circumstances warrant;

(2) submit such conditions, procedures and remedies, or proposed amendments to the Authority for its approval;

(3) make such changes to such conditions, procedures and remedies as may be

reasonably required by the Authority;

(4) publish such conditions, procedures and remedies on its website and circulate them to points of sale for publication in a manner that ensures that prospective Consumers are able to be clearly informed of them;

(5) comply with such conditions, implement such procedures and provide such remedies in accordance with their terms as approved by the Authority;

(6) report to the Authority on the types and volumes of Consumer complaints and disputes, the application of complaints procedures and manner in which complaints have been resolved; and

(7) take such other measures as the Authority considers appropriate to ensure that Consumers' complaints and disputes are satisfactorily addressed.

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

(c) A Consumer whose complaint or dispute has not been treated by a licensee in accordance with its procedures for dealing with complaints may apply to the Authority for a determination:

(1) requiring the licensee to comply with those procedures; or

(2) addressing the complaint or dispute and providing for a remedy, if such remedy is not inconsistent with any reasonable conditions and procedures established by the licensee pursuant to this section.

(d) Before making a determination under subsection (c), the Authority shall consult with the licensee and the affected Consumer.

§428 Directory assistance

(a) The Authority may make consumer protection rules requiring a licensee or class of licensees to establish and provide Customers with directory assistance services on conditions prescribed in those rules, requiring licensees to co-operate for the provision of directory assistance services, and providing for the costs of providing directory assistance

services to be shared between licensees whose Customers may access the service.

(b) In this section, 'directory assistance services' means such services to provide access to a Customer's name, telephone number and such other information about a Customer as is set out in the consumer protection rules.

§429 Quality of Service (QoS)

(a) The Authority may make consumer protection rules requiring a Dominant ServicesProvider to:

(1) establish key performance indicators for the quality of its service to users, which may be required to comply with minimum standards set out in the consumer protection rules;

(2) submit the indicators (and any subsequent amendments) to the Authority for approval;

(3) make such changes to such indicators as may be required by the Authority; and

(4) ensure that its services comply with such indicators.

(b) If a licensee fails to make performance indicators as required by consumer protection rules made under subsection (a), the Authority may issue performance indicators and the licensee shall comply with such indicators.

§430 Technical standards

(a) The Authority may make technical rules specifying technical standards for:

(1) Equipment used in licensees' Telecommunications Networks;

(2) Customer Equipment permitted to be attached to licensees' Telecommunications Networks;

(3) interconnection of licensees' Telecommunication Networks; and

(4) other Equipment permitted to be sold in Palau.

(b) In making the technical rules, the Authority may apply, adopt, or incorporate, with or without modification, any recognized international standards as they exist at a particular time, or from time to time.

§431 Customer Equipment standards

(a) A Person shall not sell, or offer for sale, Equipment, and a Person other than the licensee that owns or operates a Telecommunications Network shall not attach Equipment to a Telecommunications Network, if the Equipment:

(1) does not conform to a relevant Equipment standard in the technical rules made under §430;

(2) does not conform with a relevant international standard; or

(3) would adversely affect the operation, reliability, security, or integrity of the Telecommunications Network or cause a health or safety risk to a person.

(b) A licensee may:

(1) disconnect from its Telecommunications Networks any Customer Equipment; and

(2) cease or refuse to supply a Telecommunications Service to a Customer who has connected Customer Equipment to its Telecommunications Network,

if that Customer Equipment does not comply with the standards referred to in subsection (a).

§432 Numbering plan

(a) The Authority shall administer the numbering resource for all Telecommunications Network operators and Telecommunication Services Providers in Palau.

(b) The Authority shall make rules for the efficient use of the numbering resource specifying matters that include:

(1) a numbering plan for Telecommunications Services, including, without limitation of the foregoing, a numbering plan for Voice over Internet Protocol (VoIP) services;

(2) annual fees for the right to use allocated numbers in order to recover the costs of the administration of the numbering plan;

(3) rules regarding the assignment and use of numbers;

(4) provision for any Telecommunications Services Provider using numbering ranges as of the date of this Act to retain such numbering ranges, subject to the amendment of those ranges by the addition of further digits, where the Authority considers that

to be necessary in order to ensure an adequate supply of numbers;

(5) the assignment of numbers for emergency services;

(6) requirements for the allocation of priority, quality and capacity for calls to emergency services; and

(7) prohibitions against warehousing, hoarding or other uses of assigned numbers for anticompetitive purposes.

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

(1) has conducted a public consultation about the inclusion of the provisions;

(2) determines that there is a reasonable likelihood of demand for number portability; and

(3) determines that the benefit outweighs the costs of introducing number portability.

(d) The Authority may invite individual licensees to develop a number portability scheme in accordance with any directions given by the Authority as to the content of such a scheme and to submit the scheme to the Authority for approval.

(e) If the Authority approves a number portability scheme submitted under subsection (d), such scheme shall have effect as a decision of the Authority.

(f) A licensee that allocates central office codes to another licensee shall apply identical standards and procedures for processing all central office code assignment requests and for assigning such codes, regardless of the identity of the entity making the request, and shall not charge fees for the assignment or use of central office codes unless it charges one uniform fee for all carriers, including itself and its affiliates.

§433 National emergency numbers

A licensee that provides voice Telecommunications Services shall provide its subscribers with access to the numbers specified in the numbering rules as being assigned for emergency services free of charge.

§434 Universal access policy

(a) The Minister shall develop a policy for improving access to Telecommunications Services

of the nature described in subsection (c) for areas of Palau that are not adequately served by existing services.

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

(c) The Telecommunications Services to be considered for the purposes of the universal access policy shall be:

(1) data services which permit access to the Internet at minimum download speeds to be established by the Authority following a proceeding in which the technical feasibility, cost, and economic affordability of the Internet access speeds in Palau are assessed;

(2) emergency services with priority routing enabling contact with police, fire services, ambulance and marine rescue services;

(3) disaster relief services;

(4) operator assistance for call set-up and faults reporting; and

(5) such other Telecommunications Services designated by the Minister.

§435 Universal access eligibility

(a) The Minister shall annually identify, publish and update a list of geographic areas and/or underserved user groups that are eligible under the universal access policy for the application of Universal Access Obligations and funding under the universal access policy.

(b) The Minister shall invite proposals from licensees or prospective licensees to introduce or improve Telecommunications Services described in §434(c), and shall take into account such proposals in identifying eligible universal access areas under subsection (a).

§436 Universal Access Obligations

(a) A licensee shall become subject to a Universal Access Obligation if:

(1) the provision of those universal access services is a requirement of the license; or

(2) the licensee has assumed that obligation under §443.

(b) The Authority may enforce a Universal Access Obligation by giving notice to the licensee concerned requiring that the licensee take any action or meet any timetable described in

that notice and in the reasonable opinion of the Authority required to comply with that obligation.

(c) The Minister, upon recommendation of the Authority, may defer the commencement of a Universal Access Obligation for such period and to such an extent as he/she deems fit where the Authority has determined that the licensee concerned is building Telecommunications Facilities at its cost in an area subject to the universal access policy or the licensee has voluntarily undertaken to provide additional Telecommunications Services or to construct additional Telecommunications Facilitiesat its cost in such an area.

§437 Eligibility for universal access funding

(a) Subject to subsection (b), a licensee subject to a Universal Access Obligation as a result of a successful tender under §443 is entitled to receive funding from the Universal Access Special Revolving Fund.

(b) No licensee is entitled to funding from the Universal Access Special Revolving Fund for the provision of services in a geographic area, and any entitlement previously established shall cease, where a substantial level of access to comparable Telecommunications Services is, in the opinion of the Authority, available in that area from another licensee.

§438 Administration of Universal Access Obligations

The Authority shall ensure that Universal Access Obligations are administered in an open, transparent, non-discriminatory, objective, and competitively neutral manner, and are not more burdensome than necessary to achieve the objectives of the Universal Access Plan.

§439 Universal Access Special Revolving Fund

(a) A Universal Access Special Revolving Fund is established and will be administered by the Authority.

(b) The Special Revolving Fund shall be used for the purposes in accordance with the Universal Access Plan.

(c) The following shall be deposited in the Universal Access Special Revolving Fund:

(1) any amounts transferred under §321(f);

(2) any amounts available under any levy established by the Authority for the specific

purposes of funding universal access projects;

(3) any amounts available under frequency license fees paid as a result of a competitive tender process;

(4) any grants or donations made to or for the benefit of the Universal Access Special Revolving Fund;

(5) appropriations made by the OEK for the purposes of the Universal Access Special Revolving Fund; and

(6) any amounts from spectrum tenders as provided for in §409(e).

(d) The Authority shall cause to be maintained books of account and records in accordance with general accounting principles for funds administered by the Government in respect of the Universal Access Special Revolving Fund and any monies paid into or out of the Universal Access Special Revolving Fund.

(e) The Authority may pay monies out of the Universal Access Special Revolving Fund only to provide subsidies or concessional loans in accordance with a contract under §443.

(f) The Universal Access Special Revolving Fund and any transactions from the Universal Access Special Revolving Fund are not subject to any tax, rate, charge or impost under any other law.

§440 Universal access rules

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

(1) operation of the Universal Access Special Revolving Fund; and

(2) provision of services pursuant to a Universal Access Plan and project plans.

(b) In addition to the matters set out under subsection (a), the universal access rules may also prescribe the:

(1) rules for a competitive tender or the method of selecting a person under section §443;

(2) requirements for Persons entering a contract with the Authority under §443, including conditions to coordinate development of Telecommunications Facilities

with development of other infrastructure; and

(3) such other matters necessary to give effect to this section and the objectives of this Act.

