

TITLE 2: NATURAL RESOURCES
DIVISION 1: MARITIME AND COASTAL RESOURCES

§ 1222. License, Lease or Permit Required.

(a) Except as provided in subsection (b) of this section, no person shall engage in any exploration, development, water or non-water-dependent uses of submerged lands, or extraction of petroleum deposits or mineral deposits which may be located in submerged lands of the Commonwealth without first obtaining from the Secretary an approved license, lease, or permit for such activity.

(b) *Fiber Optic Telecommunications Cable Rights-of-Way.* Any person may engage in a water-dependent use of submerged lands of the Commonwealth for the construction, installation, operation, and maintenance of a fiber optic telecommunications cable and necessary related facilities for a fiber optic telecommunications network system, without need for a lease issued pursuant to 2 CMC § 1221(g) or other license or permit under this chapter, and shall by operation of law hold a right-of-way for such purpose in and through the submerged lands of the Commonwealth, by complying with all of the following conditions:

(1) Agreeing to pay, by notice to the Secretary of the Department of Lands and Natural Resources, and paying to the Treasury of the Commonwealth of the Northern Mariana Islands an annual use fee of \$60,000 per annum in U.S. dollars (or more at the option of such person), in advance in quarterly or fewer installments. This fee shall not be increased for 25 years, so long as timely paid, and this undertaking not to increase the fee shall constitute a contractual obligation of the Commonwealth government upon tender of the first such payment. The payment prescribed by this subsection constitutes the adequate compensation for the use of submerged lands for water and non-water-dependent uses required by 2 CMC § 1221(f). The first such payment shall be tendered not more than 30 days after issuance of the notice prescribed by this subsection.

(2) Agreeing to provide, by notice to the Secretary of the Department of Lands and Natural Resources with a copy to the relevant mayor, and providing on a nondiscriminatory basis comparable ranges and levels of services to or on Rota and Tinian as such person provides to or on Saipan, with such undertaking to constitute a contractual obligation of such person for the benefit of every resident of the island concerned.

(i) "Providing on a nondiscriminatory basis comparable ranges and levels of services" as used in this subsection includes:

(A) Providing service of equal quality;

(B) Conforming to the universal service principles stated in Section 254(b) of the federal Communications Act of 1934 [47 U.S.C. § 151 et seq.], as amended by Section 101 of the federal Telecommunications Act of 1996;

(C) In the event such person or an affiliated company provides local exchange services, commercial mobile telecommunications services, or advanced telecommunications or information services in the Commonwealth at any time during the period such person is receiving the benefit of this subsection (b) of this section, provision of such service to the islands of Saipan, Tinian, and Rota, uniformly so far as reasonably practicable, in a nondiscriminatory manner, at uniform rates throughout the is-

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lands without additional charges or tolls for services connecting one island to another; and

(D) Requiring any person purchasing, renting, or leasing capacity on a cable or other facility covered by this subsection (b) of this section, or otherwise acquiring rights to use such cable or other facility or obtaining the benefits of such fiber optic telecommunications facilities, to comply with and ensure compliance with the requirements of subsections (b)(2)(i)(A) through (b)(2)(i)(D) of this section, as a condition of and limitation on the rights acquired, and expressly for the benefit of the residents of Saipan, Tinian, and Rota.

(3) Agreeing as a contractual obligation in partial consideration of the grant of right-of-way hereunder, by notice to the Secretary of the Department of Lands and Natural Resources, to be bound by the provisions of subsection (c) of this section.

(4) Complying with all other provisions of this and other applicable law, federal or local, with respect to the construction, installation, operation, and maintenance of the fiber optic telecommunications cable and related telecommunications network system facilities.

(5) Complying with the requirement of 2 CMC § 1221(f) that an environmental protection plan (EPP) and a coastal engineering plan (CEP) be prepared, and submitting such plans to the Department of Lands and Natural Resources and the legislature. All construction, maintenance, and operation of the cable shall be in compliance with and satisfy all applicable Commonwealth and federal requirements and conform to the specifications of the EPP/CEP plans.

(6) Completing, at the person's own risk and expense, all necessary improvements and placement of cable and placing the cable in service within 24 months of giving the notice provided by this subsection.

(7) Constructing all improvements placed within the right-of-way in a good and workmanlike manner and in compliance with applicable laws, regulations, ordinances, permits, and building codes.

(8) Maintaining, at the person's own risk and expense, the right-of-way and all improvements therein in good order and repair and in a neat, sanitary, and attractive condition.

