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POHNPEI
TRIAL DIVISION

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
TRIAL DIVISION – POHNPEI STATE

FSM Telecommunication Cable Corporation,
Plaintiff,
vs.
FSM Telecommunications Corporation
Defendant.

FSM CIVIL ACTION NO. 2021-010

Transcript of the 2nd day of the Hearing on Plaintiff's Preliminary Injunction Motion
held on May 7, 2021
FSM Supreme Court, Palikir, Pohnpei FSM 96941

APPEARANCES:

For the Plaintiff: Mr. Aaron L. Warren
Mr. Robert B. Lamanna
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For the Defendant: Mr. Steven V. Finnen
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Kolonias Pohnpei FM 96941

Sandy A. Albert
Transcriber
FSM Supreme Court

EXHIBIT "E"

1 basically another solution to transport data and voice
2 communications. The amount of space that it needs in the
3 ground is smaller. A fiber is thin, thinner than a hair and
4 it can transport multiple times of data and voice
5 communications as a big twelve hundred double cable, double
6 wire cable. So, fiber to the home is basically a way, the
7 new way to connect switches, telecom infrastructure to
8 households and businesses. It offers greater speeds. It
9 offers more reliability. And it offers lower cost of
10 maintenance in general.

11 MR. WARREN: And you had testified that about half of
12 your Thirty million in Phase 3 funding was allocated for FTTH
13 projects?

14 WITNESS: The Phase 3 funding is approximately thirty,
15 Three Zero Million dollars and Fifteen Million of that is for
16 the infrastructure part of the project. Of which from that
17 Fifteen Million, approximately twelve million is allocated to
18 fiber to the home infrastructure.

19 MR. WARREN: In which States?

20 WITNESS: In principal, in all four States, but there is
21 a close in the financing agreement for FSM digital-FTTH is
22 part of the FSM digital project and that financing agreement
23 says that World Bank will not finance duplication of existing
24 cables. In the State of Chuuk on the island of Weno there is

1 already a fiber cable, a terrestrial fiber cable, operated by
2 FSM Telecom. So, the OAE have so far refrained from any
3 initiatives in Chuuk, but we are looking to bring fiber
4 network on the larger Chuuk lagoon islands. And we are
5 debating at the moment on how to do that. That would not be
6 a network that we would operate ourselves to serve customers.
7 It would be a network that would be made available to Telecom
8 operators.

9 MR. WARREN: Have you begun on any of these State based
10 projects?

11 WITNESS: No, not really because what I told you earlier
12 is that in the financing agreement there are terms and
13 obligations. One of the obligations is that four
14 implementation agreements need to be signed before any money
15 will be made available for grant funding. And the Pohnpei
16 implementation agreement is missing at this time. So, what
17 we have done is preparatory work, and project plans. That can
18 all be done with limited amounts of money. They have been
19 funded, but that funding is limited to the urgent project
20 planning only. So, more detailed planning is more
21 complicated and would require more money and that money is
22 not available at the moment as long as the FSM Government has
23 not fulfilled all its terms and obligations, its obligations
24 mainly in the financing agreement. So, when we are in a

1 planning phase and next step we start when funding becomes
2 available.

3 MR. WARREN: Have you provided any notice of your
4 intention to implement a new—the funds for State site
5 projects?

6 WITNESS: Information to whom?

7 MR. WARREN: Any, any of the Section 342 Extension for
8 a Notice?

9 WITNESS: Yes, we have informed FSM Telecom that we have
10 intentions. I have shared the initial project plan with Mr.
11 Perman last year while we were both attending a conference in
12 Hawaii. I have also told him that I think this would be
13 great way to do this together. And that we could use World
14 Bank funding well to build out and improve the existing
15 networks. And actually the only condition that World Bank
16 would have here is that it would be a network that is open to
17 any operator that wants to use it. We did not get a positive
18 response from FSMTC.

19 MR. WARREN: Why not?

20 WITNESS: I do not know. Our communication with FSMTC
21 has been limited about this. I guess it is in line with what
22 Mr. Perman mention in the sections of the other email that
23 were just highlighted and we had discussed. He has his own
24 opinion about it and he is entitled to that.

1 MR. WARREN: Does Telecom have their own project to do
2 the same thing or?

3 WITNESS: Yes, but here you get into a situation again
4 that the financing agreement for the projects clearly forbid
5 duplication. Because World Bank's point of view is we are a
6 developing organization and they fund where no local money is
7 available. If there is local money available, then obviously
8 there is no way for World Bank to step in because that would
9 create market distortion. So, the instruction here to the
10 government, or the agreement or the financing agreement
11 clearly states to the governments that it is their
12 responsibility to make sure that initiatives, other
13 initiatives, into fiber investments would be kept on hold or
14 it would be synchronized with the OAE.

15 MR. WARREN: Is there a reason you could think of why
16 Telecom would want to do its own projects when there is grant
17 funding available to the open access entity to do the same
18 thing?

19 WITNESS: Well, I think typically, I have been in
20 situations myself in earlier jobs same situation as Mr.
21 Perman is in. If you are the (Not Audible) operator, then in
22 general you try to do everything to avoid competition. You
23 really do not want to have a competitor on your network other
24 than if you are forced by the regulator. I have had a lot of