(c) The universal access rules shall provide that a tender process conducted by the Authority under §443 shall require that the Authority select the compliant tender that in the opinion of the Authority best serves the purposes of the Universal Access Plan and provides the lowest cost solution commensurate with the outcomes to be achieved.

§441 Universal Access Plan

The Authority shall, upon receipt from the Minister of a list of geographic areas and/or underserved user groups that are eligible under the universal access policy for the application of Universal Access Obligations and funding under the universal access policy, prepare and publish a Universal Access Plan.

§442 Universal access projects

The Authority shall prepare and publish one or more project plans to address a Universal Access Plan. A project plan shall specify:

(a) the timing by which deployment of such Telecommunications Services (or Telecommunications Facilities to enable such Telecommunications Services) in particular areas or segments of society of Palau should take place; and

(b) any general requirements or specifications for the provision of such Telecommunication Services or Telecommunications Facilities.

§443 Provision of universal access services

(a) The Authority may contract with a Person and provide such Person a subsidy or concessional loan for the provision of Telecommunication Services or Telecommunications Facilities in accordance with a project plan.

(b) The Authority shall, before entering a contract under subsection (a):

(1) consider whether there is likely to be competition for the subsidy or concessional loan offered under subsection (a) for the provision of Telecommunications Services or Telecommunications Facilities in accordance with the project plan; and

(2) if the Authority believes there would be such competition, conduct a competitive tender for the provision of those Telecommunications Services or Telecommunications Facilities in accordance with the universal access rules.

(c) If the Authority considers that there is not likely to be competition for the provision of the Telecommunications Services or Telecommunications Facilities for the maximum subsidy or concessional loan the Authority could offer in fulfillment of the relevant project plan, the Authority shall negotiate with any Person the Authority considers has the capability of providing those Telecommunications Services or Telecommunications Facilities and may enter into a contract for the provision of those Telecommunications Services or Telecommunications Facilities in accordance with the project plan.

(d) If, after attempting to negotiate under subsection (c), the Authority considers agreement cannot be reached, the Authority may, by written notice, require a licensee to enter into a specified contract with the Authority for the provision of the relevant Telecommunications Services or Telecommunications Facilities for a subsidy or concessional loan.

(e) The Authority shall be guided by the following principles in requiring a licensee to enter into a contract and specifying the terms of the contract under subsection (d):

(1) the licensee shall be chosen based on the Authority's assessment of its capability to provide the Telecommunications Services or Telecommunications Facilities;

(2) theobligation to provide the relevant Telecommunications Services or Telecommunications Facilities shall not unfairly discriminate between licensees;

(3) the licensee shall receive reasonable compensation having regard to the costs of providing the Telecommunications Services or Telecommunications Facilities and the revenues likely to be achieved from those Telecommunications Services or Telecommunications Facilities;

(4) the obligation to provide the relevant Telecommunications Services or Telecommunications Facilities shall not be more burdensome than is reasonably necessary to achieve the objectives of the relevant Universal Access Plan; and

(5) the Authority shall endeavor to ensure that any contract entered into under this

section does not diminish the incentives of licensees to maximize the availability of Telecommunication Services.

§444 Existing Telecommunications Facilities

(a) Should any Telecommunications Services Provider as of the date of the entry into force of this Act ('existing provider') enjoy any rights to a lease or other land use land for the purpose of erecting or installing Telecommunications Facilities or Equipment, any other Telecommunications Services Provider may, by notice to the formerTelecommunications Service Provider, the land owner, and any lessee of the land ('parties with land rights'), elect to share the use of that land with the formerTelecommunications Services Provider.

(b) On receipt of a notice under subsection (a), the existing Telecommunications Service Provider and the parties with land rights shall enter into good faith negotiations with the other Telecommunications Services Provider to agree on terms for the sharing of use rights that will preserve competitive neutrality as between the existing Telecommunications Services Provider and the other Telecommunications Services Provider.

(c) Should parties be unable to reach agreement to the reasonable satisfaction of the other Telecommunication Services Provider, the other Telecommunications Services Provider may apply to the Authority for assistance.

(d) Upon receipt of an application for assistance under subsection (c), the Authority shall consult with the existing Telecommunications Services Provider and parties with land rights and attempt to find a solution acceptable to all parties.

(e) Should the actions of the Authority under subsection (d) fail to produce an agreement between the parties within such time as the Authority considers reasonable, the Authority may determine the terms for the sharing by the existing Telecommunications Services Provider and the other Telecommunications Services Provider of use rights and may direct the parties with land rights to take such action as the Authority deems fit in order to implement that determination.

(f) A determination under subsection (e) may include provision for defined amounts by way of compensation to any of the parties with land rights or may provide for compensation to be

determined by the Supreme Court of the Republic under §447.

(g) The existing Telecommunications Services Provider, the other Telecommunications Services Provider or any party with land rights may apply for reconsideration under §326 of a determination under subsection (e).

§445 New Telecommunications Facilities

(a) Should an agreement be reached under §444 to share a new Telecommunications Facility (a 'sharing agreement'), a party to the sharing agreement may, by notice to the other parties to that agreement and to the owner or occupier of third party land, require that the owner or occupier of the third party land provide access to and use of that land to the extent required to give effect to the sharing agreement and on the same terms and conditions as those enjoyed by other parties to that agreement.

(b) Should the owner or occupier of the third party land fail, without reasonable excuse, to provide access to and use of the land under subsection (a), the Authority may direct the owner or occupier to take such action as the Authority deems fit in order to implement the requirements of subsection (a) and the owner or occupier shall comply with any such direction. A direction under this subsection may include provision for defined amounts by way of compensation to any of the parties with land rights or may provide for compensation to be determined by the Supreme Court of the Republic under §447.

(c) It shall be a reasonable excuse under subsection (b) that:

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

(2) the land concerned is not residential land and the provision of the access and use rights sought would not be technically feasible.

(d) Any party to the sharing agreement or the owner or occupier of the third party land may apply for reconsideration under §327 of a direction issued under subsection (b).

§446 Land access charges

(a) Charges proposed by land owners or land occupiers may include:

(1) actual or average administrative costs as a result of a Telecommunications Services Provider being granted permission to use land, and maintaining land to the extent costs result from the use of the land by Telecommunications Services Providers; and

(2) for each Telecommunications Services Provider, a pro rata share (based on the percentage of total capacity used or occupied) of capital improvements such as ducts, fixtures and other permanent improvements to lands, based on historic cost of the improvements.

(b) The Authority may make rules governing a fair and reasonable allocation of charges under §445 and §446.

§447 Supreme Court may determine compensation

Should a determination of the Authority under §444 and §445 provide for compensation to be determined by the Supreme Court of the Republic, the Supreme Court of the Republic shall, on application by any of the Telecommunications Services Providers concerned or a party with land rights, determine the amounts and manner of payment of compensation on such terms as it considers reasonable.

§448 Restoration after use

If the relevant land owner or land occupier so requires, the Telecommunications Services Provider shall, at the end of the term of the permitted use, promptly remove all fixtures and other improvements installed on the land at its own cost and restore the land to its original condition.

§449 Evidence

(a) A document appearing to be signed by the Minister or on behalf of the Authority shall be evidence of the official character of the person appearing to have signed it and, in the case of the Authority, of its issuance by the Authority and, if the document appears to be a copy of a decision or report, shall be evidence of its contents.

(b) A copy of a document submitted to the Authority and appearing to be certified as a true copy by the Authority shall be evidence of the original, of its submission to the Authority, of the date of its submission, and of the signature of any Person appearing to have signed it.

(c) A certificate appearing to be signed by the Authority and bearing the Authority's seal shall be evidence of its contents without proof of the signature.

§450 Appointment of Inspectors

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

(b) An Inspector shall be provided with a certificate of identity, which shall be presented at the request of any person appearing to be in charge of any place entered by the Inspector.

§451 Powers of Inspector

(a) Subject to subsection (b), an Inspector may:

(1) enter and inspect, at any reasonable time, any place owned by or under the control of a Telecommunications Services Provider or a person operating a device under a license, in which the Inspector believes on reasonable grounds there is any document, information, equipment, or thing relevant to the enforcement of this Act, and examine the document, information, equipment, or thing or remove it for examination or reproduction, as the case may be;

(2) enter any place on which the Inspector believes on reasonable grounds there is any radio transmitting device or interference-causing equipment, and examine any radio transmitting device or interference-causing equipment, logs, books, reports, data, records, documents, or other papers, and remove such information, document, device, equipment, or thing for examination or reproduction, as the case may be;

(3) make use of or cause to be made use of, any data processing network or computer at the place, to examine any data contained in or available to the network or computer;

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

(5) make use of any copying equipment or means of communication located at the premises.

(b) Where a premises referred to in subsection (a) is a residence, an Inspector shall not enter

that residence without the consent of the occupier, except:

(1) under the authority of a warrant issued under §452; or

(2) where, by reason of special and exigent circumstances, it would not be practical for the Inspector to obtain a warrant.

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

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

(e) Every Person who is required to hold a license under this Act shall exhibit the license for inspection on demand by the Authority or an Inspector.

(f) Any person who obstructs an Inspector in the exercise of the powers under this Act commits an offense.

(g) The Authority shall pay reasonable compensation to a Person for property used or damaged by an Inspector exercising powers under this section.

§452 Search warrant

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

(1) entry to a residence is necessary for the purpose of performing any duty of an Inspector under this Act; and

(2) entry to the residence has been refused, or there are reasonable grounds for believing that entry will be refused.

(b) In executing a warrant issued under this section, an Inspector shall not use force unless the Inspector is accompanied by a police officer and the use of force is specifically authorized in the warrant.

