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October 30, 2002

By ECFS

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

**Re: Federal-State Joint Board on Universal Service,
CC Docket No. 96-45**

Dear Ms. Salas:

On October 29, 2002, my colleague Douglas A. Klein and I, representing the Palau National Communications Corporation ("PNCC), and Ambassador Hersey Kyota and Rhinehart Silas of the Embassy of Palau met with Bryan Tramont and Chris Libertelli of the Office of Chairman Powell to discuss the Petition of the Palau National Communications Corporation filed on November 16, 2001.

Attached to this letter are materials that we provided, which summarize the presentation made in the ex parte meeting.

If you have any questions, please contact me.

Respectfully submitted,

David L. Sieradzki
Counsel for Palau National Communications Corp.

Enclosures

cc: Bryan Tramont
Chris Libertelli

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*Palau National Communications
Corporation*

FCC Petition Regarding
Universal Service and
NECA Membership

October 2002



The Republic of Palau's Unique Relationship With the U.S.

- Palau, with a population of about 19,500, was part of the U.S. Trust Territory of the Pacific from World War II until 1994. Since 1994, Palau has been independent but continues to be closely linked to the U.S. under a Compact of Free Association.
- The Compact, enacted into U.S. law by Congress in 1986 and ratified by Palau in 1993, commits the U.S. to promoting Palau's economic development.
- The Compact provides for Palau to be treated as if it continued to be part of the U.S. for purposes of certain programs:
 - The U.S. military has exclusive responsibility for and access to Palau, and Palauans serve in the U.S. armed forces.
 - The U.S. dollar is the currency of Palau, and the U.S. Postal Service delivers the mail in Palau (postal abbreviation "PW", ZIP code 96940).
 - Palau is treated as a domestic jurisdiction for purposes of programs administered by the U.S. Departments of Agriculture, Commerce, Education, HHS, Interior, Justice, Labor, Transportation, Veterans Affairs, and the **EPA**.The U.S. has made investments in Palau's infrastructure, including roads, airport and seaport facilities, and communications networks.



Telecommunications in Palau

- PNCC, the incumbent carrier, provides local and long-distance services to the entire population (approximately 8,300 business and residential subscribers as of June 30, 2001).
- In 1993, the USDA's Rural Utilities Service granted PNCC a \$39.1 million loan to rebuild and modernize Palau's telecommunications infrastructure. PNCC used the RUS loan funds to deploy a modern telecommunications system.
- PNCC now faces a financial crisis, due in large part to changes in FCC policies:
 - Reduction of payments from international carriers due to "Benchmark" accounting rate policy;
 - Revenue losses due to international call-back, refile, and other competitive developments;
 - Substantial difficulties with call completion and service quality on in-bound calls.



Palau's Participation in the Universal Service Program Would Serve the Public Interest

- The United States has a **vital strategic interest** in Palau, particularly given Palau's proximity to some East Asian and Pacific countries that could be among the most critical hot spots in the worldwide war on terrorism.
- PNCC faces a **financial crisis** that was largely brought about by FCC policies reducing international accounting rates to benchmark levels and promoting a more competitive international telecommunications marketplace. The United States has a responsibility to provide explicit universal service support for PNCC's operations as an alternative *to* the implicit subsidies that are being eliminated.
- The **Compact of Free Association**, which defines the relationship between the United States and Palau, expresses the United States' commitment to advancing the economic development of Palau, including critical infrastructure such as telecommunications networks.



The Executive Branch of the U.S. Government Strongly Supports the PNCC Petition

- **The U.S. State Department negotiated the Compact and oversees U.S. international relations with Palau:**
 - “I ... urge you and your colleagues at the FCC to take into consideration the unique relationship between the United States and Palau and our political, economic and strategic interests in Palau. . . . [E]conomic development and self-sufficiency – two of the Compact’s principal objectives, along with securing American strategic interests – would not be possible without an effective telecommunications system. . . . The Department of State supports Palau’s pursuit of NECA membership as a means of securing our economic and strategic interests in Palau.” (Letter to Chairman Powell, 10/20/02.)
- **The U.S. Department of the Interior’s Office of Insular Affairs plays a key role in implementing the Compact:**
 - “To grant the PNCC’s request for Palau’s inclusion in the universal service program would serve both Palau’s interests and those of the United States. Assuring a strong telecommunications infrastructure in Palau is necessary to the freely associated state’s continuing economic development and to ensure that Palau remains a strong ally of the United States. In addition, including the PNCC in the FCC’s regulatory programs is consistent with the Compact of Free Association. It appears that the PNCC has satisfied the conditions specified in the Compact for becoming subject to the FCC’s common carrier regulations.” (Letter to Chairman Powell, 10/9/02.)



