

**CHAPTER 2****FSM Telecommunications Corporation****SECTIONS**

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### **§ 201. Short title.**

This chapter may be cited as the "Federated States of Micronesia Telecommunications Corporation Act of 1981".

**Source:** PL 2-10 § 1.

### **§ 202. Establishment of Corporation.**

The Telecommunications Corporation of the Federated States of Micronesia is hereby established as a public corporation under the laws of the Federated States of Micronesia. It may hereinafter be referred to as "the Corporation".

**Source:** PL 2-10 § 2.

### **§ 203. Powers and responsibilities of the Corporation.**

The Corporation has the following powers and responsibilities:

- (1) to operate as the sole provider of all telecommunications services, except radio and television broadcasting, within the Federated States of Micronesia and between points in the Federated States of Micronesia and points outside thereof;
- (2) to operate and manage such services on the basis of commercially 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 services provided;
- (3) to plan for the expansion and improvement of telecommunications facilities and services;
- (4) to the extent practicable, to expand telecommunications services to areas and communities in the Federated States of Micronesia that are presently unserved or poorly served and to improve the quality, reliability, and variety of 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 the Federated States of Micronesia;

(5) to improve the telecommunications skills and promote the telecommunications training of Micronesian citizens who are employees of the Corporation;

(6) to establish, publish, and implement a structure of tariffs and rates for telecommunications services calculated to ensure that, to the extent practicable, adequate and equitable charges are imposed for services and that the tariff structure promotes the increased use of telecommunications services;

(7) to invest all surplus revenues of the Corporation in the expansion and improvement of telecommunications facilities and services;

(8) to incur indebtedness for the purpose of expanding and improving telecommunications facilities, to the extent and on such terms as are deemed commercially reasonable by the Corporation;

(9) to provide on a reimbursable basis emergency telecommunications services to governments, individuals, and entities in the Federated States of Micronesia; and

(10) to represent the Federated States of Micronesia with regard to telecommunications matters in such international organizations and fora in which the Federated States of Micronesia is represented, subject to the policy guidance of the Government of the Federated States of Micronesia.

**Source:** PL 2-10 § 3.

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**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

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#### **§ 204. Other powers of the Corporation.**

To the extent that such services do not unreasonably impair the ability of the Corporation to provide and maintain its national and international telecommunications services, the Corporation is authorized:

(1) to provide on a commercially reasonable basis such services relating to telecommunications as may be requested by governments, individuals, and entities; and

(2) to establish and operate on a commercial basis, or on a reimbursable basis if so requested by the Government of the Federated States of Micronesia, radio and television broadcast stations, or to provide radio and television programming, in a manner consistent with promoting economic development, the advancement of education

and health care, and the preservation of the cultural identity of the people of the Federated States of Micronesia, as identified by the National Government.

**Source:** PL 2-10 § 4.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

### **§ 205. Legal capacity of the Corporation.**

In performing the functions authorized under this chapter or other law of the Federated States of Micronesia, the Corporation shall have the capacity to exercise all powers normally exercised by a corporation, including, but not limited to, the following:

- (1) to adopt, alter, and use a corporate seal;
- (2) to adopt and amend bylaws governing the conduct of its business and the exercise of its powers;
- (3) to sue and be sued in its corporate name;
- (4) to acquire, in any lawful manner, real, personal, or mixed property, either tangible or intangible; to hold, maintain, use, and operate such property; and to sell, lease, or otherwise dispose of such property;
- (5) to acquire and take over in any lawful manner the business, property, assets, and liabilities of any entity, including the Government of the Trust Territory of the Pacific Islands relating to communications;
- (6) to borrow or raise any sum or sums of money and to issue corporate bonds on such security and upon such terms as may from time to time be deemed necessary for the expansion and improvement of communications facilities;
- (7) to retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as it may deem appropriate; and
- (8) to do all such other things as may be deemed incidental to or conducive to the attainment of the responsibilities of the Corporation.

**Source:** PL 2-10 § 5.

### **§ 206. Telecommunications Revolving Fund.**

(1) There is hereby created and established the Telecommunications Revolving Fund, hereinafter referred to as the "Fund," separate from the General Fund of the Federated States of Micronesia and all other funds.

(2) The purpose of the fund is to establish an ongoing revolving fund to allow appropriations for and revenues from the operations of the Corporation to be used for the operations of the Corporation and for capital investment or acquisition by the Corporation.

(3) All future appropriations for the operations of the Corporation as well as revenues received from the operations of the Corporation and any other moneys raised or received by the Corporation, shall be deposited in the Fund. Any unexpended moneys in this Fund shall not revert to the General Fund nor lapse at the end of the fiscal year.

(4) The Fund shall be administered by the Board of Directors of the Corporation.