§453 Requirement to supply information or documents or give evidence

(a) Where the Authority considers it necessary or desirable for the purposes of carrying out its functions and exercising its powers under this Act, the Authority may, by notice in writing served on any Person, require that Person:

(1) to furnish to the Authority, by writing signed by that Person or, in the case of a corporation or other entity, by a director or competent representative of the corporation or other entity, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or

(2) to produce to the Authority, or to a Person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice; or

(3) to appear before the Authority at a time and place specified in the notice to give evidence, either orally or in writing, and produce any document or class of documents specified in the notice.

(b) Any Person who either fails to comply with a notice issued under this section, provides false or misleading information to the Authority, or having been required to appear before the Authority shall fail to do so without reasonable excuse or shall fail to give evidence, answer any question, or produce any document or class of documents, commits an offense under this Act.

§454 Interception, disclosure, and use of communications

(a) A licensee and any Person engaged in the operation or provision of a Telecommunications Network or Telecommunications Service shall only intercept or disclose a Message orother communication pursuant to a valid warrant issued by a judge of the Republic in connection with national security or the investigation of any criminal offense where the maximum penalty that may be imposed by a court is at least two (2) years in prison. In order to obtain a valid warrant, the petitioning party must submit an affidavit detailing other attempts to obtain the information they think they will obtain through an interception or disclosure, why the information is needed, and why further attempts to obtain this information without an interception or disclosure would be dangerous or unlikely to

succeed.

(b) A licensee and any Person engaged in the operation or provision of a Telecommunications Network or Telecommunications Service shall ensure its Telecommunications Networks and Telecommunications Services are capable of interception under subsection (a) and shall facilitate such interception as required by a warrant issued by a judge of the Republic.

(c) A licensee and any Person engaged in the operation or provision of a TelecommunicationsNetwork or Telecommunications Service shall disclose the name of a subscriber, payment information, and the services he/she purchased if requested by the police or other services directly employed by the Government for national security, in connection with the investigation of any criminal offense or for the purposes of any criminal proceedings.Such requests must be in writing and authorized and signed by a judge of the Republic.

(d) If the Authority believes on reasonable grounds that a Person is in possession of data stored in a computer system or retrievable from a data storage medium, which data is necessary to investigate a breach of this Act, the Authority may, by written notice to that Person, require that person to allow the Authority to:

(1) access the computer system or retrieve data from the data storage medium;

(2) seize or similarly secure the computer system or data storage medium;

(3) maintain the integrity of the relevant stored data; and

(4) render inaccessible or remove that data from the computer system or data storage medium.

(e) A Person subject to a written notice under subsection (d) is required to cooperate with the Authority and to provide such data as the notice may require in an unencrypted and accessible form.

(f) Except as otherwise specifically provided in this chapter, it shall be unlawful for any Person who:

(1) intentionally intercepts, endeavors to intercept, or procures any other Person to intercept or endeavor to intercept, any wire, oral, or electronic communication;

(2) intentionally uses, endeavors to use, or procures any other Person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication;

(ii) such device transmits communications by radio, or interferes with the transmission of such communication;

(iii) such Person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect commerce;

(3) intentionally discloses, or endeavors to disclose, to any other Person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(4) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(5) (i) intentionally discloses, or endeavors to disclose, to any other Person the contents of any wire, oral, or electronic communication, intercepted by means authorized by section, (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, (iii) having obtained or received the information in connection with a

criminal investigation, and (iv) with intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation.

(g) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his/her employment while engaged in any activity which is a necessary incident to the rendition of his/her service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(h) It shall not be unlawful under this chapter for a Person acting under color of law to intercept a wire, oral, or electronic communication, where such Person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(i) It shall not be unlawful under this chapter for a Person not acting under color of law to intercept a wire, oral, or electronic communication where such Person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or civil act.

(j) It shall not be unlawful under this chapter for any Person:

(1) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

(2) to intercept any Radio Communication which is transmitted:

(i) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

(ii) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily

accessible to the general public;

(iii) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(iv) by any marine or aeronautical communications system;

(3) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

(4) for other users of the same frequency to intercept any Radio Communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

(k) It shall not be unlawful under this chapter for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.

§455 Offenses

(a) Any Person who contravenes or fails to comply with any provision or requirement of this Act, any rules made under this Act, a license issued under this Act, or any direction, order or decision of the Authority or the Appeals Panel commits a general offense.

(b) Any Person who is engaged in the operation or provision a Telecommunications Network or provides a Telecommunications Service without a license required by this Act or any rules made under this Act, or in contravention of its license, commits a general offense.

(c) It is an offense under this Act for any person to knowingly make any false statement of material fact (or knowingly omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading) to the Authority, an Inspector or an Appeals Panel.

§456 Penalties

Any person who is convicted of any offense under §455 is subject:

(a) in case of a natural person, to a fine not exceeding $50,000 or to imprisonment for a term not exceeding one (1) year, or both; and in the case of a continuing offence, to a further fine not exceeding $10,000 for each day during which the offense continues; and

(b) in the case of a corporation or other entity, to a fine not exceeding 5% of the gross revenues of the corporation or entity in its previous financial year, and in the case of a continuing offence, to a further fine not exceeding $100,000 for each day during which the offense continues.

§457 Corporations or other entities

(a) Where a corporation or other entity commits an offense under this Act, any director, officer, employee or agent of the corporation or entity who authorized the illegal conduct shall be a party to and guilty of the offense, and shall be subject to the punishment provided for that offense.

(b) A corporation or other entity shall be liable for violations of this Act if an employee, agent or officer of the corporation or entity engages in the offending conduct and that person is acting within the actual or apparent scope of his actual or apparent authority.

§458 Forfeiture of device

In the case of a conviction for an offense under this Act or any rules made under this Act, any device in relation to which or by means of which the offense was committed may be:

(a) forfeited to the Authority by order of the court which tried the offense; and

(b) disposed of as the Authority may direct.

§459 Prosecution

The Attorney General shall prosecute offences under this Act and may, as appropriate, refer cases to the Office of the Special Prosecutor.

§460 Exclusion of liability

(a) The Republic, the Minister, the Authority, an Inspector, or any other person exercising or performing powers or functions under this Act shall not:

(1) be liable in respect of any action, claim, or demand that may be brought or made by any Person in respect of any bodily injury or damage to property or any other circumstances arising from any act permitted by a license issued under this Act; and

(2) be subject to any action or claim, other than by way of judicial review, arising from the good faith exercise or intended exercise of any functions or powers under this Act.

(b) No person engaging in conduct licensed under this Act, or an employee or agent of such a person, shall be liable in any criminal proceedings or in any suit for damages by reason of his/her having in the course of his/her employment transmitted or conveyed by any communications, or taken any part in transmitting or conveying by any communications, any defamatory libel.

Chapter V

Specific Provisions on the Regulation of Radio Frequencies

§501 Purpose and limitation
§502 Management of the Radio Frequency Spectrum
§503 Frequency Allocation Plan and Frequency Utilization Plan
§504 Frequency Assignment Register
§505 Duty to avoid harmful interference; Authority measures
§506 Broadcasting equal time requirements
§507 Broadcasting censorship

§501 Purpose and limitation

(a) It is the purpose of this chapter to establish necessary control over radio transmission, and to provide for the use, but not ownership, of radio channels and frequencies by Persons for limited periods of time, under licenses granted by the Authority.

(b) Nothing in this chapter shall be construed to regulate or limit any noncommercial activities of a foreign government.

§502 Management of the Radio Frequency Spectrum

(a) The Radio Frequency Spectrum is a limited natural resource.

(b) The Authority, in accordance with acts of international law applicable in the Republic, shall ensure the effective and undisturbed use of the Radio Frequency Spectrum and, as appropriate, ensure the rights of the Republic to orbital positions.

(c) The Authority shall plan, manage, supervise, monitor, and regulate the use of the Radio Frequency Spectrum, including:

(1) allocation, assignment, registration, and monitoring of radio frequencies to be used by all stations operating in Palau or on any ship, aircraft, vessel, or other floating or airborne contrivance or spacecraft registered in the Republic, with due observance of the provisions of applicable treaties and international agreements, this Act, and applicable regulations;

(2) adoption and implementation of –

(i) a Frequency Allocation Plan;

(ii) aFrequency Utilization Plan; and

(iii) aFrequency Assignment Register showing existing frequency assignments and their users;

(3) updating on a regular basis and making publicly available the Frequency AllocationPlan and the radio regulations;

(4) monitoring spectrum uses;

(5) promoting and safeguarding national interests, safety and security relating to the use of Radio Frequency Spectrum; and

(6) promoting research into and considering radio propagation problems with a view to achieving interference-free operation of radio systems, as well as other measurements for managing and control of the Radio Frequency Spectrum.

§503 Frequency Allocation Plan and Frequency Utilization Plan

(a) The Authority shall prepare the Frequency Allocation Plan in accordance with applicable acts of international law.

(b) The Frequency Utilization Plan adopted by the Authority defines in greater detail the conditions and method of utilization of radio frequencies in certain radio frequency bands. It shall contain plans for the allocation and use of the radio frequencies by determined radio services, both of which shall be in accordance with the Frequency Allocation Plan.

(c) In adopting the Frequency Utilization Plan, the Authority shall:

(1) coordinate with the relevant government bodies responsible for civil aviation with respect to that part of the plan relating to radio frequencies to be used for air traffic safety; and

(2) coordinate with the government bodies responsible for the planning and management of radio frequencies with respect to that part of the plan relating to radio frequencies used for defense and national security needs.

(d) In adopting the Frequency Allocation Plan and the Frequency Utilization Plan, the Authority shall take into consideration the needs of national security and defense, protection from natural and other disasters, and the needs of the air traffic safety.

