

**AN ACT**

To create the Commonwealth Telecommunications Commission by amending 4 CMC, Div. 8, to add a new Chapter 3, Section 8301, et. seq., the “Commonwealth Telecommunications Act” and for other purposes.

**BE IT ENACTED BY THE TWELFTH NORTHERN MARIANAS  
COMMONWEALTH LEGISLATURE:**

Section 1. Amendments.

(a) Global Amendment. All references in 4 CMC, Division 8, Chapter 1 to the word “telephone” or to the words “telephone service” or “telephone services” or “telephone system” or “telephone systems” are hereby deleted. The CNMI Law Revision Commission is hereby authorized to make grammatical correction necessitated by the global amendments pursuant to this subsection.

(b) Amendment. 4 CMC, Division 8 is amended by adding a new Chapter 3, to be designated as the "Commonwealth Telecommunications Commission," Section 8301 et seq., to read as follows:

**“Chapter 3**

**Article 1. General Provisions.**

Section 8301. Short Title.

This chapter may be cited as the Commonwealth Telecommunications Act.

Section 8302. Findings.

The legislature finds that the telecommunications industry has gone through phenomenal technological developments in recent years. This industry once considered a natural monopoly may not hold true any more. The long distance telecommunications market has already been opened to some degree of competition. Under such circumstances, the legislature finds an ever increasing need to ensure a smooth

transition in the telecommunications market place in order to protect the interests of consumers.

Section 8303. Telecommunications Policy Objectives.

(a) The Commonwealth Telecommunications Commission shall serve the public interest with regard to telecommunications services and shall ensure that efficient telecommunications services are maintained in the Commonwealth.

(b) In compliance with the Federal Telecommunications Act of 1996, it is the public policy of the Commonwealth Government to encourage open markets and competition between telecommunications carriers. The Commonwealth Government finds that such competitive conditions will likely bring consumers high quality services at affordable prices.

(c) The Commission must ensure that the holders of franchises and certificates of public convenience and necessity do not utilize their market power in prejudice to the users of the services, nor abuse their market position, nor incur inefficiencies attributable to lack of competition, nor impede the utilization of new technological developments. The Commission must ensure the use of new technologies and innovations if their use will improve the efficiency and quality of telecommunications services at reasonable terms and low costs for users.

(d) It shall also be part of the public policy of the Commonwealth to guarantee the following rights to the users of telecommunications services on all Commonwealth islands:

(1) That customers enjoy services without fear of service outages or interruptions or unreasonable interference;

(2) That there shall be no discrimination in services (including the types, quality or pricing of services offered) by reason of location, race, sex, origin, religion or political affiliation;

(3) That no user's service shall be disconnected without just cause and only following adequate notification;

(4) That such service outages or interruptions of service as are inevitable be corrected as quickly as possible; and

(5) That any dispute on invoices must be processed equitably and diligently. The Commission shall encourage the informal solution of controversies.

(6) The Commission shall act as the arbitrator between the interests of the customer and the interests of the telecommunications service providers.

(7) The Commission shall coordinate with Federal Communication Commission (FCC) to adopt regulations for its designated telecommunication service providers to preserve and advance universal service, contribute on an equitable and nondiscriminatory basis to universal fund to promote universal service in the Commonwealth.

Section 8304. Definitions.

As used in this Act, the following shall have the meanings indicated below, unless clearly understood otherwise from the context:

(a) "Chairman" shall mean the Chairman of the Commission.

(b) "Commission" shall mean the Commonwealth Telecommunications Commission.

(c) "Corporation" shall mean a corporation, cooperative, community, trust or any form of association or incorporation, even though it may not have legal personality independently of its members.

(d) "Federal Communications Act of 1934" shall mean the Federal Communications Act of 1934, 47 U.S.C. 151 et seq., as amended, which includes the Federal Telecommunications Act of 1996;

(e) "Gross Revenue" or "revenues" means the gross Commonwealth revenue from telecommunications services that originate or terminate in the Commonwealth and are billed for a service address in the Commonwealth, excluding revenue from the resale of telecommunications services to another telecommunications service provider that uses the telecommunications services to provide telecommunications services to the ultimate retail consumer who originates or terminates the transmission.

(f) "Person" shall mean an individual, partnership, joint stock company, corporation, or governmental agency.

(g) "Telecommunications company" shall mean any person or corporation that owns, controls, administers, operates, manages, provides or resells, in full or in part, directly or indirectly, any telecommunications line, system or service in the Commonwealth.

(h) "Telecommunications service" or "service" shall mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received, for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Except for the definitions under this section the definitions contained in the Federal statutes under subsection (d) including applicable rules and regulations, shall apply to this act.

## **Article 2. Establishment, Organization and Funding of the Commission.**

### **Section 8305. Establishment; Orders; Seal**

(a) There is hereby established in the Commonwealth government the Commonwealth Telecommunications Commission as a regulatory agency in accordance with Article III, section 15 of the Commonwealth Constitution. The Commission shall be an independent agency of the Commonwealth government and not part of any principal department.

(b) All orders and authorizations shall be issued in the name of the Commonwealth Telecommunications Commission and all proceedings shall be instituted in the name of the Commonwealth by the Attorney General or his designee.

(c) The Commission shall have an official seal with which to authenticate its proceedings, with the words "Commonwealth Telecommunications Commission" in the design the Commission adopts.

### **Section 8306. Composition of the Commission, Election of a Chairman; Ability to Act; Quorum; Vacancy.**

(a) The Commission shall be made up of five (5) Commissioners, appointed by the Governor and confirmed by both Houses of the

Commonwealth Legislature. One (1) Commissioner shall reside on Tinian, one (1) Commissioner shall reside on Rota, and three (3) Commissioners shall reside on Saipan; provided however that no more than three (3) Commissioners appointed by the Governor may be members of the same political party. Any Commissioner whose term has expired may serve until such member's successor has taken office. The composition of the Commission shall conform to the provisions of 1 CMC 2901 (g).

(b) The members of the Commission shall elect a Chairman by majority vote.

