

TITLE 40.
COMMUNICATIONS

CHAPTER 1.

NATIONAL TELECOMMUNICATIONS AUTHORITY

ARRANGEMENT OF SECTIONS

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An Act to provide for the establishment and privatization of the Marshall Islands National Telecommunications Authority and for related purposes.

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| Commencement: | 9 October 1990 |
| Source: | P.L. 1990-105 |
| | P.L. 1994-83 |
| | P.L. 1995-139 |
| | P.L. 2001-33 |
| | P.L. 2002-56 |

§101. Short Title.

This Chapter may be cited as the Marshall Islands National Telecommunications Authority Act of 1990. [P.L. 1990-105, §1.]

§102. Interpretation.

(1) In this Chapter, unless otherwise specified:

(a) “the Authority” means the Marshall Islands National Telecommunications Authority established by Section 103 of this Chapter;

(b) “the Board” means the Board of Directors of the Authority established by this Chapter;

- (c) “a director” means a member of the Board;
- (d) “the Minister” means the Minister in charge of the subject of telecommunications;
- (e) “the President” means the President of the Republic of the Marshall Islands; and
- (f) “telecommunication services” include without limitation; telephone, telegram, telex, data transfer, facsimile, video text, and audio visual services, both as available to the general public and as provided by lease arrangement for the exclusive use of lessees. [P.L. 1990-105, §2.]

§103. Establishment of the Authority.

The Marshall Islands National Telecommunications Authority is hereby established. [P.L. 1990-105, §3.]

§104. Incorporation of the Authority.

(1) The Authority:

- (a) is a body corporation with perpetual succession;
- (b) shall have a seal;
- (c) may enter into contracts;
- (d) may acquire, hold, manage, charge, and dispose of real, personal, and mixed property;
- (e) may sue and be sued in its corporate name; and
- (t) for the purposes of its functions, has all the powers, functions, duties, and responsibilities of a corporation.

(2) To the extent that the provisions of the Association Law, P.L. 1990-91, as amended, (18 MIRC 1A) are not inconsistent with this Chapter, they shall apply to the Authority and its activities. [P.L. 1990-105, §4.]

§105. Objectives of the Authority.

The objectives of the Authority shall be:

- (a) to assume responsibility for the management, operation, and maintenance of domestic and international telecommunication services for the Republic;
- (b) to perform in a manner that will best meet the social, economic, and political needs of the people of the Republic for telecommunication services and to do so as efficiently and economically as practicable;
- (c) to the extent that it is reasonable and practicable, to provide telecommunication services to the widest practical number of users; and
- (d) to encourage and enlist private sector participation in the Authority. [P.L. 1990-105, §5.]

§106. Functions of the Authority.

The functions of the Authority under this Chapter are to plan, establish, manage, operate, and maintain domestic and international telecommunication services for the Republic consistent with the objectives set forth in Section 105 of this Chapter. [P.L. 1990-105, §6.]

§107. Powers of the Authority.

(1) Subject to this Chapter, the Authority has, in addition to any other powers conferred by

this Chapter and any other law, all powers, rights, privileges, and immunities that are necessary or convenient for carrying out its functions.

(2) Without limiting the generality of subsection (1) of this Section, but subject to this Chapter and any other law, the Authority:

(a) may enter into, make, perform, and carry out contracts of every kind for any lawful purpose without limit as to amount, with any person, firm, association or corporation, government or subdivision thereof, including agreements with telecommunication authorities of other countries to establish and operate international telecommunication services with and through the Republic;

(b) may purchase, own, lease, rent, sell, mortgage, pledge, or in any other manner deal in and with property, real, personal, or mixed, as may be necessary and convenient to carry out its functions;

(c) may borrow money and issue bonds, notes, debentures or other obligations of this corporation from time to time for any of the objectives or purposes of this corporation, and may secure the same by mortgage, deed of trust, pledge, or otherwise, or may issue the same unsecured; may purchase or otherwise acquire its own bonds, debentures, or other evidences of its indebtedness or obligations; and may purchase, hold, sell, and transfer the shares of its own capital stock to the extent and in the manner provided by the laws of the Republic as the same are now in force or as may be hereafter amended;