§504 Frequency Assignment Register

(a) The Authority shall prepare the Frequency Assignment Register showing existing frequency assignments and their users in Palau in accordance with the Frequency Allocation Plan and Frequency Utilization Plan.

(b) The Frequency Assignment Register shall contain data on the natural persons or legal entities to which specific radio frequencies have been assigned, but shall not include specific radio frequencies used for national security and defense needs and for protection against natural and other disasters.

(c) The Authority shall regularly update the Frequency Assignment Register.

(d) The Authority shall publish relevant portions of the Frequency Assignment Register in accordance with §324.

§505 Duty to avoid harmful interference; Authority measures

(a) For the purposes of this chapter, harmful interference means radio interference which endangers the functioning of a radio navigation service or of other safety services or which

otherwise seriously degrades, obstructs or repeatedly interrupts Radio Communications services operating in accordance with this Act.

(b) Telecommunications Networks must be planned to avoid the creation of harmful interference with other Telecommunications Networks and other licensed Radio Communications uses in Palau.

(c) The Authority, from time to time, may designate radio stations, the signals of which are likely to interfere with the transmission or reception of distress signals of vessels. Such stations shall keep a licensed radio operator listening on the frequencies designated for distress signals and related Radio Communications during the entire period the transmitter of such stations is in operation.

§506 Broadcasting equal time requirements

(a) If any licensee permits a legally qualified candidate for public office to use an AM or FM radio station or television station, the licensee shall afford equal opportunity to all other legally qualified candidates for that office in the use of such station; provided, that the licensee shall have no power of censorship over the material broadcast under the provisions of this section.

(b) A licensee is not required under subsection (a) to allow the use of its station by any candidate for public office. A statement by a legally qualified candidate for public office made as part of a genuine (1) news broadcast, (2) news interview, (3) news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or (4) live report of news events (including but not limited to political conventions and activities incidental thereof thereto), shall not be deemed to be use of a station within the meaning of this subsection.

(c) No provision of this subsection relieves a news service, in connection with the presentation of news broadcasts, news interviews, news documentaries, and live coverage of news events, from its obligation under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of importance to the public.

(d) Charges by a licensee for the use of an AM or FM radio station or television station by a legally qualified candidate for public office in connection with his/her candidacy for such office shall not exceed:

(1) during the forty-five (45) days preceding the date of a primary or primary runoff election or during the sixty (60) days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

(2) at any other time, the charges made for comparable use of such station by other users thereof.

(e) If any person makes a statement on an AM or FM radio station or a television station about any other person, the licensee of that station shall afford the person referred to on air an opportunity to rebut that statement on air.

§507 Broadcasting censorship

Nothing in this chapter may be understood or construed to give the Authority the power of censorship over the Radio Communications or signals transmitted by any radio station, and no regulation or condition may be promulgated or fixed by the Authority that interferes with the right of free speech by Radio Communication.

Chapter VI

Protection of Submarine Cables

§601 Authority may declare a protection zone

§602 Location of submarine cable to be specified in declaration

§603 Area of a protection zone

§604 Prohibited activities

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§606 Conditions

§607 When a declaration takes effect

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§609 Damaging a submarine cable
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§614 Defenses to offenses of engaging in prohibited or restricted activities
§615 Person may claim damages

§601 Authority may declare a protection zone

(a) The Authority may, by regulation established pursuant to the Administrative Procedures Act, declare a protection zone in relation to one or more submarine cables, or one or more submarine cables that are proposed to be installed, in Palauan Waters.For the purposes of this section, in determining whether a submarine cable is in, or is installed in, a protection zone, it is immaterial whether the cable is the cable, or any of the cables, in relation to which the protection zone was declared.

(b) The Authority must not declare a protection zone in relation to one or more submarine cables unless the Authority has consulted with the Environmental Quality Protection Board and the Division of Marine Transportation in relation to the proposal for the protection zone.The Authority must have regard to any advice or recommendations provided by the Environmental Quality Protection Board or the Division of Marine Transportationin relation to the proposed declaration.

§602 Location of submarine cable to be specified in declaration

(a) A declaration of a protection zone:

(1) must specify a nominal location for the cable or cables in all Palauan Waters in which the cable is installed; and

(2) must not specify a location for the cable or cables outside Palauan Waters.

(b) The location must be expressed in geographic coordinates and must include the geodetic datum to which the coordinates refer.

§603 Area of a protection zone

(a) Unless the Authority specifies otherwise in the declaration of a protection zone, the protection zone in relation to:

(1) one submarine cable, is the area set out in subclause (b); and

(2) more than one submarine cable, is the area set out in subclause (c).

(b) The protection zone in relation to one submarine cable:

(1) consists of so much of the following as is Palauan Waters:

(i) the area within 1,852 meters either side of the points on the surface of the sea above the nominal location of the cable; and

(ii) the waters beneath that area; and

(2) the seabed and subsoil beneath that area.

If a cable leaves one area of Palauan Waters and subsequently enters another area of Palauan Waters, this subsection has the effect that the protection zone in relation to that cable covers both areas of Palauan Waters.

(c) The protection zone in relation to more than one submarine cable:

(1) consists of so much of the following as is Palauan Waters:

(i) the area between the nominal location of the cables;

(ii) the area within 1,852 meters from the outside edge of the points on the surface of the sea above the nominal location of each of the two outermost cables; and

(iii) the waters beneath those areas; and

(2) the seabed and subsoil beneath those areas.

If a cable leaves one area of Palauan Waters and subsequently enters another area of Palauan Waters, this subsection has the effect that the protection zone in relation to that cable covers both areas of Palauan Waters.

§604 Prohibited activities

(a) A declaration of a protection zone may specify activities that are prohibited in the protection zone.

(b) If a declaration of a protection zone does not specify activities that are prohibited in the protection zone, the activities specified in subsection (d) are prohibited.

(c) An activity which is specified in a declaration of a protection zone must be an activity that is covered by subsection (d).

(d) This section covers the following activities:

(1) the use of:

(i) trawl gear that is designed to work on or near the seabed (for example, a demersal trawl);

(ii) a net anchored to the seabed and kept upright by floats (for example, a demersal gillnet);

(iii) a fishing line that is designed to catch fish at or near the seabed (for example, a demersal line);

(iv) a dredge;

(v) a pot or trap;

(vi) a squid jig;

(vii) a seine; or

(viii) a structure moored to the seabed with the primary function of attracting fish for capture (for example, a fish aggregating device);

(2) towing, operating, or suspending from a ship:

(i) any item mentioned in subsection (1); or

(ii) a net, line, rope, chain or any other thing used in connection with fishing operations;

(3) lowering, raising or suspending an anchor from a ship;

(4) sand mining;

(5) exploring for or exploiting resources(other than marine species);

(6) mining or the use of mining techniques;

(7) any activity that involves a serious risk that an object will connect with the seabed, if a connection between the object and a submarine cable would be capable of

damaging the cable;

(8) an activity specified in the regulations, being an activity that, if done near a submarine cable, would involve a serious risk of damaging the cable.

(e) Subsection (d) does not cover an activity if:

(1) the activity is carried on by, or on behalf of, a Person who owns or operates a submarine cable in the protection zone; and

(2) the activity consists of the maintenance or repair of the submarine cable.

§605 Restricted activities

(a) A declaration of a protection zone may specify restrictions that are imposed in the protection zone on activities in the protection zone.

(b) An activity on which restrictions are imposed must be an activity that is covered by subsection (c).

(c) This section covers the following activities:

(1) the use of:

(i) a net that is above the seabed at all times; or

(ii) lures or baits attached to a line towed behind a ship;

(2) towing, operating, or suspending from a ship:

(i) any item mentioned in subsection (1); or

(ii) a net, line, rope, chain or any other thing used in connection with fishing operations;

(3) fishing using a line;

(4) installing, maintaining or removing an electricity cable, an oil or gas pipeline, any like cables or pipelines and any associated equipment;

(5) constructing, maintaining or removing an installation for the use of ships;

(6) constructing or maintaining navigational aids;

(7) any activity that involves a risk that an object will connect with the seabed, if a connection between the object and a submarine cable would be capable of damaging the cable; or

(8) an activity specified in the regulations, being an activity that, if done near a submarine cable, could involve a risk of damaging the cable.

(d) Subsection (c) does not cover an activity if:

(1) the activity is carried on by, or on behalf of, a Person who owns or operates a submarine cable in the protection zone; and

(2) the activity consists of the maintenance or repair of the submarine cable.

§606 Conditions

(a) A declaration of a protection zone may be subject to any conditions that the Authority considers appropriate.

(b) Those conditions must be specified in the declaration.

§607 When a declaration takes effect

(a) A declaration of a protection zone takes effect at the time specified by the Authority.

(b) If a declaration relates only to a submarine cable or cables that are not yet installed, the Authority must not specify a time before the time that the Authority is satisfied that installation of the cable or cables will begin.

§608 Duration of declaration

(a) A declaration of a protection zone continues in effect until the Authority revokes it.

(b) To avoid doubt, a declaration continues in effect even if the submarine cable or cables in the protection zone have ceased to operate.

§609 Damaging a submarine cable

(a) A person commits an offense if:

(1) the person engages in conduct;

(2) the conduct results in damage to a submarine cable; and

(3) the cable is in a protection zone.

(b) A person found guilty of an offense under this section shall be imprisoned for up to two (2) years or be liable for a sum up to$200,000, or both.

§610 Negligently damaging a submarine cable

(a) A person commits an offense if:

(1) the person engages in conduct;

(2) the conduct results in damage to a submarine cable;

(3) the person is negligent as to the fact that the conduct results in that damage; and

(4) the cable is in a protection zone.

(b) A person found guilty of an offense under this section shall be imprisoned for up to six (6) months or be liable for a sum up to $100,000, or both.