(c) The presence of three Commissioners shall constitute a quorum; provided, however, that all five Commissioners must be initially appointed and confirmed before the Commission can take any official action. A vacancy in the Commission subsequent to the initial appointment and confirmation of a full Commission shall not impair the authority of a quorum of Commissioners to exercise all the powers and perform all the duties of the Commission. Any person selected to fill a vacancy shall be appointed only for the remainder of the unexpired term of the Commissioner whom he succeeds. Any Commissioner may be appointed to a successive term but no more than 2 consecutive full terms.

Section 8307. Qualifications of the Commissioners.

Each member of the Commission shall be a citizen of the United States and a resident of the Commonwealth (not regular full-time employees of Commonwealth government), shall not have been convicted of a felony in any jurisdiction of the United States, and may not have a direct or indirect pecuniary interest in any company subject to the jurisdiction of the Commission, or in entities in the Commonwealth, the United States or abroad that are affiliated with or have economic interests in any said company. In addition, each member of the Commission shall have at least a four year college degree or a minimum of five years managerial experience in telecommunications or a related field.

Section 8308. Terms of the Commissioners.

Except in the case of initial appointments to the Commission, each Commissioner shall serve a term of five (5) years. The Governor shall designate who

among the initial appointees shall serve, respectively, for terms of one year, two years, three years, four years and five years.

Section 8309. Compensation of Commissioners.

Notwithstanding the provisions of 1 CMC section 8247, Commissioners shall be compensated at the rate of \$200 per day plus the cost for inter island transportation with per diem, if applicable, for the purpose of attending official Commission meetings.

Section 8310. Cause for Dismissal.

In accordance with Article III, section 21 of the Commonwealth Constitution, the Governor may dismiss a Commissioner only for one or more of the following causes;

- (a) gross neglect or dereliction of duty;
- (b) breach of fiduciary duty;
- (c) conviction of a felony;
- (d) mental or physical incapacity;
- (e) failure to attend at least 50 percent of all duly convened meetings of the Commission in any calendar year.

Section 8311. Executive Director.

(a) The Commission shall have an Executive Director who shall be appointed by and serve at the pleasure of the Commission and may be dismissed with or without cause by the majority vote of the Commission.

(b) Duties and Responsibilities of Executive Director. The Executive Director, under the direction of the Chairman, shall be the administrative head of all Commission offices except those of the Commissioners themselves, responsible for the employment of personnel and consultants, the preparation of the annual budget of the Commission, the maintenance of financial records and such other duties as the Commission, through the Chairman, may delegate to the Executive Director.

(c) Salary. The Commission shall set the annual compensation of the Executive Director pursuant to 1 CMC, Div. 8, Part 2, Chapter 4, Section 8246.

(d) Civil Service Exemption. The Executive Director and all employees of the Commission shall be exempt from the civil service system.

Section 8312. Commission Special Fund.

The Department of Finance shall maintain all funds generated under this Article in a segregated special account, known as the Commission Special Fund, to be utilized to underwrite the operating expenses of the Commission. The Commission's operating expenses in its first year shall be appropriated by the Legislature from the general fund. For subsequent years the Commission's operating expenses shall be derived from the Commission Special Fund subject to appropriation by the legislature. Funds not appropriated by the legislature for the operating expenses of the Commission in any fiscal year shall revert to the general fund. The expenditure authority of all funds collected by the Commissioner appropriated to the Commission shall be the Chairman of the Commission, or designee.

**Article 3. Powers and Duties of the Commission.**

Section 8313. Jurisdiction and Authority.

(a) Authority.

(1) The Commission shall regulate all telecommunications in the Commonwealth and administer and ensure compliance with this Act. For the purpose of Section 8315 (a) and (b) hereof, the Commission shall have jurisdiction over any person or corporation with a direct or indirect interest in said services or companies.

(2) The powers and faculties provided herein shall be executable not only in relation to telecommunications companies but also to any person or corporation in the manner in which the acts described in the following clauses affect telecommunications services in the Commonwealth:

(A) Any person or corporation that violates any provisions hereof, including any person or corporation that utilizes its control over the telecommunications services or companies to carry out such violation;

(B) Any person or corporation whose actions or omissions affect the rendering of the telecommunications service, including any person or entity that utilizes its control

over the telecommunications services or companies to affect the rendering of such services;

(C) Any person or corporation that carries out any activity for which it must obtain an authorization from the Commission;

(D) Any person or corporation whose actions or omissions are prejudicial to the activities, resources or interests over which the Commission has regulatory, supervisory or oversight powers, including any person or corporation that utilizes its control over telecommunications services or companies in such a way as to result in such prejudice.

(b) General Powers and Duties. The Commission:

(1) Shall adopt its own accounting system, in coordination with the Department of Finance;

(2) Shall adopt and submit a budget pursuant to 1 CMC Section 7206;

(3) May execute contracts and formalize any type of documents that may be necessary or suitable in exercising its powers;

(4) May grant certificates of public convenience and necessity allowing telecommunications companies to provide services in the Commonwealth;

(5) May assign, refer or delegate, through direct order or by conduct of the Chairman, any matter before its consideration to be resolved by one or more Commissioners or a hearing examiner, who shall be named in such order and who shall have the powers set forth in subsection (c) hereof. Any recommended decision or order shall become a final decision or order upon a majority vote of the Commission;

(6) Shall promulgate such orders, rules and regulations and adopt such policies as are necessary for governing:

(i) its internal operations, including but not limited to matters regarding quorum, type and frequency of meetings,

employment and compensation of experts, consultants, examiners, office clerks and other personnel, and ethics governing the relationship between its officers and personnel and utilities;

(ii) the conduct of hearings, proceedings, appeals and investigations before the Commission;

(iii) the payment of charges under Section 8327, including the imposition of interest and/or penalties for nonpayment of such charges;

(iv) the issuance, renewal or revocation of certificates of public convenience and necessity;

(v) the maintenance of the official files and dockets of the Commission and the public availability of such files or dockets; and

(vi) the requirements and procedures for informal ratepayer complaints by the telecommunications company.

