



FSM Telecommunications Corporation

June 11, 2021

Takuro Akinaga  
Chief Executive  
Telecommunications Regulation Authority  
P.O. Box 1919  
Pohnpei FM 96941

Re: Response to Bottleneck facilities paper

Dear Mr. Akinaga:

This response is pursuant to the request for comments indicated in your Consultation Paper on Bottleneck Fiber Optic Communications Facilities.

Per Section 6 we wish our responses to be made public. Per section 8 we wish to be notified and will attend a public hearing on this issue.

The following are the list of questions provided.

36. We provide here the relevant consultation questions for respondents' consideration below. When answering a question, please explain your reasoning in detail.

a. Do you agree with the proposition that submarine and terrestrial fiber communications facilities are bottleneck facilities as defined in the Act?

It depends on how you define a bottleneck facility, and whether it is already in use or is possibly to be built in the future.

The issue of declaring all submarine fiber communications facilities as bottleneck facilities is not possible at this time, due to the fact that for the current time there is no underwater cable to Kosrae, and no underwater cable may ever be laid. The current EMC project was halted, and all contracts had to be re-bid, which means per OAE that the cable at the very earliest would be operational in late 2023, or early 2024. That is the optimistic forecast and there was also testimony that the project may not go through at all.

If FSMTC sought and received grant funding for a Kosrae cable there should be no limitation on it pursuing such a project since the OAE/World Bank cable has not been built and may never be built.

This cable cannot be deemed a bottleneck facility when it does not even exist.

On the issue of the Pohnpei Spur, there are in fact two distinct portions of one facility. The Pohnpei Spur should not be deemed a bottleneck facility as FSMTC still retains an interest in 50% of the spectrum rights and is challenging the

validity of the current IRU which transferred 50% of the spectrum rights to OAE for no compensation. This matter is currently in court.

Further, OAE is unreasonably trying to interfere with an upgrade of the portion of the Pohnpei Spur unquestionably retained by FSMTC. OAE is contending that it will upgrade the spectrum with grant funding, but per testimony a) the grant funding is not approved by the World Bank, b) the upgrade would require the consent of RMI/MINTA to go forward for World Bank to approve, c) it is unclear at the current time what conditions World Bank will impose on RMI/MINTA for the upgrade, d) no contracts have been signed by OAE to actually undertake the upgrade, and e) no estimate can be given as to when it will occur, f) this upgrade was first proposed in 2018.

Since this upgrade is so ill defined and uncertain, FSMTC should not be barred from performing this upgrade on its own because a) contracts have been signed, b) work has already begun, c) it will be completed by October, 2021 d) FSMTC needs the upgrade to service its growing demand in Pohnpei, e) it cannot wait for OAE to maybe take action. For these reasons the Pohnpei Spur should not be considered a bottleneck facility by virtue of the definition that two such facilities already exist.

On the issue of terrestrial fiber, it should not be considered a bottleneck facility for the reasons addressed in the main portion of this response.

b. In your view, are submarine and terrestrial fiber communications facilities essential for the production of communications services in the FSM?

The basic answer to this question is no, since the main competition to submarine and terrestrial fiber communications is satellite communications. TRA should be addressing a fair playing field for both types of players in the market, fiber and satellite, rather than trying to limit access to the submarine and terrestrial markets. If satellite supplants fiber cables, it is not essential.

c. In your view, could either submarine or terrestrial fiber optic communications facilities practicably be duplicated by a potential competitor in a communications market in the FSM? Please explain the reasons why, in your view, a communications facility can or cannot practicably be duplicated by a potential competitor in a communications market in the FSM.

Please see the response to a, above, to explain practical duplication and that the TRA should not prevent construction of facilities that are not existent now, and which are only hypothetical in the future.

Concerning terrestrial fiber optic communications, the questions being asked do not address the actual issues presented here and will be addressed below.

d. Referring to the description of fiber optic communications facilities in paragraphs 17-18 above, are your view there any specific elements or portions of either submarine or terrestrial fiber optic communications facilities that could be practicably duplicated by a potential competitor?

The short answer is yes, but see responses a and c.

e. Are there any geographic or product markets in the FSM in which submarine or terrestrial fiber networks could be practicably duplicated by a potential competitor?

The FSM is a small market where duplication is not desired or for the most part necessary. However, the issue as raised above is not hypothetical duplication, but what is actually being built on the ground. These questions do not address these issues, but please review the answers above..

We have summarized brief responses to these questions, but we are also stating as a public comment that you are not asking the right questions.

### Submarine Fiber Optic Communications

As stated above, any submarine fiber optic communications facilities cannot be all lumped together as one indivisible operation.

1. Each facility must be addressed separately.
2. There is currently a lawsuit and the TRA should not make any determinations concerning these facilities until the lawsuit is resolved.
3. FSMTC is seeking to set aside the FSMTC IRU, or at least effect significant modifications.
4. The Kosrae cable has not been built, it may never be built, and per the OAE the earliest it could be operational is late 2023, or early 2024. That would appear to be optimistic.
5. FSMTC could also receive grant funding and build the Kosrae cable earlier.
6. FSMTC owns outright the Pohnpei Spur.
7. FSMTC is challenging in Court the taking of 50% of the Pohnpei Spur spectrum by OAE. However, notwithstanding this challenge, FSMTC owns exclusively the other 50% of the spectrum and its access to the cable through its own cable landing station.
8. FSMTC is able to upgrade its own spectrum on its own cable without interference and it needs the additional bandwidth.
9. OAE has talked about a spectrum upgrade since 2018, but has accomplished nothing.
10. For these reasons the TRA should not declare these underwater facilities bottleneck facilities at this time.