§611 Defense to offenses of damaging a submarine cable

Section §609 and section §610 do not apply if:

(a) the conduct that resulted in damage to the submarine cable was necessary to save a life or a ship;

(b) the conduct that resulted in damage to the submarine cable was necessary to prevent pollution;

(c) the defendant took all reasonable steps to avoid causing damage to the submarine cable;

(d) the defendant is the carrier who owns or operates the submarine cable; or

(e) when the conduct occurred, the defendant was acting on behalf of the carrier who owns or operates the submarine cable.

§612 Engaging in prohibited or restricted activities

(a) A person commits an offense if:

(1) the person engages in conduct; and

(2) the conduct occurs in a protection zone; and

(3) the conduct:

(i) is prohibited in the protection zone; or

(ii) contravenes a restriction imposed on an activity in the protection zone;

(4) the conduct is not engaged in by the carrier who owns or operates the cable, or a person acting on behalf of such a carrier, for the purpose of maintaining or repairing a submarine cable for which the carrier is responsible; and

(5) the conduct is not engaged in by a carrier who holds a protection zone installation permit, or a person acting on such a carrier's behalf, in, or in the course of, the

installation of a submarine cable in accordance with the permit.

(b) A person found guilty of an offense under this section shall be imprisoned for up to three (3) months or be liable for a sum up to $25,000, or both.

§613 Aggravated offense of engaging in prohibited or restricted activities

(a) A person commits an offense if:

(1) the person engages in conduct;

(2) the conduct occurs in a protection zone;

(3) the conduct:

(i) is prohibited in the protection zone; or

(ii) contravenes a restriction imposed on an activity in the protection zone;

(4) the person engages in the conduct with the intention of making a commercial gain;

(5) the conduct is not engaged in by the carrier who owns or operates the cable, or a person acting on behalf of such a carrier, for the purpose of maintaining or repairing a submarine cable for which the carrier is responsible; and

(6) the conduct is not engaged in by a carrier who holds a protection zone installation permit, or a person acting on such a carrier's behalf, in, or in the course of, the installation of a submarine cable in accordance with the permit.

(b) A person found guilty of an offense under this section shall be imprisoned for up to three (3) years or be liable for a sum up to $300,000, or both.

§614 Defenses to offenses of engaging in prohibited or restricted activities

Section §612 and section §613 do not apply if:

(a) the conduct was necessary to save a life or ship;

(b) the conduct was necessary to prevent pollution; or

(c) the defendant took all reasonable steps to avoid engaging in the conduct.

§615 Person may claim damages

(a) A Person who suffers, directly or indirectly, loss or damage:

(1) because a submarine cable in a protection zone is damaged by conduct of another Person;

(2) because another Person engages in conduct that is prohibited in a protection zone; or

(3) because another Person engages in conduct that contravenes a restriction imposed on an activity in a protection zone;

may recover the amount of the loss or damage:

(i) against that other Person; or

(ii) against any Person involved in the contravention (whether or not a Person is convicted of an offence in respect of the contravention).

(b) An action under subsection (a) may be commenced at any time within five (5) years after the day on which the cause of action that relates to the conduct accrued.

(c) A reference in subsection (a) to a Person who is involved in a contravention is a reference to a Person who has:

(1) aided, abetted, counselledor procured the contravention;

(2) induced, whether by threats or promises or otherwise, the contravention;

(3) been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(4) conspired with others to effect the contravention.

Chapter VII

Transitional Provisions

§701 Appointment
§702 Establishment of the Authority
§703 Application of previous regulations
§704 Conversion of statutory authorizations to licenses
§705 Other license conversions; pending Division proceedings
§706 Dominant Services Provider
§707 Belau Submarine Cable Corporation exemptions

§701 Appointment

(a) The President shall name the Chairman and the four (4) additional members of the Managing Board of the Authority and submit their names to the Senate of the OEK for its advice and consent within sixty (60) days of the date of the entry into force of this Act.

(b) The Managing Board shall prepare and initiate an international public tender to select a candidate for the position of Director General within thirty (30) days of the date of its first official meeting following the appointment of a Chairman and at least two (2) additional members.

(c) The tender for the hiring of the Director General in subsection (b) shall be open for ninety (90) days and the Managing Board shall endeavor to complete the review, interview, and hiring process so that the Director General is appointed and in place within one hundred and twenty (120) days following the close of the tender.

(d) The Managing Board shall adopt the organizational structure of the Authority within sixty (60) days of the date of its first official meeting following appointment of a Chairman and at least two (2) additional members.

(e) Until the appointment of the Director General and the commencement of full operations by the Authority, the Division shall continue to perform the activities under its competence.

§702 Establishment of the Authority

(a) A transition team reporting to the Managing Board shall be established to develop and manage the establishment, organization, and operation of the Authority until the appointment of the Director General. Upon his/her appointment, the Director General shall reconstitute and lead the transition team.

(b) The Director General shall evaluate the personnel and assets of the Division and propose a transition plan to the Managing Board containing processes for the orderly and phased transfer to the Authority of selected assets of the Division and a proposed staffing plan and salary schedule for the Authority including position descriptions and processes for the secondment or transfer to the Authority of selected personnel of the Division and plans for the recruitment, selection and hiring of additional staff.

(c) The Managing Board shall adopt the staffing plan and salary schedule and take action on

the transition plan within sixty (60) days of the date of the appointment of the Director General.

(d) Costs associated with the establishment of the Authority, including the cost of any technical assistance contracts not funded by donor organizations, may be funded from grants, loans, and the appropriated budget of the Ministry.

(e) $150,000 is hereby allocated and appropriated from local revenues for use by the Authority for each of the current fiscal year and the subsequent fiscal year. For the current fiscal year, such $150,000 amount will be pro rated based on the number of days remaining in the current fiscal year from the date of this Act coming into effect.

§703 Application of previous regulations

(a) Unless otherwise provided in this Act, detailed regulations stipulated by this Act shall be adopted within a period of four (4) months from the date of the appointment of the Director General by the Managing Board.

(b) Notwithstanding §102 and until the adoption of the regulations referred to in subsection (a), valid regulations in force as of the date of the entry into force of this Act, especially with respect to spectrum management and the regulation of radio frequencies, shall continue to apply, with such modifications in the interpretation thereof being made as may be necessary.

§704 Conversion of statutory authorizations to licenses

(a) The Existing statutory authorizations pursuant to which PNCC is authorized to construct and operate Telecommunications Networks, utilize the Radio Frequency Spectrum, and provide Telecommunications Services shall be replaced by an individual consolidated license to be issued to PNCC by the Authority within six (6) months from the date of the appointment of the Director General by the Managing Board.

(b) PNCC and the Authority shall consult and cooperate to develop the terms of the individual license referred to in subsection (a), provided that the terms and conditions thereof shall comply fully with the provisions of Chapters II through V of this Act.

(c) Until the individual license referred to in subsection (a) is issued, PNCC may continue the

activities for which it is authorized under the statutory authorizations repealed by this Act, provided that from the date of the entry into force of this Act, PNCC shall comply with this Act and the provisions of such regulations as may be enacted by the Authority hereunder, including, without limitation of the foregoing, regulations related to regulatory fees (§408); interconnection and access to Telecommunications Networks, and competition (§411 through §422); provision of Telecommunications Services to Customers (§423 through §429); numbering (§432 and §433); universal access and universal service (§434 through §443); construction of Telecommunications Facilities and access to land (§444 through §448); and reporting and data collection (§452 through §455).

§705 Other license conversions; pending Division proceedings

(a) Any person who, as of the date of the entry into force of this Act, is licensed to own or operates a VHF, UHF, or HF radio, or a cellular telephone service, or an AM or FM radio station or television station, and who applies to the Authority for the appropriate license under this Act within six (6) months from the date of the appointment of the Director General by the Managing Board, may continue to operate such VHF, UHF, or HF radio, or a cellular telephone service, or AM or FM radio station, or television station until such time as the Authority either approves or denies the license application.

(b) Licensing procedures, as well as procedures for issuance of decisions by the Division, that have not been completed by the date when this Act enters into force shall cease to be valid on the date of entering into force of this Act, but may be renewed by the applicant by notice to the Authority submitted within six (6) months from the date of the appointment of the Director General by the Managing Board.

§706 Dominant Services Provider

PNCC, by virtue of its status as the sole current provider of fixed-line public Telecommunications Services in Palau, is deemed to be a Dominant Services Provider in the markets for fixed-line local and national voice telephone services and the market for access to Telecommunications Networks for data transmission and leased lines until the Authority in a proceeding determines otherwise.

§707 Belau Submarine Cable Corporation exemptions

Notwithstanding the provisions of any other Act, the income of the Belau Submarine Cable Corporation shall be exempt from payment of income tax, and the Belau Submarine Cable Corporation shall not be liable for the payment of customs duty and import levy, or any other tax having a similar effect. Such exemptions shall expire on December 31, 2020.

Section 3. Effective Date. This Act will take effect upon its approval by the President of the Republic, or upon becoming law without such approval.

Date: _____ Introduced by: _____
[By Request]

LOAN NUMBER 3347-PAL (SF)

LOAN AGREEMENT
(Special Operations)

(North Pacific Regional Connectivity Investment Project)

between

REPUBLIC OF PALAU

and

ASIAN DEVELOPMENT BANK

DATED 07 MARCH 2016

LOAN AGREEMENT
(Special Operations)

LOAN AGREEMENT dated 07 March 2016 between REPUBLIC OF PALAU ("Borrower") and ASIAN DEVELOPMENT BANK ("ADB").