(7) Shall promulgate such other orders, rules and regulations and adopt such policies as are necessary and appropriate for the exercise of its regulatory and enforcement powers under subsections (c) and (d) or to exercise a right under or conform the regulation of telecommunications services with applicable federal statutes, including but not limited to the Federal Communications Act of 1934.

(c) Powers and Duties Related to Telecommunications Service. To carry out its regulatory function over telecommunications services, the Commission:

(1) Shall establish fair and reasonable rates, charges or rents and grant certifications to provide services in Commonwealth;

(2) Shall require the telecommunications companies to establish such accounting systems as it determines to be reasonably necessary for carrying out its authority and for achieving the purposes hereof, including those required for the distribution of expenses and determination of profits for services or products;

(3) May suspend an accounting debit or credit for any telecommunications company and shall create the procedures for correcting said accounting entries. Any change in the accounting standards shall comply with the notification and commentary procedures to be established by the Commission;

(4) Shall investigate and determine the value of useful property that is used by any telecommunications company. The Commission, further, shall establish the procedures, methods and rates for the purpose of calculating the amount of the depreciation of the property utilized by any telecommunications company;

(5) (A) Shall require each telecommunications company subject to its jurisdiction to maintain such books, accounts, documents and files and to present to the Commission such information or documents that the Commission determines are reasonably necessary for exercising its authority and for achieving the purposes hereof. The form of each account, record and memorandum that the Commission may require from the companies that are subject to the Federal Communications Act of 1934, shall conform to the forms of the accounts, records and memoranda that the FCC requires, when such is practical in the opinion of the Commission;

(B) The Commission may also, without it being understood as a limitation, require a telecommunications company to present contracts, reports on inventory of property utilized in rendering telecommunications services and reports on transfers of evidence of debts. The books, accounts, documents, files, contracts and reports presented to the Commission by virtue of the exercise of this power shall be held by the Commission in the sites and during the term provided by regulation. All the information and documents presented before the Commission shall be subject to inspection by the public unless the Commission provides otherwise. Any report or information submitted as provided in this clause or in any other provision hereof by a telecommunications company that justifies that it must remain

confidential because its exposure to public inspection would be prejudicial to the public interest shall be kept confidential and not exposed to public inspection until the Commission determines otherwise;

(6) May conduct or order such inspections, investigations and audits as it determines to be reasonably necessary for the exercise of its authority, to achieve the purposes hereof and for the preparation of recommendations to the legislature related with public policy on telecommunications. This authority shall include, without its being understood as a limitation, the power to enter during reasonable hours to inspect sites, properties and books, records, accounts, memoranda and other documents of telecommunications companies; the authority to require such companies to contract the services of independent auditors, as provided in the procedures of the Commission. The inspections, investigations and audits may, without its being understood as a limitation, cover the assessment of the property utilized by any telecommunications company; the efficiency of the telecommunications operations of said companies; the extent to which their operations comply with the needs of the Commonwealth; changes in the conditions of operations; and compliance by telecommunications companies with any accounting rule or other rules adopted by the Commission;

(7) May establish rules and regulations pertaining to wholesale pricing standards and pricing of individual network elements;

(d) Enforcement Powers The Commission may:

(1) Carry out public hearings and investigations;

(2) Issue subpoenas, orders to show cause and citations with warning of contempt. Any subpoena or citation with warning of contempt shall be signed by the Chairman or, where the Commission has delegated authority over the matter, the Commissioner or examiner so delegated, and notice thereof shall be served consistent with Title 7, Division 1 of the Commonwealth Code;

(3) Initiate such actions or proceedings before the Superior Court to enforce any final order, decision, citation or subpoena. If enforcement of a Commission order, decision, citation or subpoena is ordered by the Superior Court, it shall award the Commission costs and attorneys fees;

(4) Appear in any hearing or proceeding that is related to any matter that affects or may affect the provision of telecommunications services within the Commonwealth before any private entity, public organization, court, board, committee, administrative organization, department, office or agency of the Commonwealth or the Government of the United States;

(5) Impose and order the payment of costs, expenses and attorneys' fees, together with the payment of expenses and fees for other professional and consulting services incurred in investigations, hearings and proceedings before the Commission; and

(6) Impose administrative fines.

(e) Hearings Powers. The Commission may:

(1) take oaths and depositions;

(2) issue subpoenas, orders to show cause and citations;

(3) receive, evaluate and rule on evidence;

(4) preside over hearings;

(5) hold conferences to simplify procedures, and

(6) decide in the case of the Commission, or recommend decisions in the case of a Commissioner or examiner, matters under their consideration.

#### **Article 4. Regulatory Provisions.**

##### **Section 8314. Certification of Telecommunications Companies.**

(a) (1) Certification Required. Any telecommunications company interested in providing or operating a telecommunications service in the Commonwealth shall request, obtain and maintain a valid certificate of public convenience and necessity from the Commission. Certification is not required for any telecommunications company

interested in providing or operating an information service, as that term is defined under the Federal Communications Act of 1934.

(2) The Commission shall grant certification to a telecommunications company if it determines that, aside from complying with the established criteria, certification is consistent with the public interest. When acting upon a request, the Commission may grant certification in full or in part and may impose such conditions and terms as it determines to be reasonably necessary for achieving the purposes hereof.

(b) Modifications, Suspensions and Revocations. A certification granted by the Commission pursuant to provisions of this article may be modified, suspended or revoked by the Commission for just cause after notice and opportunity for hearing.

(c) Authorization for Discontinuation or Cessation of Services.

(1) No telecommunications company may discontinue, reduce or diminish its provision of telecommunications services unless it requests and obtains a valid authorization from the Commission for said discontinuation, reduction or diminishment.

(2) The Commission shall adopt regulations specifying the form, content, procedure and criteria for filing requests for such authorizations and for providing the public with the opportunity to express itself thereon. Said procedure shall, without its being understood as a limitation, include the publication of notices notifying the public about said requests. When acting upon requests for discontinuation, cessation, reduction or diminishment of a telecommunications service, the Commission shall consider the reasons on which the request is based together with the consequences of a social nature and public interest that may result from its decision. The Commission may grant or deny the request in full or in part, or impose such conditions on every total or partial authorization as it deems reasonably necessary for achieving the purposes hereof.

