

TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

H. B. NO. 10-226, SS1, SD2

SECOND SPECIAL SESSION, 1996

AN ACT

To facilitate the placement of submerged fiber optic cables linking the islands of the Commonwealth and the Commonwealth with the world and providing state-of-the-art telecommunications services; to establish a competitive environment for the provision of fiber optic telecommunications services in and to the Commonwealth; to reject submerged land leases as the appropriate means for authorizing placement of fiber optic telecommunications cables in and through the submerged lands of the Commonwealth, and specifically reject the submerged land lease agreement between GST Telecom, Inc. and the Commonwealth Government via the Department of Lands and Natural Resources submitted to the legislature by the Governor; to amend the Submerged Lands Act; and for other purposes.

BE IT ENACTED BY THE TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. Short Title. This Act may be cited as the "Fiber Optic Communications Facilitation and Competitive Telecommunications Act of 1996."

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.

Section 3. Amendments to Submerged Lands Act. Chapter 2 of Division 1 of Title 2 of the Commonwealth Code is hereby amended as follows:

(a) 2 CMC § 1211 is amended to read:

"§ 1211. Purpose.

The purpose of this Chapter is to provide for water and non-water dependent

uses of Commonwealth-owned submerged lands and to provide for the exploration, development of, and extraction of petroleum deposits or mineral deposits in submerged lands of the Northern Mariana Islands and to provide that the Department of Lands and Natural Resources shall establish procedures for the granting of water and non-water dependent uses and for the granting of exploration or development licenses and permits for the extraction of petroleum or mineral deposits. Except as provided by section 1222(b), all leases, licenses or permits shall be approved by law."

(b) 2 CMC § 1213 is amended by adding a new subsection (j) thereto and renumbering the existing subsections (j) and (k) accordingly, the new subsection (j) to read:

"(j) 'Person' means any individual, partnership, association, corporation, joint venture, estate, firm, company, trust, receiver, club, syndicate, cooperative association, or other entity."

(c) 2 CMC § 1222 is amended to read:

"§ 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 U.S. \$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 paragraph 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 paragraph.

(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.

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

(i) providing service of equal quality;

(ii) conforming to the universal service principles stated in Section 254(b) of the federal Communications Act of 1934, as amended by Section 101 of the federal Telecommunications Act of 1996;

(iii) 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), 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 islands without additional charges or tolls for services connecting one island to another; and

(iv) requiring any person purchasing, renting, or leasing capacity on a cable or other facility covered by this subsection (b), 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 subparagraphs (i) through (iv) hereof, 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) hereof.

(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 section 1221(f) of this Article 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 CNMI 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 paragraph (1) of this subsection, 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, (A) 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 (B) 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.

(1) In the event a person breaches a term or condition of subsection (b) 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):

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

(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) 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) 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) or to enforce performance of any of the terms and conditions of the right-of-way, or in any action under subsection (c), 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), an award of costs and attorneys fees shall be at the discretion of the court based on the merits of the claim or defense."

Section 4. Exclusive Rights Prohibited. No Commonwealth government official shall execute or approve any license, lease, or permit, or enter into any agreement, granting or providing for exclusive rights for any period of time with respect to water or non-water dependent uses of submerged lands for the construction, installation, operation, or maintenance of fiber optic telecommunications cable or related facilities for fiber optic telecommunications network systems. Any term or provision in any license, lease, permit, or agreement, or in any document or instrument, for such exclusivity shall be void and unenforceable, and shall be disregarded by any employee or official of the Commonwealth. Except as provided by this Act or otherwise expressly provided by law, no moratorium, prohibition or restrictions on construction, installation, maintenance, or operations in-service may be granted to or imposed on any person with respect to fiber optic telecommunications cable or related facilities for fiber optic telecommunications network systems.

Section 5. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes; Provided, that no person shall have standing based on any provision of the Submerged Land Act (2 CMC § 1201 et seq.) to enjoin any act or forbearance taken pursuant to and in conformance with this Act, and no provision of the Submerged Land Act (2 CMC § 1201 et seq.) shall provide a basis for a claim for damages asserted in connection with any action or forbearance taken pursuant to and in conformance with this Act. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 6. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 7. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

CERTIFIED BY:

ATTESTED BY:

/s/ Diego T. Benavente
DIEGO T. BENAVENTE
Speaker
House of Representatives

/s/ Evelyn C. Fleming
EVELYN C. FLEMING
House Clerk

Approved this 18th day of June, 1996

/s/ Paul A. Manglona
~~FROILAN C. TENORIO~~ PAUL A. MANGLONA
Acting Governor
Commonwealth of the Northern Mariana Islands