

AN ACT

To establish the Belau Submarine Cable Corporation as a state-owned public corporation that is authorized to procure, own, and manage a fiber optic cable on behalf of the Republic, and for related purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:

1           Section 1. Legislative Findings.

2           The Government of the Republic of Palau, through Executive Order No. 351,  
3           established a national Information Communications Technology Policy that  
4           recognizes the requirement for increased public and private investment in the ICT  
5           sector. The ICT policy holds that competitive telecommunications markets will  
6           encourage investment, improve service quality and choice, and allow for efficient  
7           pricing. Currently, Palau's international connectivity depends entirely on satellites.  
8           Satellite connections carry high costs, permit limited bandwidth, and have a high  
9           round-trip delay time. Poor telecommunications performance has negative  
10          consequences for growth and development across the economy.

11          A study funded by the World Bank has demonstrated the financial viability of  
12          a submarine cable investment to establish broadband internet connectivity to Palau  
13          by connecting to the major cable hub at Guam. The State of Yap in the Federated  
14          States of Micronesia will also be connected to the Guam hub through this project and  
15          mutual participation is essential to the project going forward. A submarine cable  
16          investment will supply high quality broadband internet capacity at lower cost to  
17          Palau than is currently available, making high-tech, high-speed telecommunication  
18          services accessible and affordable to the broader population.

19          The Republic of Palau has requested the Asian Development Bank ("ADB") to  
20          support the financing of its portion of the submarine internet cable project. As a part  
21          of the financing arrangements the ADB has made the Republic's establishment of a  
22          company to be the implementation agency for the project, capable of treating all  
23          service providers using submarine cable capacity in a non-discriminatory manner, to  
24          be a pre-requisite for ADB board approval of the loan. This bill establishes a state-

owned corporation, known as the Belau Submarine Cable Corporation, to procure and manage the fiber optic cable.

The establishment of the Belau Submarine Cable Corporation, and the subsequent enabling of fiber optic cable connectivity, will help promote economic growth, improve efficient use of resources and facilitate cooperation on transnational matters including the management and monitoring of natural resources and disaster mitigation.

**Section 2. Establishment of Belau Submarine Cable Corporation.**

There is established a public corporation called the “Belau Submarine Cable Corporation.”

**Section 3. Duration.**

The period of duration of this public corporation is perpetual, subject to the laws of the Republic of Palau.

**Section 4. Purpose and Principal Objective.**

(a) The purpose of this public corporation is for any lawful purpose related to the procurement, ownership, and management of a fiber optic cable on behalf of the Government of the Republic of Palau.

(b) This public corporation is created to create a competitive and level playing field and full access for any business so that a competitive price for the best services may be made available to Palauans and visitors to Palau.

(c) The principal objective of this public corporation is to operate based on sound business principles, such as full cost recovery, including the cost of capital, and to ensure open access to the cable for all information communications technology service providers so that the benefits of the fiber optic cable accrue to the benefit of the consumer.

**Section 5. Powers and Duties.**

The corporation has the following powers to be duly exercised by its Board of Directors (hereinafter “Board”), officers, agents, and employees in accordance with the laws and regulations of the Republic of Palau:

(a) To sue and be sued in its own name.

1           (b) To undertake all actions necessary to facilitate the procurement of a fiber  
2 optic cable, including working with, as may be necessary, any entity designated by the  
3 President of the Republic of Palau with a mandate to procure a fiber optic cable on  
4 behalf of the Republic.

5           (c) To undertake all actions necessary to promote open access to the fiber  
6 optic cable for all relevant information communications technology service providers  
7 on an equal and commercially reasonable basis, in such a manner that ensures that  
8 the benefits of improved information communications technology infrastructure  
9 accrues to the benefit of the consumer.

10          (d) To undertake all actions necessary to manage the fiber optic cable so that  
11 any loan utilized to finance the procurement of the fiber optic cable is paid off in  
12 accordance with the terms of the loan agreement, or sooner, if possible.

13          (e) To undertake, maintain and operate any works, system, facilities  
14 apparatus, or equipment required for any purpose related to managing the fiber  
15 optic cable.

16          (f) To undertake all actions necessary in order to ensure that the public  
17 corporation operates on commercial principles and accomplishes its principal  
18 objectives, as set forth herein.

19          (g) To hire and fire employees; however, the Board may delegate the power to  
20 hire and fire employees to the Chief Executive Officer.

21          (h) To own or lease property or infrastructure for the purpose of connecting  
22 the fiber optic cable on land and hosting any equipment that is required for the  
23 reliable and secure operation of the fiber optic cable.

24          (i) To obtain appropriate insurance from an established insurance provider  
25 for the fiber optic cable and related equipment.