**Source:** PL 3-27 § 1.

### **§ 207. Debts and obligations of the Corporation.**

Unless otherwise expressly provided by law, the debts and obligations of the Corporation shall not be debts or obligations of the Government of the Federated States of Micronesia, nor shall the Government of the Federated States of Micronesia be responsible for any such debts or obligations.

**Source:** PL 2-10 § 6; PL 3-27 § 3 (part).

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

### **§ 208. Tax liability.**

The Corporation shall exist and operate solely for the benefit of the public and shall be exempt from any taxes or assessments except the following:

- (1) import taxes or assessments on any of its property, operations, or activities; and
- (2) gross revenue tax.

Nothing herein shall be deemed to exempt employees and independent contractors of the Corporation from tax liability for services rendered to the Corporation; and the Corporation shall be liable for employers' contributions to the Social Security System of the Federated States of Micronesia in the manner provided by law.

**Source:** PL 2-10 § 7; PL 3-27 § 3 (part); PL 11-26 § 1; PL 17-3 § 1.

**Cross-reference:** The statutory provisions on Taxation and Customs are found in title 54 of this code. The statutory provisions on Social Security and Prior Service Benefits are found in title 53 of this code.

**Case annotation:** For tax purposes, the FSM Telecommunications Corp. is deemed part of the national government thereby making it exempt from a state use tax. *FSM Telecomm. Corp. v. Department of Treasury*, 9 FSM R. 292, 294 (Pon. 1999).

Because a Congressional statute set up Telecom to serve the public interest and foster economic development, because Telecom may seek

appropriations from Congress and, to the extent approved by the President, grants from sources outside of the FSM, because Telecom's board of directors must submit an annual report reflecting its activities, including financial statements, to the government, and because Telecom has no independent shareholders and is fully owned by the national government, Telecom is deemed, for taxation purposes, to be a part of the national government, and its efforts to carry out its mission should not be hindered by any state's efforts to tax its business activities. *FSM Telecomm. Corp. v. Department of Treasury*, 9 FSM R. 380, 385 (Pon. 2000).

By making the taxing powers allocated between the national and state governments of Micronesia exclusive and distinct and allocating the exclusive power to tax income and imports, the Constitution's framers sought to avoid vertical multiple taxation and ensure a consistent fiscal policy for Micronesia. *FSM Telecomm. Corp. v. Department of Treasury*, 9 FSM R. 380, 387-89 (Pon. 2000).

### **§ 209. Board of Directors—Establishment.**

The affairs of the Corporation shall be managed and its corporate powers exercised by a Board of Directors, hereinafter referred to as "the Board."

**Source:** PL 2-10 § 8(1); PL 3-27 § 3 (part).

### **§ 210. Board of Directors—Composition.**

The Board shall be composed of five voting members. One member shall be appointed by the President of the Federated States of Micronesia with the advice and consent of the Congress. The Governor of each State of the Federated States of Micronesia shall appoint one member of the Board with the advice and consent of the respective State legislature. The chief executive officer of the Corporation shall serve *ex officio* as a member of the Board but he shall have no right to vote.

**Source:** PL 2-10 § 8(2); PL 3-27 § 3 (part); PL 5-104 § 1.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

### **§ 211. Board of Directors—Organizational meeting.**

(1) On September 1, 1981, and annually thereafter during the month of September, October, or November on such dates as are set by the Board, the Board shall meet to select its officers and to conduct such other business as it shall deem advisable.

(2) At the first such meeting, the appointed members of the Board shall determine by lot the length of their initial terms, with three members serving initial terms of one year, two serving initial terms of two years, and two serving initial terms of three years.

(3) The President of the Federated States of Micronesia may, by Executive order, set the first organizational meeting for another date not later than December 31, 1981, when he has determined that a majority of the Board has not been appointed or confirmed prior to September 1, 1981.

**Source:** PL 2-10 § 8(4); PL 3-27 § 3 (part); PL 4-45 § 1.

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

### **§ 212. Board of Directors—Terms of office.**

Terms of office shall be for a period of three years. However, the rights and powers of a member whose term has expired shall remain in effect until the first meeting of the Board following the appointment of that member's successor; except that no member shall remain in office in this manner for longer than one year after the end of his term.

**Source:** PL 2-10 § 8(4); PL 3-27 § 3 (part); PL 14-54 § 1.

### **§ 213. Board of Directors—Vacancies.**

Every vacancy on the Board shall be filled for the unexpired portion of the term in the same manner as originally filled. Upon determination that a vacancy exists, the chairman or, in his absence, the presiding officer of the Board shall issue a notice of vacancy to all members of the Board and the parties responsible for filling the vacancy.