(d) Registration of Interstate and International Communications Companies. Any telecommunications company that provides interstate or international telecommunications services between Commonwealth and other places outside Commonwealth shall file all authorizations granted by the Federal Communications Commission to provide said service with the Commission within thirty (30) days following the commencement of said service, or a certified statement from the Federal Communications Commission that said authorization is not required. It shall also file the name, address and telephone number of the person to whom complaints about such services must be directed.

(e) (1) Existing Franchises. A telecommunications company holding an telecommunications franchise on the effective date of this Act may continue to provide services for a period of not more than sixty (60) days after the effective date of this Act, provided that telecommunications company files an application under § 8314 (a) (1) with the Commission within that sixty day period.

(2) Upon receipt of the complying application of a company holding such an existing franchise, the Commission shall grant the company a conditional authorization, which shall remain in effect until the company's application for a certificate of public convenience and necessity has been processed under the terms of this article, and pursuant to any rules promulgated hereunder.

(3) If the company's application is approved, its operation shall continue under the terms of the franchise. To the extent that the terms of a company's franchise are inconsistent with the requirements contained herein, or any rules or regulations adopted by the Commission, those requirements, rules or regulations shall take precedence over inconsistent franchise provisions. If the Existing Operator's application is disapproved, the Existing Operator shall discontinue operation in compliance with such orders as may be made by the Commission, subject to any rights granted by this article.

(4) The Commission is hereby assigned all the duties and responsibilities of the CNMI Government or its agencies under any telecommunications franchise in existence on the day of this act.

Section 8315. Transfers and Capitalization.

(a) Transfers. Franchises, certificates of public convenience and necessity, substantial assets and certificates of capital stock of a telecommunications company, as well as direct or indirect control of a person or corporation possessing same, may not be sold, assigned, transferred, mortgaged, or otherwise encumbered without the prior consent of the Commission. The Commission shall adopt regulations that specify the form, content and procedures for filing the pertinent requests and for giving the public the opportunity to express its viewpoints. This subsection shall not be interpreted to the effect that it impedes the sale, encumbrance or disposal of property that is not necessary or useful for the rendering of telecommunications services by any telecommunications company.

(b) Capitalization. The Commission shall establish the minimum capital requirements that each telecommunications company must satisfy. When establishing said requirements, the Commission may take into account the capitalization of any entity that may have an interest in the telecommunications company. The Commission shall also have authority to adopt rules related to mortgages, encumbrances and other liabilities on the stock and assets of the telecommunications companies, including rules requiring the prior approval of the Commission to carry out financial transactions, such as security contracts, mortgages or any other type of encumbrance or liability.

(c) Compliance. Any transaction of any type that results in a violation of the provisions of clauses (a) and (b), above, or the rules that the Commission may adopt by virtue thereof, shall be null and void.

Section 8316. Standards of Service and Facilities.

(a) General Standard. Every telecommunications company shall supply and maintain adequate and efficient telecommunications services, where economically feasible, on all Commonwealth islands. Unjust or unreasonable

discriminations in rendering telecommunications services are prohibited. Every telecommunications company shall adopt and present to the Commission the quality criteria it will utilize to achieve the aforementioned standards and objectives.

(b) Quality Criteria. For local telecommunications services, such criteria shall include, but without being limited to, the following:

- (1) installation and repair of facilities;
- (2) management of calls by operators;
- (3) completed calls;
- (4) transmission and noise;
- (5) suspension of service for failure to pay;
- (6) invoices to customers and disputes on invoicing, and
- (7) interruptions in the service.

For local telecommunications services, the standards adopted by the Commission shall ensure that such services are provided to all subscribers on all Commonwealth islands where technically feasible and at the lowest possible cost in keeping with good service.

(c) Specification of Services and Facilities. If it is determined that such is reasonably necessary to achieve the purposes hereof, the Commission shall have the authority to require the telecommunications company to carry out the repairs, changes, alterations, additions, extensions and improvements needed to achieve the quality standards and objectives.

Section 8317. Insurance.

The Commission shall have the authority to require telecommunications companies to insure for such amounts and against such risks as the Commission determines to be reasonably necessary, to guarantee the payment by said companies or their directors, officials, employees, agents or contractors, that is otherwise deemed necessary for complying with the purposes hereof. To this effect the Commission may require them to acquire insurance policies and/or bonds that demonstrate their capacity to assume the financial loss associated with such risks, through self-insurance or any other mechanism acceptable to the Commission.

Section 8318. Forbearance of rate regulation to facilitate competition.

(1) In accordance with the provisions of this section, the Commission shall forbear regulation as to rates, tariffs, fares, or charges to facilitate competition and shall authorize the provision of all or any portion of regulated telecommunications service under stated or negotiated terms to any person or entity that has acquired or is contemplating acquisition of, through construction, lease, or any other form of acquisition, similar telecommunications service from an alternate source.

(2) At any time, the provider of regulated telecommunications service may file a verified application with the Commission for forbearance of regulation to facilitate competition. The application must describe the telecommunications service to be offered, the customer to be served, and the party or parties offering similar service, together with other information and in a form that the Commission may prescribe. The additional information must be reasonably related to the determination of the existence of an alternative offer but may not require information relating to the cost of providing the service.

(3) The Commission shall approve or deny an application for forbearance of regulation to facilitate competition within 30 days after the filing of the application. If the Commission has not acted on an application within the permitted time period, the application is considered granted. The Commission shall deny the application only upon a finding that the application is incomplete or that the subject or similar service is not being offered to the customer by parties other than the applicant. If a customer or potential customer of the provider seeking forbearance requests a quotation of prices from another provider of telecommunications service having tariffs or price lists for similar services on file with the Commission, the Commission may presume the existence of competition.

(4) Upon approval of the application, the provider of telecommunications service may negotiate with a person or an entity for the provision of the service without regard to its tariffs or price lists on file with the Commission.