(9) Agreeing, by notice to the Secretary of the Department of Lands and Natural Resources, that at the end of the 25 year period specified by subsection (b)(1) of this section, if the person shall not agree to any different payment then required, or any new or different conditions, then at the option of the Department of Lands and Natural Resources or successor thereof,

(i) All right and title to, and possession of, improvements then existing in the right-of-way, including the cable, shall, without liability to the person, be surrendered to the Commonwealth government, which shall succeed to all rights and assume all duties associated therewith, or

(ii) The person shall remove exposed improvements from the mean high water mark seaward to the 100 foot contour line.

(c) Right-of-Way: Terms and Conditions; Default.

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(1) In the event a person breaches a term or condition of subsection (b) of this section other than a provision which is a condition precedent to acquisition of the right-of-way, such person shall have 30 days to remove or cure such breach, measured from the date the person receives written notice of the breach. If the person shall fail to cure the breach as provided herein, the person shall be in default of the terms and conditions of the grant of right-of-way.

(2) If a person holding a right-of-way pursuant to subsection (b) of this section:

(i) Shall become insolvent or be adjudicated bankrupt and as a result the Commonwealth is deprived of the payments prescribed by subsection (b)(1) of this section,

(ii) Shall institute proceedings in bankruptcy or make an assignment for the benefit of creditors,

(iii) Shall become insolvent, or if proceedings in bankruptcy shall be instituted against the person, or if any execution or attachment shall issue against the person, unless the person proceeds promptly to cause, and does cause, such actions to be dismissed or terminated as against the cable and the right-of-way, or

(iv) Shall abandon the cable or the right-of-way, the person shall be in default of the terms and conditions of the grant of right-of-way.

(3) In the event of a default in the terms and conditions of the grant of right-of-way, the Secretary of the Department of Lands and Natural Resources may, upon 90 days written notice, terminate the right-of-way and take possession of the cable; provided, that the matter shall be submitted to binding arbitration pursuant to the rules of the American Arbitration Association upon request by the person holding the right-of-way within 90 days of receiving notice. Rights and remedies under this subsection (c) of this section shall be without prejudice to other rights and remedies of any person at law or in equity. The provisions of 2 CMC § 1231(c) and (e)(1) do not apply with respect to subsection (b) of this section, except with respect to any employee or official of the Commonwealth obstructing, or attempting to obstruct, rights thereunder.

(4) Waiver of any breach of the terms and conditions of the right-of-way shall not be deemed a waiver of any subsequent or continuing breach of the same or any other term or condition, nor shall acceptance of the payments prescribed by subsection (b)(1) of this section be deemed a waiver of any term or condition or remedy.

(5) Any disagreement or dispute arising under this section may by consent of the parties be submitted to binding arbitration pursuant to the rules of the American Arbitration Association.

(d) *Expenses of Enforcement.* In any action brought to enforce rights grounded in subsection (b) of this section or to enforce performance of any of the terms and conditions of the right-of-way, or in any action under subsection (c) of this section, the prevailing party shall be entitled to reasonable expenses and attorney's fees to be fixed by the arbitrator or the court as appropriate, except that in an action by a resident of Rota or Tinian to enforce rights under subsection (b) of

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this section, an award of costs and attorney's fees shall be at the discretion of the court based on the merits of the claim or defense.

Source: PL 1-23, § 5; amended by PL 6-13, § 2, art. 2 (§ 1222); PL 9-72 § 2; PL 10-14, § 3, modified.

Commission Comment: PL 10-14, the "Fiber Optic Communications Facilitation and Competitive Telecommunications Act of 1996," took effect June 18, 1996. According to PL 10-14, § 2:

Section 2. Submerged Land Fiber Optic Cable Leases. The Legislature finds that submerged land leases are not the appropriate means for authorizing placement of fiber optic telecommunications cables in and through the submerged lands of the Commonwealth. The use of submerged lands to be made by companies laying fiber optic cables is not of the nature that would ordinarily call for a lease. Rather, this use is better characterized as an easement or right-of-way. Accordingly, the lease entitled "Lease of Water Dependent Use of Submerged Lands" between GST Telecom, Inc. and the Department of Lands and Natural Resources, Government of the Commonwealth of the Northern Mariana Islands submitted to the Legislature by the Governor on or about January 30, 1996 is hereby rejected. The Legislature further finds that even if a lease were appropriate, the terms of said lease are not in the best interests of the people of the Commonwealth.

In 2 CMC § 1222(c)(2)(iii), after "insolvent," the Commission substituted "or" for "of," correcting a typographical error.