WHEREAS

(A) the Borrower has applied to ADB for a loan for the purposes of the Project described in Schedule 1 to this Loan Agreement;

(B) the Project will be carried out by Borrower and Belau Submarine Cable Corporation ("BSCC"), and for this purpose the Borrower will make available to BSCC the proceeds of the loan provided for herein upon terms and conditions satisfactory to ADB;

(C) by agreement of even date herewith entered between ADB and the Borrower ("Ordinary Operations Loan Agreement"), ADB has agreed to provide to the Borrower a loan from ADB's ordinary capital resources for an amount of sixteen million four hundred seventy thousand Dollars ($16,470,000) for the purposes of the Project; and

(D) ADB has agreed to make a loan to the Borrower from ADB's Special Funds resources upon the terms and conditions set forth herein and in the Project Agreement of even date herewith between ADB and BSCC;

NOW THEREFORE the parties agree as follows:

ARTICLE I

Loan Regulations; Definitions

Section 1.01. All the provisions of the Special Operations Loan Regulations of ADB, dated 1 January 2006 ("Loan Regulations"), are hereby made applicable to this Loan Agreement with the same force and effect as if they were fully set forth herein, subject, however, to the following modifications:

(a) Section 2.01(25) is deleted and the following is substituted therefor:

"Project Agreement" means the Project Agreement of even date herewith between ADB and BSCC.

(b) The term "Project Executing Agency" appearing in Section 6.01(a), 8.01(d), 8.01(f), 8.01(k), 9.01(c) and 9.02(c) of the Loan Regulations shall be substituted by the term "BSCC".

Section 1.02. Wherever used in this Loan Agreement, the several terms defined in the Loan Regulations have the respective meanings therein set forth unless

modified herein or the context otherwise requires. Additional terms used in this Loan Agreement have the following meanings:

(a) "ADF Subsidiary Loan Agreement" means the agreement between the Borrower and BSCC in respect of the proceeds of the Loan relent under the Project as described in Section 3.01(a) of this Loan Agreement;

(b) "BSCC" means the Belau Submarine Cable Corporation, or any successor thereto acceptable to ADB;

(c) "Consulting Guidelines" means the Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (2013, as amended from time to time);

(d) "Consulting Services" means the services to be financed out of the proceeds of the Loan as described in paragraph 3 of Schedule 1 to this Loan Agreement;

(e) "Environmental Management Plan" or "EMP" means the environmental management plan for the Project, including any update thereto, incorporated in the IEE;

(f) "Environmental Safeguards" means the principles and requirements set forth in Chapter V, Appendix 1, and Appendix 4 (as applicable) of the SPS;

(g) "Goods" means equipment and materials to be financed out of the proceeds of the Loan, including related services such as transportation, insurance, installation, commissioning, training, and initial maintenance, but excluding Consulting Services;

(h) "ICT" means information and communications technology;

(i) "Initial Environmental Examination" or "IEE" means the initial environmental examination for the Project, including any update thereto, prepared and submitted by the Borrower and cleared by ADB;

(j) "IRU" means indefeasible right of use;

(k) "IRU Agreement" means the agreement, dated 26 February 2016, between BSCC, and GTI Corporation, a member of the SEA-US Consortium relating to the IRU of Palau;

(l) "Loan Disbursement Handbook" means ADB's Loan Disbursement Handbook (2015, as amended from time to time);

(m) "OCR Subsidiary Loan Agreement" means the agreement between the Borrower and BSCC in respect of the proceeds of the loan under the Ordinary Operations Loan Agreement relent under the Project as described in Section 3.01(a) of the Ordinary Operations Loan Agreement;

(n) "PAM" means the project administration manual for the Project dated 20 October 2015 and agreed between the Borrower and ADB, as updated from time to time in accordance with the respective administrative procedures of the Borrower and ADB;

(o) "PNCC" means the Palau National Communication Corporation;

(p) "Procurement Guidelines" means ADB's Procurement Guidelines (2015, as amended from time to time);

(q) "Procurement Plan" means the procurement plan for the Project dated 20 October 2015 and agreed between the Borrower and ADB, as updated from time to time in accordance with the Procurement Guidelines, the Consulting Guidelines, and other arrangements agreed with ADB;

(r) "Project facilities" means the facilities to be constructed and/or maintained, and the equipment to be installed and maintained under the Project;

(s) "Safeguard Policy Statement" or "SPS" means ADB's Safeguard Policy Statement (2009);

(t) "Safeguards Monitoring Report" means each report prepared and submitted by the Borrower to ADB that describes progress with implementation of and compliance with the EMP including any corrective and preventative actions;

(u) "SEA-US Consortium" means the consortium of companies that are included in the SEA-US cable subsystem, including Globe Telecom Inc., PT Telekom Indonesia International, Teleguam Holdings LLC, GTI Corporation, Hawaiian Telcom Services Company, Inc., RAM Telecom International, Inc.;

(v) "Subsidiary Loan Agreements" means the ADF Subsidiary Loan Agreement and the OCR Subsidiary Loan Agreement;

(w) "Supply Contract" means the Supply Contract for the Palau Spur Part 1, dated 26 February 2016, between BSCC and NEC Corporation relating to the supply and installation of the submarine cable system for the Palau spur between the landing station to be constructed in Palau and a branching unit to be installed by NEC as part of the SEA-US System; and

(x) "Works" means construction or civil works to be financed out of the proceeds of the Loan, including services such as drilling or mapping, and project related services that are provided as part of a single responsibility or turnkey contract, but excluding Consulting Services.

ARTICLE II

The Loan

Section 2.01. ADB agrees to lend to the Borrower from ADB's Special Funds resources an amount in various currencies equivalent to six million thirty-two thousand Dollar equivalent Special Drawing Rights (SDR 6,032,000).

Section 2.02. (a) The Borrower shall pay to ADB an interest charge at the rate of 2% per annum during the grace period and thereafter, on the amount of the Loan withdrawn from the Loan Account and outstanding from time to time.

(b) The term "grace period" as used in subsection (a) hereinabove means the period prior to the first Principal Payment Date in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.03. The interest charge and any other charge on the Loan shall be payable semiannually on 1 June and 1 December in each year.

Section 2.04. The Borrower shall repay the principal amount of the Loan withdrawn from the Loan Account in accordance with the amortization schedule set forth in Schedule 2 to this Loan Agreement.

Section 2.05. The currency of repayment of the principal amount of the Loan and the currency of payment of the interest charge for the purposes of Sections 4.03(a) and 4.04 of the Loan Regulations shall be Dollar.

ARTICLE III

Use of Proceeds of the Loan

Section 3.01. (a) The Borrower shall relend the proceeds of the Loan to BSCC under the ADF Subsidiary Loan Agreement upon terms and conditions satisfactory to ADB. Except as ADB may otherwise agree, the terms for relending the proceeds of the Loan shall substantially mirror the terms being provided under this Loan Agreement.

(b) The Borrower shall cause the proceeds of the Loan to be applied to the financing of expenditures on the Project in accordance with the provisions of this Loan Agreement and the Project Agreement.

Section 3.02. The proceeds of the Loan shall be allocated and withdrawn in accordance with the provisions of Schedule 3 to this Loan Agreement, as such Schedule may be amended from time to time by agreement between the Borrower and ADB.

Section 3.03. Except as ADB may otherwise agree, the Borrower shall procure, or cause to be procured, the items of expenditure to be financed out of the

proceeds of the Loan in accordance with the provisions of Schedule 4 to this Loan Agreement.

Section 3.04. Except as ADB may otherwise agree, the Borrower shall cause all items of expenditure financed out of the proceeds of the Loan to be used exclusively in the carrying out of the Project.

Section 3.05. Withdrawals from the Loan Account in respect of Goods, Works and Consulting Services shall be made only on account of expenditures relating to:

(a) Goods which are produced in and supplied from and Works and Consulting Services which are supplied from such member countries of ADB as shall have been specified by ADB from time to time as eligible sources for procurement; and

(b) Goods, Works and Consulting Services which meet such other eligibility requirements as shall have been specified by ADB from time to time.

Section 3.06. The Loan Closing Date for the purposes of Section 8.02 of the Loan Regulations shall be 30 September 2018 or such other date as may from time to time be agreed between the Borrower and ADB.

ARTICLE IV

Particular Covenants

Section 4.01. In the carrying out the Project and operation of the Project facilities, the Borrower shall perform, or cause to be performed, all obligations set forth in Schedule 5 to this Loan Agreement.

Section 4.02. The Borrower shall enable ADB's representatives to inspect the Project, the Goods and Works, and any relevant records and documents.

Section 4.03. ADB shall disclose the annual audited financial statements for the Project and the opinion of the auditors on the financial statements within 30 days of the date of their receipt by posting them on ADB's website.

Section 4.04. The Borrower shall take all actions which shall be necessary on its part to enable the Project Executing Agency to perform its obligations under the Project Agreement, and shall not take or permit any action which would interfere with the performance of such obligations.

Section 4.05. (a) The Borrower shall exercise its rights under the Subsidiary Loan Agreements in such a manner as to protect the interests of the Borrower and ADB and to accomplish the purposes of the Loan.

(b) No rights or obligations under the Subsidiary Loan Agreements shall be assigned, amended, or waived without the prior concurrence of ADB.

ARTICLE V

Suspension; Acceleration of Maturity

Section 5.01. The following are specified as additional events for suspension of the right of the Borrower to make withdrawals from the Loan Account for the purposes of Section 8.01(m) of the Loan Regulations:

(a) the Borrower shall have failed to perform any of its obligations under the Ordinary Operations Loan Agreement;

(b) BSCC shall have failed to perform any of its obligations under the Project Agreement or the Supply Contract, or the IRU Agreement; and

(c) Republic of Palau Public Law No. 9-47 on the establishment of the BSCC or any provision thereof shall have been repealed, suspended or amended in any manner which in the reasonable opinion of ADB shall or may adversely affect the carrying out of the Project or the operation of the Project facilities.