### Terrestrial Fiber Optic Communications

Concerning Terrestrial Fiber Optic Communications the questions posed are misleading, ambiguous and do not address the specifics of reality in the FSM.

Again, this whole proposal appears to be submitted and pushed through by the World Bank to justify and support their agenda in the FSM. As a result, they do not wish to ask appropriate questions.

There are several issues here and no information is being solicited on any of these issues.

There is currently a financing agreement with the FSM and the World Bank to build Fiber to the Home (FTTH) in the FSM. The World Bank wants to fund FTTH in the FSM but make it operational only through ownership by the OAE. That is fairly nonsensical since OAE has no technicians, repair people, service people, equipment or tools.

However, if terrestrial fiber is to be designated a bottleneck facility then OAE should not be involved at all since it would duplicate services for what FSMTC already has at the current time.

302(f) 'bottleneck facility' means a communications facility declared by the Authority to be essential for the production of communications 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 communications market;

Further the questions that need to be asked are as follows:

1. What terrestrial fiber optic cable has already been installed in the FSM?

FSMTC has installed terrestrial fiber optic cable as follows:

- a. Yap, all businesses and commercial enterprises, government, and most current residential customers.
- b. Chuuk, all of Weno Island is covered, including businesses, government and residential customers.
- c. Pohnpei, most businesses, government and a large portion of residential customers.
- d. Kosrae, initially started laying fiber cable to customers.

2. What terrestrial fiber optic cable has been installed by OAE?

- a. Yap None, no contracts in place, grant not approved by World Bank, no estimated start date proposed.
- b. Chuuk, None, no contracts in place, grant not approved by World Bank, no estimated start date proposed.
- c. Pohnpei, None, no contracts in place, grant not approved by World Bank, no estimated start date proposed, no financing agreement signed by the State which is a requirement for all four state to receive World Bank approval.
- d. Kosrae, None, no contracts in place, grant not approved by World Bank, no estimated start date proposed.

3. Where is OAE supposed to build its FTTH?

Unknown, no plans. They are not supposed to duplicate what is already in place but approximately 90% of what they intend to build would be duplicative.

4. If FTTH is not supposed to duplicate what is already in place, with both hardware, and technical support, what is its purpose?

Unknown, no answer can be provided, other than "its free money."

5. Is the purpose of this proposal to take assets from FSMTC and turn them over to OAE without compensation and without recourse.

That would violate Article IV, section 3 of the Constitution, prohibiting deprivation of property without due process, and would be an unconstitutional taking.

6. Is FSMTC supposed to then pay OAE for the use of its own lines?

That would violate Article IV, section 3 of the Constitution, prohibiting deprivation of property without due process, and would be an unconstitutional taking.

7. What is the FTTH business model proposed by OAE.

A comprehensive business plan has not been submitted, but oral explanations would appear to be unworkable and not feasible, even if grant funded. For example I am attaching Exhibit 6 from the current civil action with OAE. It shows customers in FSM for ADSL. It shows 6678 customers in all four states. No one has argued that there are substantially more customers in untapped markets.

OAE further testified that they need 20% of a market to be committed to a retail provider to build up the FTTH in any area. (Area has not been well defined).

There would be many areas where they could not reach that market level due to the fact FSMTC is already servicing more than 80% of the market in those areas.

The only way for OAE to then build would be to poach customers from FSMTC, but then this poaching is needless duplication of expensive fiber optic cable facilities, since OAE would build its own fiber.

Lastly, OAE, a licensee of TRA to build terrestrial cable, is for all intents and purposes a competitor of FSMTC, and its FTTH project is primarily OAE engaging in retail operations. This also is against the wording and intent of the law.

8. If FSMTC retains its current terrestrial cable systems what is its responsibility to allow other retailers to use such pre-existing facilities.

This issue has never been addressed by TRA, even though the law has been in place since 2014. TRA has to consider costs of maintaining all of the infrastructure and the costs to provide services and run the system to any new retailers. Retailers have to pay a fair share of the costs. Retailers cannot simply plug in switching gear and provide a few modems and call themselves

a telecommunications company. Retailers cannot simply rely on the FSMTC to continue maintenance, repair and service for free. Retailers also need to be assessed a portion of any costs to be charged by OAE for underwater cable communications. Lastly new retailers cannot simply service a small lucrative area, and leave the harder to reach and less lucrative areas to FSMTC. FSMTC has an obligation to service all areas of the FSM, but it cannot do so if it loses its paying customer base.

Foreign telecommunications companies have run the numbers with spread out population, low numbers of customers and difficulties with the location, and not a single one has even conducted a preliminary exploration with investment here. Several non telecommunications local enterprises may be expressing interest, but they have not been assessed any costs yet, nor have they been apprised of any true and fair costs of operation. Once they are provided with real costs the business model as proposed by OAE will simply fail.

9. How will terrestrial fiber compete against satellite?

This issue is simply being ignored. Star Link will be a major game changer with cut rate internet and satellite. Remote locations will be easier served by satellite as opposed to terrestrial cable. Once again, TRA as a regulator should be working with its local telecommunications providers to simply keep them operating, rather than focusing on grandiose plans that will not reach fruition.

10. Should terrestrial fiber be considered a bottleneck facility?

Not at this time, TRA has not conducted enough research or reviewed the issues. Its simplistic diagram on page 4 of the Paper is simply unhelpful, and does not address the factual matters that need to be reviewed.

Please review these comments. We look forward to presenting in more detail at the public hearing.

Sincerely,



Fredy Perman  
President/CEO  
FSM Telecommunications Corporation