(5) Within 10 days after the conclusion of the negotiations, the provider of regulated telecommunications service shall file with the Commission the final contract or other evidence of the service to be provided, together with the charges and other conditions of the service. Thereafter, for the term of the contract, the provider of regulated telecommunications service may provide the service to the customer without regard to its tariffs or price lists on file with the Commission.

(6) Services provided pursuant to subsection (1) remain subject to the regulatory powers of the Commission.

Section 8319. Duty to Interconnect.

(1) The purpose of this section is to implement specific provisions of the Federal Telecommunications Act of 1996, Public Law 104-104.

(2) (a) Each telecommunications carrier shall perform the duties enumerated in 47 U.S.C. 251(a).

(b) Each local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(b).

(c) In addition to the duties provided for in subsection (2)(b), each local exchange carrier shall perform the duties enumerated in 47 U.S.C. 251(c).

Section 8320. Voluntary Negotiation of Interconnection Agreements.

Upon receiving a request for interconnection, services, or network elements, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers. The agreement must include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement.

Section 8321. Mediation of Interconnection Agreements.

Upon the written request of any party negotiating an agreement for interconnection with another telecommunications carrier, the Commission may designate a mediator, who may be a Commission member, to mediate any differences arising in the course of the negotiation.

Section 8322. Arbitration of Interconnection Issues.

(1) The Commission has the authority to arbitrate any open interconnection issues pursuant to 47 U.S.C. 252(b), as it existed on February 8, 1996.

(2) During the period from the 135th to the 160th day, inclusive, after the date on which an incumbent local exchange carrier receives a request for negotiation, the carrier or any other party to the negotiation may petition the Commission to arbitrate any open issues. A party that petitions the Commission under this section shall, at the same time as it submits the petition, provide the Commission all relevant documentation concerning the following:

- (a) the unresolved issues;
- (b) the position of each of the parties with respect to those issues; and
- (c) any other issue discussed and resolved by the parties.

(3) A party petitioning the Commission under this section shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the Commission receives the petition.

(4) A nonpetitioning party to a negotiation may respond to the other party's petition and provide any additional information that it wishes within 15 days after the Commission receives the petition.

(5) The Commission shall limit its consideration to those issues set forth by the parties to the negotiation in the petition for arbitration and the response to the petition.

(6) The Commission may appoint a hearings examiner for arbitration proceedings under this section. The hearings examiner shall file with the Commission a proposed decision within the time set by order of the Commission. A hearings examiner must be assigned with regard to the expertise required for the particular matter. On the filing by a party, in good faith, of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearings examiner or on the hearings examiner's own motion, the Commission shall determine the affidavit or motion as a part of the record in the case. The Commission may

disqualify the hearings examiner and appoint another hearings examiner. The affidavit must state the facts and the reasons for the belief that the hearings examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.

(7) Participation in the arbitration proceeding must be limited to the telecommunications carrier requesting the arbitration, the telecommunications carrier from which interconnection is being sought, and the CNMI consumer counsel.

(8) Negotiations among the telecommunications carriers may continue, pending a final decision by the arbitrator.

(9) Unless otherwise agreed to by the parties, the Commission shall, within 10 days of the filing of a request for arbitration, conduct a conference with the parties for the purpose of establishing a schedule for the orderly and timely disposition of the arbitration. The schedule must include discovery deadlines and a hearing date.

(10) The Commission may issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence relevant to the issues being arbitrated and may administer oaths. Subpoenas must be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action in district court. The Commission shall regulate the course of the hearings and the need for filing briefs and may direct the parties to appear and confer to consider simplification of the issues by consent of the parties.

(11) The Commission shall issue its final decision no later than 6 months after the request for negotiations on a petition issued. When the Commission files its final decision or when the hearings examiner files the proposed decision with the Commission, each party must be simultaneously given a copy delivered personally or by certified mail. The decision must:

- (a) ensure the resolution of issues presented by the parties and this section;
- (b) establish rates for interconnection, services, or access to unbundled network elements pursuant to 47 U.S.C. 252(d); and

(c) provide a schedule for implementation of the terms and conditions of the decision by the parties.

(12) If the person who conducted the hearing becomes unavailable to the Commission, the Commission is not precluded from issuing a final decision based on the record if the demeanor of the witnesses is considered immaterial by all parties.

(13) Unless required for the disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or of making findings of fact and conclusions of law in an arbitration proceeding, after issuance of notice of hearing, may not communicate with any party or a party's representative in connection with any issue of fact or law in the case unless there is notice and opportunity for all parties to participate.

Section 8323. Approval of Arbitration Decision.

(1) If the Commission has not approved or rejected in its entirety an agreement adopted by arbitration within 30 days of submission by the parties, the agreement is considered approved.

(2) The Commission may reject the agreement only if the Commission finds that the agreement does not meet the requirements of 47 U.S.C. 251 and the regulations prescribed to implement that section by the FCC or the standards set forth in 47 U.S.C. 252(d). Upon rejection of an agreement, the Commission shall provide the parties with written findings as to any deficiencies.

Section 8324. Approval of interconnection agreements.

(1) Within 30 days of filing of an interconnection agreement adopted by negotiation of the parties to an agreement, the Commission shall approve or reject the agreement, or the agreement is considered approved.

(2) The Commission may reject an agreement filed under this section only if the Commission finds that:

(a) the agreement or a portion of the agreement discriminates against a telecommunications carrier not a party to the agreement; or

(b) the implementation of the agreement or portion is not consistent with the public interest, convenience, and necessity.

(3) Upon rejecting an agreement filed under this section, the Commission shall issue written findings detailing any deficiencies in the agreement.

Section 8325. Determination of Eligible Carrier Status -- Universal Service Support.

(1) The Commission is authorized to designate telecommunications carriers as eligible for Federal Universal Service support, in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254, and for any CNMI universal service funds. This authorization applies to all telecommunications carriers notwithstanding the carrier's exemption from further regulation by the Commission.