Section 5.02. The following is specified as an additional event for acceleration of maturity for the purposes of Section 8.07(d) of the Loan Regulations: any of the events specified in Section 5.01 of this Loan Agreement shall have occurred.

ARTICLE VI

Effectiveness

Section 6.01. The following are specified as additional conditions to the effectiveness of this Loan Agreement for the purposes of Section 9.01(f) of the Loan Regulations:

(a) the Ordinary Operations Loan Agreement shall have been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower, and all conditions precedent to its effectiveness, other than a condition requiring effectiveness of this Loan Agreement, shall have been fulfilled; and

(b) the Subsidiary Loan Agreements shall have been duly executed and delivered on behalf of the Borrower and the BSCC and all conditions to

its effectiveness shall have been fulfilled, on terms and conditions satisfactory to ADB.

Section 6.02. The following are specified as additional matters, for the purposes of Section 9.02(d) of the Loan Regulations, to be included in the opinion or opinions to be furnished to ADB:

(a) the Ordinary Operations Loan Agreement has been duly authorized or ratified by, and executed and delivered on behalf of, the Borrower, and is legally binding upon the Borrower in accordance with its terms; and

(b) the Subsidiary Loan Agreements shall have been duly authorized or ratified by, and executed and delivered on behalf of the Borrower and the BSCC and are legally binding upon the Borrower and BSCC in accordance with their terms.

Section 6.03. A date 90 days after the date of this Loan Agreement is specified for the effectiveness of the Loan Agreement for the purposes of Section 9.04 of the Loan Regulations.

ARTICLE VII

Miscellaneous

Section 7.01. The Minister of Finance of the Borrower is designated as representative of the Borrower for the purposes of Section 11.02 of the Loan Regulations.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the Loan Regulations:

For the Borrower

The Minister
Ministry of Finance
PO Box 6011, Koror
Republic of Palau 96940

Facsimile Number:

(680) 767-2168.

For ADB

Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila
Philippines

Facsimile Numbers:

(632) 636-2444
(632) 636-2446.

IN WITNESS WHEREOF the parties hereto, acting through their representatives thereunto duly authorized, have caused this Loan Agreement to be signed in their respective names as of the day and year first above written and to be delivered at the principal office of ADB.

REPUBLIC OF PALAU

By _____
ELBUCHEL SADANG
Minister of Finance and Governor

ASIAN DEVELOPMENT BANK

By _____
XIANBIN YAO
Director General
Pacific Department

SCHEDULE 1

Description of the Project

1. The objective of the Project is to decrease cost and increase quality of internet service.

2. The Project shall comprise establishing a submarine cable connection from Palau to the submarine cable system owned by the SEA-US Consortium that connects to the international cable hub in Guam.

3. Consulting Services will be provided to manage and implement the above.

4. The Project is expected to be completed by 31 March 2018.

SCHEDULE 2

Amortization Schedule

(North Pacific Regional Connectivity Investment Project)

Date Payment Due	Payment of Principal (expressed in Special Drawing Rights)
1 June 2021	150,800
1 December 2021	150,800
1 June 2022	150,800
1 December 2022	150,800
1 June 2023	150,800
1 December 2023	150,800
1 June 2024	150,800
1 December 2024	150,800
1 June 2025	150,800
1 December 2025	150,800
1 June 2026	150,800
1 December 2026	150,800
1 June 2027	150,800
1 December 2027	150,800
1 June 2028	150,800
1 December 2028	150,800
1 June 2029	150,800
1 December 2029	150,800
1 June 2030	150,800
1 December 2030	150,800
1 June 2031	150,800
1 December 2031	150,800
1 June 2032	150,800
1 December 2032	150,800
1 June 2033	150,800
1 December 2033	150,800
1 June 2034	150,800
1 December 2034	150,800
1 June 2035	150,800
1 December 2035	150,800
1 June 2036	150,800
1 December 2036	150,800
1 June 2037	150,800
1 December 2037	150,800
1 June 2038	150,800
1 December 2038	150,800

Schedule 2

Date Payment Due	Payment of Principal (expressed in Special Drawing Rights)
1 June 2039	150,800
1 December 2039	150,800
1 June 2040	150,800
1 December 2040	150,800
TOTAL	**6,032,000**

* The arrangements for payment are subject to the provisions of Sections 3.04 and 4.03 of the Loan Regulations.

SCHEDULE 3

Allocation and Withdrawal of Loan Proceeds

General

1. The table attached to this Schedule sets forth the Categories of items of expenditure to be financed out of the proceeds of the Loan and the allocation of the Loan proceeds to each such Category ("Table"). (Reference to "Category" in this Schedule is to a Category or Subcategory of the Table.)

Basis for Withdrawal from the Loan Account

2. Except as ADB may otherwise agree, the proceeds of the Loan shall be disbursed on the basis of the withdrawal percentage for each item of expenditure set forth in the Table.

Interest Charge

3. The amount allocated to Category 5 is for financing the interest charge on the Loan during the implementation period of the Project.

Reallocation

4. Notwithstanding the allocation of Loan proceeds and the withdrawal percentages set forth in the Table,

(a) if the amount of the Loan allocated to any Category appears to be insufficient to finance all agreed expenditures in that Category, ADB may, by notice to the Borrower, (i) reallocate to such Category, to the extent required to meet the estimated shortfall, amounts of the Loan which have been allocated to another Category but, in the opinion of ADB, are not needed to meet other expenditures, and (ii) if such reallocation cannot fully meet the estimated shortfall, reduce the withdrawal percentage applicable to such expenditures in order that further withdrawals under such Category may continue until all expenditures thereunder shall have been made; and

(b) if the amount of the Loan allocated to any Category appears to exceed all agreed expenditures in that Category, ADB may, by notice to the Borrower, reallocate such excess amount to any other Category.

Disbursement Procedures

5. Except as ADB may otherwise agree, the Loan proceeds shall be disbursed in accordance with the Loan Disbursement Handbook.

Retroactive Financing

6. Withdrawals from the Loan Account may be made for reimbursement of eligible expenditures incurred under the Project before the Effective Date, but not earlier than

12 months before the date of this Loan Agreement, subject to a maximum amount equivalent to 20% of the Loan amount.

Condition for Withdrawals from Loan Account:

7. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from Categories 1 or 2 until:

(a) the IRU Agreement shall have been duly executed and delivered on behalf of the parties thereto, upon terms and conditions acceptable to ADB, and all conditions to effectiveness shall have been fulfilled. In addition, legal opinions satisfactory to ADB shall have been submitted to ADB, confirming that the IRU Agreement have been duly authorized by, and executed and delivered on behalf of the parties thereto, and are legally binding upon the parties thereto in accordance with their terms; and

(b) the Supply Contract shall have been duly executed and delivered on behalf of the parties thereto, upon terms and conditions acceptable to ADB, and all conditions to effectiveness shall have been fulfilled. In addition, legal opinions satisfactory to ADB shall have been submitted to ADB, confirming that the Supply Contract have been duly authorized by, and executed and delivered on behalf of the parties thereto, and are legally binding upon the parties thereto in accordance with their terms.

8. Notwithstanding any other provision of this Loan Agreement, no withdrawals shall be made from Category 3 until a landing agreement between BSCC and PNCC for the use of PNCC land and facility will have been signed and made effective.

TABLE

ALLOCATION AND WITHDRAWAL OF LOAN PROCEEDS (North Pacific Regional Connectivity Investment Project)			
Number	**Item**	**Total Amount Allocated for ADB Financing (SDR) Category**	**Basis for Withdrawal from the Loan Account**
1	Spur to connect SEA-US Cable System**	3,055,000	34.1% of total expenditure claimed*
2	IRU**	1,259,000	34.1% of total expenditure claimed*
3	Cable station construction and fit out **	389,000	34.1% of total expenditure claimed*
4	Project Management Unit	198,000	33.3% of total expenditure claimed
5	Interest during implementation	49,000	100% of amounts due
6	Unallocated	1,082,000	
	Total	6,032,000	

* Exclusive of taxes and duties imposed within the territory of the Borrower.
** Subject to the conditions for withdrawal described in paragraphs 7 and 8 of Schedule 3.

SCHEDULE 4

Procurement of Goods, Works and Consulting Services

General

1. The procurement of Goods, Works and Consulting Services shall be subject to and governed by the Procurement Guidelines, and the Consulting Guidelines, respectively.

2. All terms used in this Schedule and not otherwise defined in this Loan Agreement have the meanings provided in the Procurement Guidelines and/or the Consulting Guidelines, as applicable.

Goods and Works

3. Except as ADB may otherwise agree, Goods and Works shall only be procured on the basis of the methods of procurement set forth below:

(a) International Competitive Bidding; and
(b) Direct Contracting

4. The methods of procurement are subject to, among other things, the detailed arrangements and threshold values set forth in the Procurement Plan. The Borrower may only modify the methods of procurement or threshold values with the prior agreement of ADB, and modifications must be set out in updates to the Procurement Plan.

Conditions for Award of Contract

5. The Borrower shall not award any Works contract which involves environmental impacts until:

(a) the Environmental Quality Protection Board has granted the final approval of the IEE; and

(b) the Borrower has incorporated the relevant provisions from the EMP into the Works contract.

Consulting Services

6. Except as ADB may otherwise agree, the Borrower shall apply quality- and cost-based selection for selecting and engaging Consulting Services.

Industrial or Intellectual Property Rights

7. (a) The Borrower shall ensure that all Goods and Works procured (including without limitation all computer hardware, software and systems, whether separately procured or incorporated within other goods and services procured) do not violate or infringe any industrial property or intellectual property right or claim of any third party.

