



FSM Telecommunications Corporation

October 06, 2021

Takuro Akinaga

Chief Executive

Telecommunications Regulation Authority

P.O. Box 1919

Pohnpei FM 96941

Re: Consultation Paper on Bottleneck Fiber Optic Communications Facilities

Dear Mr. Akinaga:

This response is pursuant to the request for comments indicated in your Consultation Paper on Bottleneck Fiber Optic Communications Facilities, dated September 27, 2021.

Initially we must raise a huge issue. Based on the advice of our attorney, we are seeking for 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.

We just located two critical documents, which are attached. The first is the Financing Agreement between the FSM and the International Development Association (World Bank), Grant Number D-556-FM, dated April, 2020.

The second and much more concerning agreement is the agreement between the International Development Association (World Bank) and the Telecommunications Regulation Authority of Federated States of Micronesia which you signed on 13 April 2020.

Article II, Project section 2.01 states,

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 of 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.

On the attached Schedule, p. 4, section 1(B)(b) and (c) states as obligations of TRA:

(b) cooperate fully with the Recipient (FSM) 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 Agency 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 to be subject to a change in the 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 Project related interests of the Association or the Recipient. (Emphasis added)

This section then needs to be read in conjunction with the World Bank

Financing Agreement with the FSM. Schedule 2, Section 1(A)(6) states in part.

The Recipient shall take all measures required or necessary on its part to ensure that: (a) equipment, facilities or infrastructure, including but not limited to fiber optic networks, used in the supply of ICT services by FSMTC or the Open Access Entity, is used in an economically efficient manner, (b) from the Effective Date any new investment in fiber optic networks for telecommunication services shall be owned by the Open Access Entity and not by FSMTC or any other publicly owned or controlled entity: and (c) FSMTC shall not compete against the Open Access Entity or otherwise duplicate OAE's investments in

equipment, facilities or infrastructure used in the provision of telecommunications services.

If TRA is required by its own contractual agreement to implement the goals of the FSM/World Bank Financing Agreement, I am highly concerned that this requirement should have been disclosed prior to this time, and TRA should not be claiming neutrality on issues regarding Fiber to the Home. Further, without such neutrality it is unclear how TRA can even hear matters on this issue.

Further I am even more greatly concerned regarding semester reporting requirements.

Section II, A. Project Reports, states:

1. The Project Implementing Entity shall monitor and evaluate the progress of its Respective Part of the Project and prepare Project Reports for its Respective Part of the Project in accordance with the provisions of Section 5.08(b) of the General Conditions and on the basis of the indicators acceptable to the Association. Each such report shall cover the period of one calendar semester and shall be furnished to the Recipient not later than two weeks after the end of the period covered by such report for incorporation and forwarding by the Recipient to the Association of the overall Project Report.

FSMTC is being asked to disclose highly confidential information, which it appears you are contractually obligated to disclose to the World Bank, FSM and hence OAE. Such disclosures would be highly prejudicial to FSMTC. Further 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.

At the current time we have issued a subpoena for these semester reports.

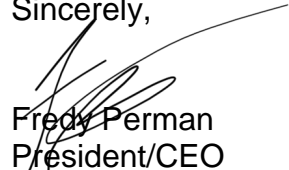
FSMTC is willing to comply with the normal requests from TRA and will comply with these requests if so ordered. However, based on the above TRA should give us a written response concerning these issues and to preserve these issues for any litigation.

If TRA feels it is justified that there is no need to defer responding, FSMTC requests a reasonable time to respond after the written decision is issued.

However, this conflict is so substantial that clearly this issue must be addressed first.

Thank you for your assistance in this matter.

Sincerely,



Fredy Perman  
President/CEO  
FSM Telecommunications Corporation