(2) Upon the petition of a telecommunications carrier, or upon its own motion, the Commission shall designate a telecommunications carrier that meets the requirements of 47 U.S.C. 214(e)(1) as an eligible telecommunications carrier for a service area designated by the Commission. In the case of an area served by a rural telephone company, the term "service area" means the company's "study area" for Federal Universal Service support unless the FCC establishes a different definition of service area for the company. The term "service area" for all other telecommunications carriers means a geographic area such as a census block or grid block as established by the Commission for the purpose of determining federal universal service obligations and support mechanisms.

(3) Upon receiving a petition from a telecommunications carrier and consistent with the public interest, convenience, and necessity, the Commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one telecommunications carrier for a service area, so long as each additional requesting telecommunications carrier meets the requirements of 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

(4) If no telecommunications carrier will provide the services that are supported by universal service support mechanisms under 47 U.S.C. 254(c) to

all or a part of an unserved community that requests service, the Commission shall determine which telecommunications carrier is best able to provide the service to the requesting unserved community. Any telecommunications carrier ordered to provide service under this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be designated as an eligible telecommunications carrier for that community or the unserved portion of the community.

(5) The Commission shall permit an eligible telecommunications carrier to relinquish its designation as an eligible carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the Commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the Commission shall require the remaining eligible telecommunications carrier to ensure that all customers served by the relinquishing carrier will continue to be served and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The Commission shall establish a time, not to exceed 1 year after the Commission approves relinquishment under this section, within which the purchase or construction must be completed.

Section 8326. Discounts for Schools, Libraries, and Health Care Providers. The Commission is authorized to establish intra-Commonwealth discounts to schools, libraries, and health care providers and to perform administrative functions necessary as a condition of Federal Universal service support if the discounts are recovered through the Federal Universal Service fund.

Section 8327. Fees and Charges.

(a) Purposes. The Commission may impose on, and collect from, those telecommunications companies which enjoy the privilege of operating in the Commonwealth, such reasonable fees and charges in accordance with the provisions of this Section as are necessary to:

(1) underwrite the Commission's operating expenses in compliance with its responsibilities hereunder; and

(2) establish a reserve not to exceed an amount equal to its prior year expenditures and obligations or such lesser amount that the Commission deems reasonable, to assure continued and efficient operation of the Commission, pursuant to its projected goals and objectives and its expense experience for prior years.

(b) Determination of Annual Charges. The maximum amount that may be imposed on any single telecommunications company annually, beginning with the calendar year January 1, 2001 shall be equal to:

(1) the total amount that the Commission must recover annually for the purposes enumerated in subsection (a), said amounts being determined on the basis of estimated expenses contained in the Commission's budget, multiplied by

(2) the gross annual revenues of said telecommunications company and divided by

(3) the gross annual revenues in Commonwealth of all telecommunications companies subject to the Commission's jurisdiction;

Provided that the charges to be imposed on any telecommunications company under this clause shall not exceed one half of one percent (0.5%) of its annual gross revenues in Commonwealth in excess of twenty-five thousand (\$25,000) dollars.

(c) Expenses for Specific Proceedings. In addition to any annual charges imposed under subsection (b), the Commission may require the involved telecommunications company to reimburse expenses and fees incurred for professional and consultative services in the conduct of investigations, hearing, or any other proceeding carried out in relation with said company which was not considered or contemplated in determining the annual charges authorized under subsection (b) herein.

(d) Reconsideration of Charges. Prior to seeking judicial review under Section 8330, a telecommunications company shall request reconsideration of any charge imposed by the Commission by:

- (1) making timely payment of the entire amount imposed; and
- (2) contemporaneous with said payment, filing a detailed written statement of the reasons why the charges imposed are excessive or illegal in whole or in part.

The charge(s) shall be deemed affirmed unless modified by written order of the Commission within sixty (60) days of the filing of a request for reconsideration. The Commission shall not be obligated to reimburse any part of any imposition of charges if it certifies that carrying out said reimbursement would adversely affect the Commission's operations. If the Commission issues said certification, then the affected telecommunications company shall be entitled to reduce the corresponding amount of the impositions of future charges that the Commission may impose.

(e) Penalty for Late Payment. If any amount assessed against a telecommunications company is not paid within thirty (30) days after the date of issuance, the telecommunications company shall pay a penalty to the Commission of two (2) percent of the amount due for each month or fraction thereof that such amount is unpaid.

(f) The Commission shall deposit all fees, charges, expenses, and late penalties collected under this Section in the Commission Special Fund established in Section 8312.

### **Article 5. Rates.**

Section 8328. Rate Structure and Approval Procedures.

(a) Prohibition Against Discrimination. No telecommunications company shall give preferences or improper or unreasonable advantages of any type related to rates, charges or rents for telecommunications services to any person, corporation or geographic area nor shall it submit any person, corporation or geographic area to undue prejudices, disadvantages or discrimination in any other service aspect.

(b) (1) Filed Rates. Every telecommunications company shall present the Commission with a schedule of all the rates, rents and charges it proposes assessing for services of all types between points within the Commonwealth.

(2) The rate structure shall clearly set forth the sites between which the telecommunications services shall be rendered and shall also express separately all the charges and rates and privileges or facilities granted or permitted and any internal rule or regulation or the terms and conditions of contracts that may in any way change, alter, affect or determine any rate, rent or charge or the sum of the rates, rents or charges for the services rendered. The Commission shall promulgate regulations for maintaining all the information required by this subsection available for public inspection.

(c) Compliance with Rate Structure.

(1) No telecommunications company may charge or receive an amount of compensation for any service other than the rates, rents and charges specified in the company's current rate structures on file with the Commission;

(2) No telecommunications company engaged in supplying or rendering more than one product or service may charge, demand, collect or receive a different compensation for the collective, combined supply or rendering for two or more of said products or services than the sum of the rates, rents or charges specified in the listing of rates, rents and charges specified in the listing of rates, rents and charges filed with the Commission and in force at that moment and applicable to each product or service supplied or rendered separately;

(3) No telecommunications company may reimburse or remit directly or indirectly, in any manner or by any means, any portion of the rates, rents and charges so specified; and

(4) No telecommunications company shall grant any person or corporation any contract form or agreement or any rule or regulation or

any facility or privilege except those that are ordinarily and uniformly granted to all persons and corporations.