**Source:** PL 2-10 § 8(5); PL 3-27 § 3 (part); PL 14-54 § 2.

### **§ 214. Board of Directors—Removal.**

(1) Members of the Board may be removed from the Board for failure to attend three consecutive meetings of the Board.

(2) A member may be removed by a two-thirds majority vote of all other members of the Board for neglect of duty or malfeasance in office. Notification of intent to call for removal pursuant to this section shall be made at least 30 days in advance, by means which shall be described in the bylaws of the Corporation, and shall include a summary of the basis of the charges against the member and identification of the witnesses to be called and evidence to be used.

(3) The Supreme Court of the Federated States of Micronesia shall have jurisdiction to hear claims of wrongful removal.

**Source:** PL 2-10 § 8(6); PL 3-27 § 3 (part).

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**Cross-reference:** The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

**§ 215. Board of Directors—Officers.**

The Board shall elect from among its members a chairman, vice chairman, and secretary-treasurer. The chairman shall ordinarily preside at Board meetings. In his absence the vice chairman shall preside. The bylaws shall provide for determination of the presiding officer in the absence of these officers.

**Source:** PL 2-10 § 8(7); PL 3-27 § 3 (part).

**§ 216. Board of Directors—Regular meetings.**

Regular meetings shall be held not less than twice per calendar year, at such times and place or places as shall be determined by the bylaws.

**Source:** PL 2-10 § 8(8); PL 3-15 § 1; PL 3-27 § 3 (part).

**§ 217. Board of Directors—Special meetings.**

Special meetings shall be called by the chairman on his own initiative, or by petition of one-third of the members, pursuant to notice as shall be provided in the bylaws.

**Source:** PL 2-10 § 8(9); PL 3-27 § 3 (part).

**§ 218. Board of Directors—Quorum.**

A quorum of all regular business of the Board shall be five members.

**Source:** PL 2-10 § 8(10); PL 3-27 § 3 (part).

**§ 219. Board of Directors—Executive committee—Establishment; Meetings.**

There shall be an executive committee of the Board composed of the chairman, vice chairman, and secretary-treasurer, or their individually designated substitutes chosen from among the membership of the Board. The executive committee shall meet with the chief executive officer at least once per calendar quarter at such times and places as shall be determined by the bylaws.

**Source:** PL 2-10 § 8(11); PL 3-27 § 3 (part).



**§ 220. Board of Directors—Executive committee—Powers.**

The executive committee shall be empowered to conduct all business of the Board, except that the executive committee shall not have the authority to terminate the services of the chief executive officer, to retain the services of a new chief executive officer, to alter the senior levels of the administrative structure of the Corporation, to approve the budget of the Corporation, or to increase the indebtedness of the Corporation beyond such limits as are provided in the bylaws, without the concurrence of the Board.

**Source:** PL 2-10 § 8(11); PL 3-27 § 3 (part).

**§ 221. Board of Directors—Record of meetings.**

The secretary-treasurer, or in his absence another member designated by the bylaws, shall keep full and accurate minutes of all meetings.

**Source:** PL 2-10 § 8(12); PL 3-27 § 3 (part).

**§ 222. Board of Directors—Compensation of directors.**

Directors who are employees of the National Government or a State government of the Federated States of Micronesia shall receive no additional compensation for their service as members of the Board. The compensation of members who are not Government employees shall be as determined by the Board. All members of the Board shall be entitled to compensation for travel and per diem at established Federated States of Micronesia Government rates when serving the Corporation.

**Source:** PL 2-10 § 8(13); PL 3-27 § 3 (part).

**§ 223. Management.**

There shall be a chief executive officer of the Corporation, whose compensation, title, and term of office shall be determined by the Board. The chief executive officer shall be responsible for the management of the operations of the Corporation, and shall, in accordance with the policies established by the Board, retain, direct, and terminate the services of employees. Subject to the Board's approval, the chief executive officer shall select and train a citizen of the Federated States of Micronesia to take over the responsibilities of the chief executive officer as soon as feasible.

**Source:** PL 2-10 § 9; PL 3-15 § 2; PL 3-27 § 3 (part).

**§ 224. Budget and finance officer.**

The chief executive officer shall appoint, with the concurrence of the Board, a budget and finance officer, for

such term as shall be provided in the bylaws of the Corporation. He shall receive and disburse all funds of the Corporation. The Board may require that he shall execute, at the expense of the Corporation, a good and sufficient bond with sureties authorized to do business in the Federated States of Micronesia. The budget and finance officer shall serve at all times under the direct supervision of the chief executive officer.

**Source:** PL 2-10 § 10; PL 3-27 § 3 (part).

### **§ 225. Budget preparation.**

The budget and finance officer shall prepare in advance of each fiscal year, under the supervision of the chief executive officer, an annual budget for the Corporation, taking into consideration anticipated capital and operational expenditures and anticipated revenues. The Corporation shall use the same fiscal calendar as that of the Government of the Federated States of Micronesia. The budget shall indicate the operational, capital, and maintenance requirements of the Corporation that will be met with the anticipated revenues of the Corporation, and such essential requirements as cannot be met without increase in the rate of revenues or outside financial assistance.