PNCC's Petition Requests Three Findings:

- 1) The **FCC has jurisdiction** over PNCC.
- 2) Under **Section 254** of the Communications Act, the FCC should include PNCC in the high-cost universal service program.
- 3) The FCC should **waive the “incumbent local exchange carrier” definitions** in certain rules in order to allow PNCC to participate in NECA and in the high-cost universal service support program.



1) The FCC Has Jurisdiction Over PNCC

The language of the Compact extends the FCC's jurisdiction:

“The United States Federal Communications Commission has jurisdiction, pursuant to the Communications Act of 1934 and the Communications Satellite Act of 1962, over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in Palau.”

Compact of Free Association, Article III, Section 131(a)(2).

The legislative history confirms this:

“Palau will be included in the United States telecommunications system for rate-making and other operational aspects relating to United States common carriers.”

Senate Rept. No. 99-403, P.L. 99-658, ut 38.



1) The FCC Has Jurisdiction Over PNCC

The Palau Compact specifically provides for the FCC to exercise its Communications Act authority over any carrier that:

- a) is a United States common carrier;
- b) provides domestic and international communications services in Palau; and
- c) does so using satellite earth stations that it owns and that are located in Palau.



1) The FCC Has Jurisdiction Over PNCC

The Palau Compact specifically provides for the FCC to exercise its Communications Act authority over any carrier that:

a) is a United States common carrier;

- PNCC will be a United States common carrier upon grant of the international Section 214 authority requested in the petition, for which it is indisputably qualified.



1) The FCC Has Jurisdiction Over PNCC

The Palau Compact specifically provides for the FCC to exercise its Communications Act authority over any carrier that:

a) is a United States common carrier;

b) provides domestic and international communications services in Palau;

- PNCC clearly provides domestic and international communications services to customers in Palau.



1) The FCC Has Jurisdiction Over PNCC

The Palau Compact specifically provides for the FCC to exercise its Communications Act authority over any carrier that:

- a) is a United States common carrier;
- b) provides domestic and international communications services in Palau; and
- c) **does so using satellite earth stations that it owns and that are located in Palau.**
 - All communications in Palau are interconnected with the U.S. and international public switched networks via the one satellite earth station in Palau, which PNCC owns.
 - Regardless of whether the FCC has authority to regulate PNCC's domestic (or "intrastate") service in Palau, the FCC has authority to provide federal universal service funding for it, just as it does for other U.S. carriers' intrastate service.



2) *Under Section 254, the FCC Should Include PNCC in the High-Cost Universal Service Program*