(d) Methods and Procedures for Establishing Rates, Charges and Rents.

(1) The Commission shall establish the procedures and methods to be followed in setting and approving rates, charges and rents for telecommunications services. The methods and procedures may provide for the utilization of:

(A) price-cap formulas that result in rate adjustments based on productivity and exogenous factors such as inflation indices and/or

(B) formulas based on rate of return. The formulas may be utilized to establish flexible prices, i.e., maximum, minimum or both types of prices.

(2) The Commission shall be obligated to revise periodically the effect of the approved formulas for fixing rates, evaluating their effect on the telecommunications company, including rates of return on its investment, and modifying the factors and other components of said formulas on the basis of experience.

(3) For the purposes of this subsection, the formula based on rate of return means the methodology used to approve charges and rates for a service that takes into consideration the public need for adequate, efficient and reasonable service, and the need of the telecommunications companies to receive sufficient income to cover all current costs for offering said service, including taxes and interest, and including adequate provisions for the depreciation of property needed for rendering said service, and for deriving a fair and reasonable return on the value of their property using as a guide the return of equivalent risk enterprises and reasonable consideration that the Commission deems pertinent.

(4) The Commission may utilize methods, analytical techniques and procedures for determining rates, rents and charges that are different from those mentioned in this subsection, including forbearance

of rate regulation and detariffing, provided it demonstrates in authentic form that the chosen method will satisfy the criteria established in this subsection for the rate structure in a more effective way than the methods mentioned herein and that it enjoys acceptance by the telecommunications regulators.

(e) Prohibition against cross-subsidization. No telecommunications company may use current revenue earned or expenses incurred in conjunction with services subject to regulation under this chapter to subsidize services that are not regulated or are not tariffed. Expenses incurred in conjunction with services that are not regulated or that are not tariffed under this chapter may not be attributed to services that are subject to regulation for any reason.

The Commission may not subsidize the price of any telecommunications service, including wholesale prices or the prices of individual network elements, by reducing the prices to reflect an allocation or credit of revenue from the operations of an affiliated company of the carrier of telecommunications services, including a publishing affiliate.

(f) Procedure for Implementing or Modifying Rates, Charges or Rents. The following procedures shall apply when implementing or modifying changes in rates, charges and rents for telecommunications services, unless the Commission determines that these should not apply to the formula or procedure established for determining rates, and adopt alternative procedures.

(1) Notification. Every telecommunications company interested in modifying the rates, charges or rents applicable to telecommunications services shall provide public notice of such proposed modifications at least sixty (60) days prior to the effective date of the proposed changes.

The Commission shall provide the form and content of the aforementioned notifications by regulation, provided that the public notification shall at least include the place, date and time at which the public hearings on the proposed change will take place (which date must not be less than thirty (30) days nor more than thirty-five (35) days from the date of said notification); the rates, charges or rents in force;

the rates, charges or rents whose adoption is proposed and the justification thereof; and the effective date of the proposed changes. For the purpose of this clause, public notification shall include, as a minimum, its publication in one newspaper of general circulation that covers the area affected by the proposed change.

(2) Public Hearings. The Commission shall hold public hearings on proposed rate changes when these apply to non-competitive telecommunications services. In cases of competitively-provided telecommunications services the Commission shall have the discretion to hold such hearings.

(3) Access to Documents. The Commission shall place reports or documents supporting or justifying the proposed modifications to rates, charges or rents at the disposition of the public sufficiently in advance of the date on which the hearings are to be held. In the event that public hearings are not held, the aforementioned information shall be available before the rates, charges or rents go into effect.

(4) Opinion; Report. In the event the public hearing is presided over by an examiner, such examiner shall submit a report to the Commission within such period of time as the Commission may establish. The report shall include a list of objections, statements, opinions, documents, studies, recommendations and other pertinent facts introduced in the hearings, together with conclusions and recommendations. Copies of said report shall be available to the public for examination and study. Any interested party may submit written comments in relation to said report within ten (10) days following the date same is made available to the public. Once this term has elapsed, the matter shall be submitted to the Commission, which must make a decision regarding the proposed rate change.

(5) Alternate Procedures. Prior to the expiration of the notification periods to the public established in this subsection for rate changes for telecommunications services, the Commission may:

(i) reject the proposed change in the rates, charges or rents as clearly illegal or incompatible with any provision or purpose hereof;

(ii) suspend the effectiveness of said proposal and take such other actions as may be appropriate. It will not be necessary for the Commission to reject or suspend a proposed change in rates, charges or rents in order to carry out a hearing related to the legality of said proposal.

(g) Suspension of Proposed Rates, Charges or Rents.

(1) After having initiated a hearing to consider a proposed rate change and while said hearing and the decision on same are pending, the Commission may suspend the application of said rate, charge or rent in full or in part, for a period no longer than five (5) months on and after the time at which it would otherwise have become effective, by delivering a written statement to the affected telecommunications company with the reasons for said suspension.

(2) After a full hearing, the Commission may issue such orders as may be appropriate in a proceeding initiated after said rate, charge or rent is in force. If the proceeding has not been concluded and an order has been issued within the suspension period, the proposed rate, charge or rent, whether new or revised, shall become effective at the end of said period. In the case of a proposed change for a new service or an increase in the charges, the Commission may, by order, require the interested telecommunications company to maintain a precise accounting of all the amounts received by reason of said rates, charges or rents for new services or increases in rates, charges or rent, specifying by whom and in benefit of whom said amounts are paid, and once the hearing has concluded and a decision has been issued, it may, by another order, require the affected telecommunications company to reimburse with interest the persons in whose representation said amounts were paid, with that portion of said rate, charge or rent for new service or increase in rates, charges or rents, for which, by

determination, the Commission finds no justification. In any hearing in which an already increased or to be increased charge is involved, the weight of the proof demonstrating that said increase in rates, charges or rents is fair and reasonable shall fall upon the telecommunications company.