**Source:** PL 2-10 § 11; PL 3-27 § 3 (part).

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code.

### **§ 226. Supplemental budget requests.**

To the extent that the Corporation deems it necessary and advisable, the Corporation is authorized to seek appropriations from the Congress of the Federated States of Micronesia and, to the extent approved by the President of the Federated States of Micronesia, grants from sources outside of the Federated States of Micronesia, of such funds as are necessary to supplement revenues to provide for the operations, maintenance, and expansion of the telecommunications system of the Federated States of Micronesia.

**Source:** PL 2-10 § 12; PL 3-27 § 3 (part).

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

### **§ 227. Accounts and records.**

(1) The Board and the chief executive officer shall be jointly responsible to ensure that the budget and finance officer prepares proper and complete books of account reflecting all income, expenses, assets, liabilities, capital, and retained earnings of the Corporation. Accounting for the Corporation shall be on the accrual basis so as to enable periodic determination of profit and loss from operations and the full cost of providing services. Expenses shall include depreciation on fixed assets and amortization of long term debt.

(2) The Board, not later than 90 days after the close of each governmental fiscal year, shall submit to the President, the Congress, and the Governor and legislature of each State a complete report, including financial statements, showing the activities of the Corporation during the fiscal year, the present condition of the Corporation, and such other matters as the Board shall deem appropriate. The financial statements shall include at least a balance sheet, operating statements, statement of changes in financial position, and analysis of changes in retained earnings.

(3) The Public Auditor shall audit the financial statements and books of account of the Corporation no less frequently than annually.

**Source:** PL 2-10 § 13; PL 3-27 §§ 2, 3 (part).

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code. The statutory provisions on the Public Auditor are found in chapter 5 of title 55 (Government Finance and Contracts) of this code.

### **§ 228. Public consultation.**

The Board and the executive committee shall periodically consult with, and seek the advice of, interested members of the public in each respective State of the Federated States of Micronesia regarding the operation of telecommunications services. The Board and the executive committee shall endeavor to ensure that such consultations are done with persons broadly representative of the actual and potential users of the telecommunications system, including representatives of the medical and educational professions, civil aviation, maritime commerce, broadcasting, law enforcement, and business.

**Source:** PL 2-10 § 14; PL 3-27 § 3 (part).

### **§ 229. Transition—Commencement of service.**

The Corporation shall commence provision of services in the Federated States of Micronesia at such time as it has acquired title to or control over the telecommunications equipment and other related property of any entity including the Trust Territory of the Pacific Islands which is located in the Federated States of Micronesia, or as may otherwise be agreed between the Government of the Federated States of Micronesia and the Government of Trust Territory of the Pacific Islands. The Corporation shall determine the manner and terms upon which it shall assume its responsibilities under this chapter, in accordance with applicable law.

**Source:** PL 2-10 § 15(1); PL 3-27 § 3 (part).

**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

### **§ 230. Transition—Employees.**

The Corporation shall undertake to employ the employees of the Trust Territory Government and the State governments who are employed in good standing in telecommunications services at the time that the Corporation commences operation of telecommunications services. Nothing herein shall require the Corporation to hire such employees at positions commensurate with their former responsibilities, or at the rate of wages previously received; however, each such employee shall be able to carry forward rights to accrued sick leave, but not annual leave or other benefits.

**Source:** PL 2-10 § 15(2); PL 3-15 § 3; PL 3-27 § 3 (part).

### **§ 231. Liens and debts.**

(1) The Board of Directors is hereby empowered to secure its debts by the granting of a first lien on specified assets of the Corporation. A first lien shall have priority over all other liens against such assets whether derived by contract, statute, common law or custom.

(2) A first lien shall be perfected by the filing of the lien documentation with the Assistant Clerk or Clerk of the Supreme Court of the Federated States of Micronesia in the State in which the asset is located.

(3) All subsequent creditors and lien holders shall be conclusively deemed to have constructive notice of such lien upon filing as set forth in subsection (2) of this section.

(4) The assets which may be pledged to secure debts of the Corporation include all revenue of the Corporation, all personal property and fixtures and real property to the extent permitted by the laws of the Federated States of Micronesia and the State in which the real property is located.

(5) The Corporation shall not assume any debt that will be repaid later than 365 days from the date of execution, or agree to a lien or other security interest in the assets of the Corporation as security for a debt, without the approval by resolution of the Congress.

**Source:** PL 5-7 § 1.

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**Cross-reference:** The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

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