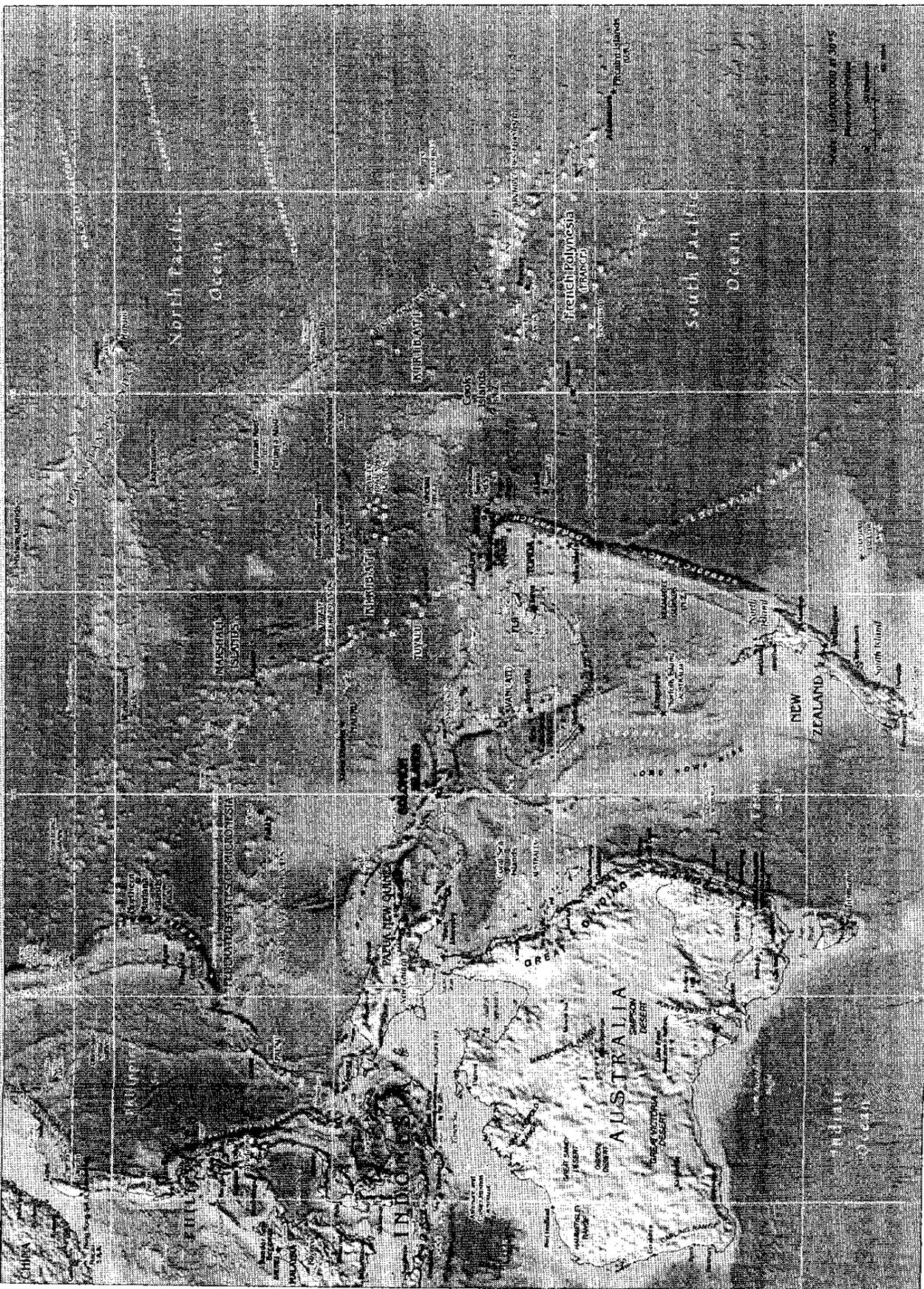
- a) For purposes of telecom regulation, the Compact treats Palau as if it were part of the United States (“the Nation”).
- b) The FCC can and should interpret “the Nation” to include all areas subject to FCC jurisdiction, including Palau.
 - To give meaning to Section 131 of the Palau Compact, “the Nation” should be interpreted to cover all areas under FCC jurisdiction. U.S. law treats Palau as part of the United States for a number of federal programs – including telecommunications regulation.
 - In any event, the FCC retains discretion to strike a “balance” among the principles in Section 254(b); those “lofty and expansive” principles “hardly constitute[] a series of specific statutory commands.” *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999); *Texas Office of Public Utility Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001); *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).
- c) The circumstances of Palau are unique. Making these findings with respect to Palau would not compel the FCC to extend the universal service or NECA programs any further.
 - The annual cost is estimated as not likely to exceed \$6.5 million.



3) The FCC Should Waive the “ILEC” Definitions in Certain Rules

- The Commission’s rules assume that all incumbent local exchange carriers (“ILECs”) participated in NECA in the past. There can be no dispute that PNCC is the ILEC in Palau.
- The FCC has granted very similar waivers for American Samoa Telecom and the Guam Telephone Authority.
- Once the FCC finds that it has jurisdiction over PNCC, there is no distinction between PNCC and those carriers.

OCEANIA





United States Department of State

Assistant Secretary of State
for East Asian and Pacific Affairs

Washington, D.C. 20520

SEP 20 2002

Dear Chairman Powell:

I am writing in regard to the petition submitted to the Federal Communications Commission (FCC) by the Palau National Communications Corporation (PNCC) for inclusion within the National Exchange Carriers Association (NECA). I understand the Commission staff is examining actively PNCC's petition and have been in regular contact with the Department of State.