(b) The Borrower shall ensure that all contracts for the procurement of Goods and Works contain appropriate representations, warranties and, if appropriate, indemnities from the contractor or supplier with respect to the matters referred to in subparagraph (a) of this paragraph.

8. The Borrower shall ensure that all ADB-financed contracts with consultants contain appropriate representations, warranties and, if appropriate, indemnities from the consultants to ensure that the Consulting Services provided do not violate or infringe any industrial property or intellectual property right or claim of any third party.

ADB's Review of Procurement Decisions

9. Contracts procured under international competitive bidding procedures and contracts for Consulting Services shall be subject to prior review by ADB, unless otherwise agreed between the Borrower and ADB and set forth in the Procurement Plan.

SCHEDULE 5

Execution of Project; Financial Matters

Implementation Arrangements

1. The Borrower and BSCC shall ensure that the Project is implemented in accordance with the detailed arrangements set forth in the PAM. Any subsequent change to the PAM shall become effective only after approval of such change by the Borrower and ADB. In the event of any discrepancy between the PAM and this Loan Agreement, the provisions of this Loan Agreement shall prevail.

Counterpart Support

2. The Borrower shall make available to BSCC all counterpart funds required for timely and effective implementation of the Project, including, without limitation, any funds required to mitigate unforeseen environmental and social impacts, and to meet additional costs arising from design changes, price escalation in construction costs and/or unforeseen circumstances.

Government Coordination

3. The Borrower is fully committed to the Project and shall ensure that all its ministries, agencies and divisions relevant in the implementation of the Project give their full cooperation to ensure smooth implementation of the Project. Specifically, the Borrower shall cause BSCC and/or all relevant ministries to give full, timely and efficient cooperation in providing resources, issuing any licenses, permits or approvals required in connection with the laying of the submarine cables.

Corporate Governance

4. The Borrower shall ensure, and shall cause BSCC to ensure, that throughout Project implementation (i) no material organizational changes to BSCC (either financial, operational, or structural), nor material asset transfers to or from BSCC, including a change in ownership of the Project facilities, are approved or implemented without prior approval of ADB; and (ii) any such changes are carried out in a transparent manner and in accordance with applicable laws and regulations.

Organizational Matters

5. In relation to the Project, no later than 31 December 2017, BSCC shall have recruited and engaged key personnel for its operations and finance departments, including permanent staff with adequate qualifications; and (ii) other staff required to meet substantially all its other staffing requirements to function as a functioning corporation, without the support of the project management unit funded by the Project.

6. Subject to BSCC's recruitment and promotion rules, BSCC shall generally recruit all personnel on a competitive and transparent basis through open advertisements in the relevant printed media and on their websites.

ICT Strategy

7. Within twelve months from the Effective Date, the Borrower shall have adopted a national ICT strategy, the features of which will include a time-bound program to implement legislative reforms that effect an enabling environment for secure electronic transactions, ensure online security, protect against cyber-crimes, protect personal data, and regulate intellectual property rights.

8. Within eighteen months from the Effective Date, the Borrower shall have completed the legal and regulatory reforms necessary to incorporate into national law (i) the Borrower's specific commitments regarding telecommunications to the World Trade Organization, including as set out in the *Reference Paper to the GATS Agreement on Basic Telecommunications*; and (ii) international best practices in the field of telecommunications regulation, with a view to creating an enabling telecommunications and information and communication technology environment providing, among other things, for (a) open interconnection access on non-discriminatory terms and with transparent and reasonable, cost-oriented rates; (b) appropriate measures to prevent anti-competitive behavior; (c) transparency in license administration and regulatory decision making; (d) independent appeals mechanisms and dispute resolution processes; (e) efficient administration of scarce resources (such as frequencies and numbers) in an objective, timely, transparent and non-discriminatory manner; and (f) adequate provisions regarding consumer protection.

9. Within eighteen months from the Effective Date, the Borrower shall have adopted a detailed road map with corresponding budget allocation to deploy ICT-based public service delivery in education, health, public administration and disaster risk reduction within the existing national development strategy.

Telecom Regulatory Office

10. Within eighteen months from the Effective Date, the Borrower shall establish a telecom regulatory office.

Supply Contract

11. The Borrower shall ensure and shall cause BSCC to ensure that the Supply Contract includes a provision stating that unless ADB prior approval is obtained, sub-contractors and/or suppliers to be contracted to carry out any work or supply any goods and services shall be from ADB member countries.

Cable Protection Measures

12. Within twelve months after the Effective Date, the Borrower shall have adopted executive orders and/or submitted to parliament draft legislation, as may be needed to ensure adequate protection of the submarine cable system in Palau's territorial waters, including, without limitation, that no trawl fishing or anchoring will be permitted in the area within Palau's territorial waters through which the submarine cable will pass.

13. In the event that the submarine survey shows that Project facilities will cross another submarine cable, the Borrower, shall ensure that BSCC approaches the owner and

enters into a cable crossing agreement in accordance with the recommendations issued by the International Cable Protection Committee.

Environment

14. The Borrower shall ensure or cause BSCC to ensure that the preparation, design, construction, implementation, operation and decommissioning of the Project and all Project facilities comply with (a) all applicable laws and regulations of the Borrower relating to environment, health and safety; (b) the Environmental Safeguards; and (c) all measures and requirements set forth in the IEE, the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report.

Land Acquisition and Involuntary Resettlement

15. The Borrower shall ensure that the Project does not involve any land acquisition or involuntary resettlement risks or impacts within the meaning of the SPS. If due to unforeseen circumstances the Project involves any such impacts, the Borrower shall take all steps necessary or desirable to ensure that the Project complies with all applicable laws and regulations of the Borrower and with the SPS.

Indigenous Peoples

16. The Borrower shall ensure that the Project does not involve any indigenous people risks or impacts within the meaning of the SPS. If due to unforeseen circumstances, the Project involves any such impacts, the Borrower shall take all steps necessary or desirable to ensure that the Project complies with all applicable laws and regulations of the Borrower and with the SPS.

Human and Financial Resources to Implement Safeguards Requirements

17. The Borrower shall make available or cause BSCC to make available necessary budgetary and human resources to fully implement the EMP.

Safeguards – Related Provisions in Bidding Documents and Works Contracts

18. The Borrower shall ensure or cause BSCC to ensure that all bidding documents and contracts for Works contain provisions that require contractors to:

(a) comply with the measures relevant to the contractor set forth in the IEE and the EMP, and any corrective or preventative actions set forth in a Safeguards Monitoring Report;

(b) make available a budget for all such environmental and social measures;

(c) provide the Borrower with a written notice of any unanticipated environmental, resettlement or indigenous peoples risks or impacts that arise during construction, implementation or operation of the Project that were not considered in the IEE, and the EMP;

(d) adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction; and

(e) reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

Safeguards Monitoring and Reporting

19. The Borrower shall do the following or cause BSCC to do the following:

(a) submit semi-annual Safeguards Monitoring Reports to ADB and disclose relevant information from such reports to affected persons promptly upon submission;

(b) if any unanticipated environmental and/or social risks and impacts arise during construction, implementation or operation of the Project that were not considered in the IEE and the EMP, promptly inform ADB of the occurrence of such risks or impacts, with detailed description of the event and proposed corrective action plan; and

(c) report any actual or potential breach of compliance with the measures and requirements set forth in the EMP promptly after becoming aware of the breach.

Prohibited List of Investments

20. The Borrower shall ensure that no proceeds of the Loan are used to finance any activity included in the list of prohibited investment activities provided in Appendix 5 of the SPS.

Gender and Development

21. The Borrower shall ensure that the principles of gender equity aimed at increasing Project benefits and impacts on women in the Project area consistent with ADB's Policy on Gender and Development (1998) are followed during implementation of the Project, including (a) equal pay to men and women for work of equal value; (b) enabling working conditions for women workers; and (c) taking necessary actions to encourage women living in the Project area to participate in the design and implementation of Project activities.

Project Website

22. Within twelve months from the Effective Date, BSCC shall create a Project website to disclose information about various matters on the Project, including procurement. With regard to procurement, the website shall include information on the list of participating bidders, name of the winning bidder, basic details on bidding procedures adopted, amount of contract awarded, and the list of goods/services procured.

Labor Standards, Health and Safety

23. The Borrower shall ensure that the core labor standards and the Borrower's applicable laws and regulations are complied with during project implementation. The Borrower shall include specific provisions in the bidding documents and contracts financed by ADB under the Project requiring that the contractors, among other things: (a) comply with the Borrower's applicable labor law and regulations and incorporate applicable workplace occupational safety norms; (b) do not use child labor; (c) do not discriminate workers in respect of employment and occupation; (d) do not use forced labor; (e) allow freedom of association and effectively recognize the right to collective bargaining; and (f) disseminate, or engage appropriate service providers to disseminate, information on the risks of sexually transmitted diseases, including HIV/AIDS, to the employees of contractors engaged under the Project and to members of the local communities surrounding the Project area, particularly women.

24. The Borrower shall strictly monitor compliance with the requirements set forth in paragraph 18 above and provide ADB with regular reports.

Governance and Corruption

25. The Borrower and BSCC shall (a) comply with ADB's Anticorruption Policy (1998, as amended to date) and acknowledge that ADB reserves the right to investigate directly, or through its agents, any alleged corrupt, fraudulent, collusive or coercive practice relating to the Project; and (b) cooperate with any such investigation and extend all necessary assistance for satisfactory completion of such investigation.

26. The Borrower and BSCC shall ensure that the anticorruption provisions acceptable to ADB are included in all bidding documents and contracts, including provisions specifying the right of ADB to audit and examine the records and accounts of the executing and implementing agencies and all contractors, suppliers, consultants, and other service providers as they relate to the Project.