(d) shall have the exclusive right to engage in the erection, construction, installation, maintenance, operation, and management of domestic and international telecommunications services in the Republic, subject to the authority that has been granted to others by the Republic to engage in such activities or that may be granted; provided that any such future grant of authority:

(i) does not adversely affect the financial ability of the Authority to serve the outer islands; and

(ii) shall not permit the operation of a public switch system;

“(e) shall in accordance with the provisions of Sections 103, 104, 105, 106, and 107 of the Marshall Islands Administrative Procedure Act 1979, 6 MIRC, Chapter 1, set and collect rates and charges, and promulgate rules and regulations, with respect to the provision of telecommunication services; provided, however, that rates and charges shall not be set so that for any fiscal year the anticipated annual net profit shall be more than twenty per cent (20%) of anticipated annual revenues; and provided, further, that annual net profits earned in excess of twenty per cent (20%) of annual gross revenues shall within the next fiscal year be used by the Authority either to maintain or expand its system or provide rebates to its customers;”

(f) shall adopt articles of incorporation and bylaws to govern the operations and functions of the Authority. [P.L. 1990-105, §7.][subsection (e) amended by P.L. 2001-33, §2(A).]

§108. Management of the Authority.

(1) Subject to this Chapter and to the articles of incorporation and bylaws adopted by the Authority pursuant to this Chapter, the Authority shall be controlled and managed by a Board of Directors.

(2) The Board has and may exercise and perform all the powers and functions of the

Authority under this Chapter. [P.L. 1990-105, §8.]

§109. The Board of Directors.

(1) The initial directors of the Board, which shall serve until their successors are elected or appointed at the first shareholder's meeting described in subsection 112(6) of this Chapter, shall be comprised of five (5) directors including the following: the Minister, who shall serve as the chairman of the Board, and, subject to nomination by the Minister and appointment and removal by the President, two (2) officials of the Ministry of Transportation and Communication and two (2) members of the private sector. The initial Board shall meet at the call of the chairman or any two (2) directors and, subject to this Chapter, the articles of incorporation, and the bylaws, shall determine its own procedures. Vacancies in the initial Board may be filled in the same manner as directors may be appointed. The quorum for any meeting of the initial Board shall be three (3).

(2) At the shareholder's meeting described in subsection 112(6) of this Chapter, and until the Government owns less than twenty five percent (25%) of the authorized capital stock of the Authority:

(a) the Board shall be comprised of eight (8) directors and the quorum for any meeting of the Board shall be five (5);

(b) the directors shall be elected by ballot at the annual meeting of the shareholders, to serve for one year or until their successors are elected and qualified; their term of office shall begin immediately after election; and

(c) every shareholder entitled to vote at any election for directors of the Authority shall have votes equal to the number of his shares with voting rights multiplied by the number of directors to be elected; and he may accumulate his votes and give one candidate all his votes, or he may distribute his votes among as many candidates as he thinks fit; the candidates receiving the highest number of votes up to the number of directors to be elected are elected.

(3) At such time as the Government owns less than twenty-five percent (25%) of the authorized capital stock of the Authority, the number, selection, and qualification of directors as set forth in subsection (2) of this Section, may be changed by the amendment of the bylaws of the Authority.

(4) If a director has a personal interest in the subject matter of any question before a meeting of the Board, he shall disclose his interest in the meeting and shall take no part in the deliberations (except as directed by the Board) or in the decision of the Board on the question. Any such disclosure shall be recorded in the minutes. [P.L. 1990-105, §9.]

§110. Officers and staff.

(1) The officers of the Authority shall be a president, vice-president, secretary, and treasurer, each of whom shall be selected by the directors in accordance with the bylaws. Such other officers as may be deemed necessary may be selected by the directors or chosen in such other manner as may be described in the bylaws. The same person may not hold the position of president and secretary at the same time. The duties of the officers shall be as set forth in the bylaws or by resolution of the directors, not inconsistent with the bylaws or this Chapter.

(2) The Authority may employ such other employees, consultants, and advisers on such terms and conditions as it deems necessary and convenient for the performance of the functions of

the Authority.