The Department of State takes no position on the legal issues associated with the Federal Communications Act of 1934, as amended, and the jurisdiction that act may provide the FCC over telecommunications services in Palau or the other Freely Associated States.

I, however, urge you and your colleagues at the FCC to take into consideration the unique relationship between the United States and Palau and our political, economic and strategic interests in Palau. Palau was liberated by the United States from Japanese control in World War II and was administered by the U.S. as part of the Trust Territory of the Pacific Islands under a United Nations mandate from 1948 to 1994. In that latter part, Palau became an independent country linked to the United States by a Compact of Free Association, a status Palau shares with the Republic of the Marshall Islands and the Federated States of Micronesia. Under the Compact, the Palau granted the U.S. certain defense rights and the U.S. assumed responsibility for Palau's defense and security. The United States also provided Palau with important financial

The Honorable

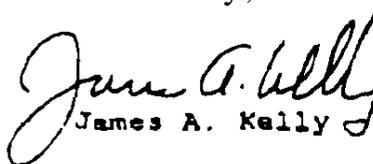
Michael Powell, Chairman,
Federal Communications Commission,
Washington, D.C.

and economic assistance and extended many domestic Federal programs to Palau. These programs are not available outside the United States except in the three Freely Associated States.

The Compact with Palau, as ratified by the U.S. Congress, recognizes and codifies in U.S. law American economic and strategic interests in Palau. An important part of U.S. interests in Palau is ensuring the country's economic stability and promoting its development. Quality international telecommunications facilities are a fundamental necessity, given Palau's geographic isolation from the United States and other major economic centers. The United States worked closely with Palau in developing PNCC's facilities and financing their construction through a U.S. Department of Agriculture loan. The USG provided this substantial assistance toward in the establishment of Palau's telecommunications recognizing that economic development and self-sufficiency -- two of the Compact's principal objectives, along with securing American strategic interests -- would not be possible without an effective telecommunications system.

The Government of Palau and PNCC believe that NECA membership is the only viable option for meeting Palau's future telecommunications needs. The Department of State supports Palau's pursuit of NECA membership as a means of securing our economic and strategic interests in Palau. As the FCC weighs the legal and regulatory issues involved in PNCC's petition, I hope you can consider these interests as well.

Sincerely,


James A. Kelly



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

October 9, 2002

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Petition of the Palau National Communications Corporation, CC Docket No. 96-45

Dear Mr. Chairman:

The Palau National Communications Corporation (PNCC) has filed a petition with the Federal Communications Commission (FCC) to increase the PNCC's effectiveness as the provider of telecommunications services in Palau. Until October 1, 1994, Palau was a district of the former Trust Territory of the Pacific Islands; since that date Palau has been a state in free association with the United States. The Department of the Interior has performed a key role in implementing the Compact of Free Association¹, which governs Palau's special relationship with the United States. In addition, the Office of Insular Affairs coordinates and monitors Federal programs² provided to Palau and the other two freely associated states.

To grant the PNCC's request for Palau's inclusion in the universal service program would serve both Palau's interests and those of the United States. Assuring a strong telecommunications infrastructure in Palau is necessary to the freely associated state's continuing economic development and to ensure that Palau remains a strong ally of the United States. In addition, including the PNCC in the FCC's regulatory programs is consistent with the Compact of Free

¹ Signed in Palau on January 10, 1986, and enacted as U.S. Public Law 99-658 on November 14, 1986.

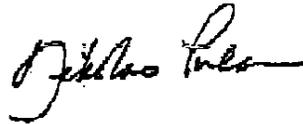
² Excluding services provided by the Departments of Defense and State and the Peace Corps.

³ Under the leadership of its current President, His Excellency Tommy E. Remengesau Jr., Palau is a valued partner in the United States' war against terrorism. AS President Remengesau wrote in his September 12, 2001, letter (serial no. 01-440) to President George W. Bush: "the people and government of ... Palau stand committed to providing .. whatever support and assistance we are able to give."

Association. It appears that the PNCC has satisfied the conditions specified in the Compact for becoming subject to the FCC's common carrier regulations.

I appreciate your time and consideration and invite you or your staff to contact the members of my staff and me at any time to discuss this matter further.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Nikolao L. Pula Jr.", written in a cursive style.

Nikolao L. Pula Jr.
Acting Deputy Assistant Secretary
for Insular Affairs