



Federated States of Micronesia
Telecommunication Regulation Authority

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October 27, 2021

Fredy Perman
CEO & President
FSM Telecommunications Corporation
P.O. Box 1210
Pohnpei, FM 96941

Dear Fredy,

Re: Consultation Paper on Bottleneck Fiber Optic Communications Facilities

Thank you for your letter of October 6, 2021, relating to our letter of September 27, 2021, attaching requests for information relevant to the above-captioned consultation. Rather than respond to those requests for information, you allege in your letter a lack of neutrality on the part of the Authority on issues regarding fiber to the home.

The Authority denies any lack of "neutrality" as alleged. Further, your concerns are misplaced, as will be described below, and the Authority requests that FSMTC respond to the September 27, 2021, requests for information.

TRA Role in the Project

As noted in your letter, the Authority is a party to a Project Agreement with the International Development Association dated April 13, 2020. Section 2.01 of the Project Agreement reads as follows:

*2.01 The Project Implementing Entity (TRA) declares its commitment to the objectives of the Project. To this end, the Project Implementing Entity **shall carry out Part 3(c) of the Project** in accordance with the provisions of Article V if the General Conditions and the Schedule to this Agreement, and shall provide promptly as needed the funds, facilities, services and other resources required for its Respective Part of the Project.*
[emphasis added]

This section 2.01 is clear that the TRA's obligations under the Project Agreement are limited to Part 3(c) of the Project.

Your letter, however, failed to include any text describing Part 3(c) of the Project. This is found in Schedule 1 of the Financing Agreement between the Federated States of Micronesia and the International Development Association dated April 12, 2020, and reads as follows:

- (c) **strengthening the capacity of the Telecommunications Regulation Authority to fulfil effectively its responsibilities and mandate under the Telecommunications Act**, as well as such other responsibilities that may be conferred on it from time to time, including but not limited to data privacy, data protection, harmful digital communications and cybersecurity; and [emphasis added]

The scope of Part 3(c) of the Project, therefore, is the strengthening of the capacity of the TRA to carry out its duties and obligations under the Telecommunications Act.

As a statutory entity, the Authority is bound to carry out its duties under the Telecommunications Act, and the Project Agreement simply affirms the Authority's responsibilities in this regard and supports the strengthening of its capacity to do so.

TRA Obligations under the Project Agreement

In your letter, you also cite sections 1(B)(b) and 1(B)(c) of the Schedule to the Project Agreement. However, you chose not to reproduce the entire section 1(B), which we do here:

B. Implementation Arrangements

To ensure proper and efficient implementation of its Respective Part of the Project, the project Implementing Entity shall:

- (a) *enter into the TRA Subsidiary Agreement with the Recipient, in form and substance satisfactory to the Association, and thereafter comply with its obligations under the TRA Subsidiary Agreement:*
- (b) *cooperate fully with the Recipient and the Association to assure that the purposes of the Financing and the objective of the Project will be accomplished. To that end, the Project Implementing Entity shall: (i) from time to time, at the request of either the Recipient or the Association, **exchange views on the Project and the performance of its obligations under this Agreement**, and furnish to the Recipient and the Association, as may be relevant, **all such information relating to its Respective Part of the Project** as they shall reasonably request; and (ii) promptly inform the Recipient and the Association of any condition which interferes with, or threatens to interfere with, such matters;*
- (c) *at all times throughout the Project implementation period, not be subject to a change in its objectives, organizational structure, budget or governance, without prior written consent of the Association, if such action or change has or is reasonably likely to have a material adverse effect on the ability of the Project Implementing Entity to carry out **its obligations under its***

Respective Part of the Project, or any interests of the Association or the Recipient;

- (d) throughout the Project implementation period, **implement the Telecommunications Act** in order to support a competitive ICT sector and promote long term interests of end users of ICT services; and
- (e) **pursuant to the Telecommunications Act** maintain: (i) licensing rules for communications networks and services; (ii) spectrum licensing rules; and (iii) interconnection and access rules, including wholesale prices and pricing principles to guarantee an open and non-discriminatory access to bottleneck facilities and the provision of wholesale services, all in a manner satisfactory to the Association.
[emphasis added]

It is clear that the focus of section 1(B)(b) is on the performance of the TRA's obligations under the Project Agreement and on the provision of information relating to the TRA's Respective Part of the Project. The requirement to "exchange views on the Project" and "to cooperate fully with the Recipient and the Association to assure that the purposes of the Financing and the objective of the Project will be accomplished" must also be taken to be limited to the TRA's Respective Part of the Project.