(3) Article VII of the Constitution does not apply to or in relation to the Authority. [P.L. 1990-105, §10.]

§111. Vesting of real, personal, and mixed property.

As of April 27, 1987, all real, personal, and mixed property of the telecommunication service of the Republic of the Marshall Islands, including without limitation all monies lying in the Telecommunications Fund created under the Telecommunications Act 1983, vest absolutely in the Authority; and all assets and liabilities, rights, duties, and obligations, and all contracts and agreements of the Republic relating to telecommunication service and existing on March 25, 1987, including the telecommunications grant made available under Section 215(b) of the Compact of Free Association, shall stand transferred to and vest in the Authority as of said date. [P.L. 1990-105, §11.]

§112. Authorized capital stock; privatization.

(1) The initial Board shall on or before December 31, 1990, obtain an appraisal of the value, as at April 27, 1987, of the property transferred under Section 111 of this Chapter.

(2) The appraised value determined under subsection (1) of this Section, shall constitute the aggregate par value of the initial authorized capital stock of the Authority. The par value of each share shall be \$10.00.

(3) Of the initial authorized capital stock, twenty-five percent (25%) shall be issued to the Government as soon as practicable.

(4) The remaining seventy-five percent (75%) of the initial authorized capital stock, shall as soon as practicable be made available for purchase by the public for cash on such terms and conditions as authorized by the Board; provided, however:

(a) the purchase price per share shall not be less than the par value;

(b) only citizens, legal residents, corporations or entities of the Republic of the Marshall Islands shall be permitted to purchase or own shares; provided however, that upon the expiration of three years after the effective date of this Act, the Board and the shareholders may permit foreign investors to purchase or own up to a cumulative total of twenty-five percent (25%) of the shares at a given time;

(c) no citizens, legal residents, corporations or entities of the Republic of the Marshall Islands, other than the government shall be permitted to purchase or own more than 50% of the authorized capital stock”.

(d) Government shall, in addition to the authorized capital stock issued to it under Subsection (3) of this Section, retain 51% of the remaining unsold authorized capital stock under this Subsection; provided further, that the Cabinet may at its discretion, when it deems necessary and appropriate, sell or otherwise dispose of up to 50% of the Government’s total capital stock; and

(e) As used in this Section:

(i) “citizen” and its grammatical variations means the citizen of the Republic of the Marshall Islands as defined in the Constitution and any other laws of the Republic;

(ii) “legal resident” and its grammatical variations means a person who is not a citizen of the Republic, but who has during the period of ten (10) consecutive years prior to the date of request to purchase or own shares, ordinarily and lawfully resided

in the Republic;

(iii) “corporation” and its grammatical variations means a domestic corporation duly registered and incorporated in the Republic, which has been established and doing business in the Republic for a minimum period of ten (10) years prior to the request to purchase or own shares and is up to date in the payment of all its taxes; and

(iv) “entity” and its grammatical variations includes the RMI, local governments, government agencies or authorities, local schools, churches, unincorporated partnerships, business or concerns, that have been established and operating in the Marshall Islands for a minimum period of ten (10) years prior to the date of request to purchase or own shares, and is up to date in the payment of all its taxes.

(5) Monies received by the Authority with respect to the sale of capital stock under subsection (4) of this Section, shall, to the extent of the par value of the stock sold, be paid into the Marshall Islands General Fund or otherwise credited to the Government as soon as practicable after their receipt.

(6) As soon as practicable, but in any event within sixty (60) days, after the initial issuance of the stock purchased pursuant to subsection (4) of this Section, the Board shall call for and hold a meeting of the shareholders to elect new directors.

(7) Until the Government owns less than twenty-five percent (25%) of the authorized capital stock, the amount of the authorized capital stock can only be amended with the consent of the Government.

(8) Each share of stock of the Authority shall be entitled to one vote stand in any shareholder election or action for any purpose; provided, however, shareholders shall be permitted to accumulate their votes in the election of directors.