(3) If the Commission determines that conditions require immediate action, it may waive the requirement for a prior hearing and shall make its determinations pursuant to the information in its possession. If the Commission or the reviewing court subsequently determines that the partial or temporary rates fixed by the Commission were not fair and reasonable, it shall permit the affected telecommunications company to recover the amount that represents the difference between the gross income obtained by reason of the temporary rates and the gross income it would have obtained, had the finally authorized rates been fixed originally, by means of a temporary increase in the definitive rates.

(h) Fixing of Just and Reasonable Rates, Charges and Rents.

(1) If, as part of a complaint, or an authorization process for changing rates, charges or rents, or under an investigation order issued by the Commission at its own initiative, the Commission determines after holding a hearing that any rate, charge or rent of any telecommunications company is or shall be in violation of any provisions hereof, incompatible with the purposes hereof, unreasonable or shall offer improper advantages or preferences to said telecommunications company, or otherwise endangers the stability of the Commonwealth telecommunications system, the Commission may determine and fix what the just and reasonable rates, charges and rents shall be, or the maximum or minimum rates, charges or rents that must be observed.

(2) The Commission may order a telecommunications company to cease and desist from said rates, charges or rents to the extent that the Commission deems necessary, and may prohibit

the telecommunications company from publishing, demanding or charging any rate, charge or rent that is different from that fixed by the Commission, or in excess of the maximum or less than the minimum, as the case may be.

(i) Service Outages. The Commission may order a telecommunications company to credit or rebate to its customers a proportion of such customer's basic service fee if there has been a service outage and such outage had been determined by the Commission to be unreasonable. The Commission shall promulgate rules and regulations to define an "unreasonable service outage, the formula for determining the amount of credit or rebate and any other necessary rules and regulations necessary to implement this subsection.

### **Article 6. Dispute Resolution and Judicial Review.**

#### Section 8329. Complaints to the Commission; Violations and Penalties.

(a) Subscriber complaints to the Commission regarding the operation of a telecommunications company shall be filed in writing with the Commission. The Commission shall take up such complaints with the telecommunications company, in an effort to bring about the satisfaction of the complaint without a formal hearing.

(b) The Commission shall resolve all complaints, if possible, informally. No form of informal complaint is prescribed, but the writing must contain the essential elements of a complaint, including the name and address of the complainant, the name of the telecommunications company against which the complaint is made, a clear and concise statement of the facts involved and a request for affirmative relief.

(c) In the event that the Commission cannot resolve the complaint to the satisfaction of all parties, the complainant may file a formal request to the Commission and will be entitled to a hearing.

(d) If the Commission determines that any rate, action, omission, rule regulation, classification or practice of a telecommunications company violates any provision hereof or any rule or order to the Commission, then the Commission may:

(1) order said company to pay the complainant the damages it causes that are attributable to said rate, act, omission, rule, regulation, classification or practice, and

(2) order said company to take such actions or desist from carrying out such actions as the Commission may determine are reasonably necessary for desisting from the violation.

(e) A telecommunications company may be subject to a fine or civil penalty in accordance with subsection (f) hereof, upon a determination by the Commission or court that the telecommunications company has violated any of the following:

(1) The material terms of its certificate of public convenience and necessity;

or

(2) Substantial compliance with this article or rules or orders prescribed by the Commission.

(f) The Commission may impose administrative fines of up to a maximum of twenty-five thousand (\$25,000) dollars for each violation hereof. In the case of a continuing violation, each day that transpires shall constitute a separate offense, but the total amount of the fine imposed shall not exceed five hundred thousand (\$500,000) dollars. Any penalty assessed under this subsection is in addition to any other costs, expenses or payments for which the telecommunications company is responsible under other provisions of this subsection.

(g) The Commission may permit, in lieu of a full hearing before the Commission, that one of its hearing examiners conduct hearings and report its findings to the Commission.

(h) The Commission shall adopt rules governing the filing of such complaints.

Section 8330. Judicial Review.

Any person aggrieved by a final action of the Commission may seek judicial review pursuant to 1 CMC Section 9112 within thirty (30) days of its issuance. Such review shall be limited to questions of law and the record established and issues raised before the Commission.”

Section 8331. Consumer Counsel.

In any proceeding before the Commission, the Consumer Counsel may intervene and participate as a party.

Section 8332. Interim Rules and Regulations.

Except as provided herein, the regulations, standards, procedures and all other such aspects related to the regulation of the functions and operation of telecommunications companies that may be in force when this Act becomes effective, shall continue to apply until amended or repealed by the Commission, pursuant hereto.

**Article 7. Miscellaneous.**

Section 8333. No Preemption of Laws Governing Anti-Competitive Activity.

Nothing in this part in any way preempts, abrogates, or otherwise affects any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anticompetitive activity.

Section 8334. Annual Report.

On or before June 1<sup>st</sup> of every year from the effective date of this act, the Commission shall file with the Governor and the presiding officers of the Legislature an annual report in which the Commission shall:

- (1) Detail the administration and operations of the Commission; and
- (2) Review the impact on universal access and service in the CNMI of any Federal Universal Service Fund that results from current Federal Communications rulemaking under the Federal Telecommunications Act of 1996; and
- (3) Evaluate the extent to which the Federal Universal Service Fund falls short of supporting legislatively defined universal access and service goals in the CNMI; and
- (4) Propose plans or legislation that would ensure the attainment of universal access and telecommunications service goals in the CNMI; and
- (5) Relate all other concerns regarding the delivery of the telecommunications services or the regulations of telecommunications companies in the CNMI, or the telecommunications industry in general.”

Section 2. 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 3. 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. 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 4. Effective Date.

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

**CERTIFIED BY:**

**ATTESTED TO BY:**

Benigno R. Fitial

Evelyn C. Fleming

**BENIGNO R. FITIAL**  
SPEAKER OF THE HOUSE

**EVELYN C. FLEMING**  
HOUSE CLERK

APPROVED this 23<sup>rd</sup> day of February, 2001

/Signed for Governor/

for **PEDRO P. TENORIO**

**GOVERNOR**

Commonwealth of the Northern Mariana Islands