Similarly, the focus of section 1(B)(c) is also on the performance, and risks to the performance, of the TRA's Respective Part of the Project.

Sections 1(B)(d) and 1(B)(e) simply require the TRA to do what it is already doing, namely, the exercise of its functions and duties under the Telecommunications Act.

Notably absent from the Project Agreement and from Part 3(c) of the Project is any reference to FSMTC, the OAE, or a fiber-to-the-home project.

Not a Party to the Financing Agreement

While you assert that section 1(B) of the Schedule to the Project Agreement needs to be read in conjunction with the Financing Agreement, it should be emphasized that the TRA is not a party to the Financing Agreement. Nor is the TRA bound by the obligations described in section 1(A)(6) of Schedule 2 of the Financing Agreement that you reference. These apply strictly to the Government of the FSM.

TRA Reporting Requirements

As noted in your letter, the TRA has certain reporting requirements under section 2(A) of the Schedule to the Project Agreement. These, however, are limited to reporting on the TRA's Respective Part of the Project, i.e., Part 3(c) of the Project (the strengthening of the capacity of the TRA to carry out its duties and obligations under the

Telecommunications Act) and certain statistical indicators on the development of communications markets in the FSM.

Contrary to the concerns expressed in your letter of October 6th, the TRA is not in fact contractually obligated to disclose to the World Bank, the Government of the FSM, the OAE, or indeed any other person, the information requested of FSMTC by the TRA's September 27, 2021, letter. The information requested by the TRA in the context of the Bottleneck Facilities Consultation is not relevant to or connected to the strengthening of the TRA's capacity to carry out its duties and obligations under the Telecommunications Act, and is therefore outside the scope of the TRA's reporting requirements under the Project Agreement. It is, however reasonably required by the TRA for the purposes of making a determination in the Bottleneck Facilities Consultation (if such a determination is warranted).

Bottleneck Facilities Consultation

In your October 6, 2021, letter, you suggest that *"the designation of bottleneck facilities regarding FTTH would appear to be part and parcel of the mandate listed in these documents to attempt to benefit OAE in its FTTH project."*

This is in fact incorrect. First, the TRA has no such "mandate." Second, the TRA is exercising its powers under the Act in order to achieve the objectives of the Act. Whether a communications facility is a bottleneck facility will depend upon the specific relevant facts regarding that facility, facts which the TRA has been seeking through its requests for information in the Bottleneck Facilities Consultation.

In your letter, you ask that the *"... TRA to defer action on this matter until a number of issues, including a judicial determination is made if TRA has conflicts in this matter that prohibit fair and impartial actions regarding all matters related to FTTH."* The court's October 19, 2021, Order Granting in Part Motion to Dismiss Counterclaim appears to have addressed this issue.

Confidentiality Matters


The TRA understands, without deciding the matter, that the information requested by its September 27, 2021, letter may be considered confidential or sensitive. You may choose, if you wish, to designate some or all of it as "sensitive information" pursuant to section 322 of the Act. If you do so, please explain in detail why you consider any of the information to be "sensitive information" as defined in section 322 of the Act. We may publish some or all of your answers to the questions, unless it is "sensitive information."

Response to the Requests for Information

As noted above, the Authority requests that FSMTC respond to the September 27, 2021, requests for information.

Please do so **by no later than 5 pm November 9, 2021.**

Sincerely,



Takuro Akinaga
Chief Executive