(9) Only persons in whose names shares entitled to vote stand on the stock records of the Authority on the day of any meeting of the shareholders, shall be entitled to vote at such meeting, unless some other day be fixed by the Board for the determination of shareholders of record, and then on such other day. Provided, however, until the initial authorized capital stock is fully sold to the private sector, the Government shall be entitled to vote the shares remaining unsold. [P.L. 1990-105, §12.][amended by P.L. 2001-33 §2(B).][PL2002-56 amending (4)(c) and (e)(iv) of this section]

§113. Accounts and records.

(1) In respect to its assets and transactions, the Authority shall maintain accounts and records in accordance with generally accepted accounting principals consistently applied.

(2) The Authority shall engage an independent auditor to complete an audit of the accounts and records of the Authority within ninety (90) days after the end of each fiscal year.

(3) The Authority shall, as soon as practicable after the close of each fiscal year, submit the financial statements of the Authority and the auditor’s report to the Cabinet for presentation to the Nitijela. [P.L. 1990-1 05, §13.]

§114. Revenue; authorized investments.

(1) The revenue of the Authority shall not be treated as revenue of the Government for purposes of Article VIII of the Constitution and may be expended for the purposes of the Authority pursuant to procedures adopted by the Board.

(2) The Authority shall, at the discretion of the Board, invest any of its monies in excess of the amount necessary for meeting the immediate requirements of the Authority, to ensure the greatest return commensurate with sound financial policies. [P.L. 1990-105,§14.][subsection (2) amended by P.L. 2001-33, §2(C)]

§115. Payment of dividends.

(1) Except as otherwise provided by law, the Board of the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, only from the profits and earned surplus of the Authority and only when the Authority does not have a loss and the payment of a dividend would not create a capital deficit.

(2) For purposes of the payment of the dividends, the Government will be deemed to be the owner of any shares of the initially authorized capital stock which have not been purchased by the public. [P.L. 1990-1 05, §15.]

§116. Taxation.

Goods imported by the Authority for the provision of telecommunication services shall not be subject to any tax, rate, charge, impost or duty under any other law; provided, however, that upon the resale of any such goods, the Authority will be liable for and shall pay the then applicable tax, rate, charge, impost or duty on the depreciated value of the goods. [P.L. 1990-105, §16.]

§117. Acquisition of land for the Authority.

(1) Where any land, or interest therein, is required for the purposes of the Authority and the Minister responsible for land acquisition approves the proposed acquisition, the land or interest proposed to be acquired shall, for purposes of the Land Acquisition Act (9 MIRC 2), be deemed to be required for public use and may be acquired under that Act and transferred to the Authority.

(2) The compensation payable for land acquired under subsection (1) of this Section, shall be paid by the Authority. [P.L. 1990-105, §17.]

§118. Transition provision.

(1) All acts, transactions, matters, and things done, determined, or entered into by the National Telecommunication Authority (NTA) established under the National Telecommunication Authority Act 1987 shall be deemed to have been done, determined, and entered into by the Authority.

(2) All assets, liabilities, rights, and obligations of NTA and existing immediately before the effective date of this Chapter, are transferred to and are assets, liabilities, rights, and obligations of the Authority.

(3) The Board of Directors and officers of NTA immediately before the effective date of this Chapter shall be the initial Board and officers of the Authority.

(4) The acts, transactions, matters, and things done, determined, or entered into by the Government with respect to NTA shall be deemed to have been done, determined and entered into by the Government with respect to the Authority, including Nitijela Resolution No. 13 adopted September 26, 1988, and the guaranty authorized thereunder. [P.L. 1990-105, §19.] [Section re-numbered as 118, original 118 was "Reserved"[Rev2003]

§119. Special accounting for certain aged receivables.

Notwithstanding any provision in this Act [apparently referring to this Chapter, the Act being amended] to the contrary, all accounts receivable, including judgments, signed or unsigned promissory notes and all others, relating to telecommunications services provided prior to October 1, 1988, which have been collected or remain uncollected as of the date of this Act [*referring to the amending Act, PL. 1995-139, certified on 6 October 1995*], are hereby extinguished and shall be written-off in the financial books of the Authority. [added by P.L. 1994-83, § 2; amended by P.L. 1995-139, §2. References in square brackets added by Commissioner for clarity.][section re-numbered as §119.[Rev2003]