26           **Section 6. Prohibited Actions.**

27          (a) This public corporation shall not sell the capacity of the fiber optic cable to  
28 consumers on a retail basis.

29          (b) This public corporation does not have the authority to sell or convey any  
30 interest in the fiber optic cable under its ownership, management, and authority

1 unless such sale is submitted to the President of the Republic for consideration, and if  
2 approved by the President of the Republic such sale must also be approved by a joint  
3 resolution of the Olbiil Era Kelulau.

4 **Section 7. Initial Incorporator.**

5 The initial incorporator of this public corporation is the Government of the  
6 Republic of Palau, represented by the Minister of Finance. The address of the  
7 incorporator is P.O. Box 100, Koror, Republic of Palau 96940.

8 **Section 8. Board of Directors.**

9 (a) The Board has the authority to perform all of the powers and duties of the  
10 corporation, as set forth in Section 5, and to delegate authority to a duly hired Chief  
11 Executive Officer to the extent necessary to carry out the powers and duties of the  
12 corporation in the best interests of the corporation.

13 (b) There are five (5) members of the Board; the five (5) members must elect a  
14 chairman from among the five (5) members. Three (3) members of the Board will  
15 constitute a quorum for carrying out the business of the Board. The concurrence of a  
16 majority of all members present at any meeting will be necessary to take any official  
17 Board action.

18 (c) The members of the Board are appointed by the President with the advice  
19 and consent of the Senate of the Olbiil Era Kelulau. The Board members will serve  
20 terms of four (4) years, at the conclusion of which they may be reappointed by the  
21 President with the advice and consent of the Senate. The Board members may be  
22 removed by the President for cause.

23 (d) Until such time as a quorum of the Board is appointed by the President  
24 and confirmed by the Senate of the Olbiil Era Kelulau, the Minister of Finance may  
25 act with all of the authority of the Board and the Chief Executive Officer.

26 (e) A Board member may be liable to the corporation for any action that is  
27 determined in a court of law to be a breach of a fiduciary duty owed to the  
28 shareholders of the corporation.

29 (f) A member of the Board acts under a fiduciary duty of loyalty and duty of  
30 care to the corporation.

1 (g) Board members may not receive compensation for their duties, except that  
2 they will be entitled to fifty dollars (\$50) per day while on the business of the Board  
3 and per diem at standard Republic of Palau rates for travel necessitated by the  
4 business of the Board.

5 Section 9. Officers.

6 Once a Board of Directors has been duly appointed by the President and  
7 confirmed by the Senate of the Olbiil Era Kelulau, the Board of Directors may hire a  
8 Chief Executive Officer who serves at the will of the Board of Directors and is  
9 compensated as determined by the Board of Directors.

10 Section 10. Stock.

11 As initially incorporated this public corporation may not issue stock to the  
12 general public and the Minister of Finance is the sole shareholding owner of the  
13 public corporation on behalf of the government of the Republic of Palau, provided  
14 that in ten (10) years the government may consider privatizing this corporation or  
15 establishing a public-private partnership.

16 Section 11. Miscellaneous.

17 (a) This public corporation must keep correct and complete books and  
18 records of account and must also keep minutes of all meetings of shareholders and  
19 directors.

20 (b) This public corporation is subject to the Open Government Act.

21 (c) The fiscal year of this public corporation is the same as the national  
22 government, beginning on October 1 of each year and ending on September 30 of  
23 each year.

24 (d) The Board may adopt an official seal of the public corporation. If an  
25 official seal is adopted, then it must be circular and inscribed with the name of the  
26 corporation, the jurisdiction of incorporation, and the words, "Corporate Seal."

27 (e) All profits accrued by the public corporation must be applied to pay down  
28 the loan provided by the Asian Development Bank for the establishment of a fiber  
29 optic cable connection.

1           **(f) This corporation will comply with all applicable laws, rules, and regulations**  
2 **regarding international connections of the fiber optic cable.**

3           **(g) The Board will adopt quality control measures such as Service-Level**  
4 **Agreements and Key Performance Indicators to ensure the provision of high quality**  
5 **services regarding the fiber optic cable.**

6           **(h) The Environmental Quality Protection Board (hereinafter “EQPB”) shall**  
7 **work closely with this corporation to avoid unnecessary delays during the**  
8 **construction phase period to ensure project work is in accordance with the**  
9 **construction schedule, and to ensure that this corporation meets all applicable EQPB**  
10 **requirements.**

11           **Section 12. Bylaws.**

12           **(a) The bylaws of this public corporation must be adopted and promulgated**  
13 **by the Board.**

14           **(b) The bylaws of this public corporation may not be inconsistent with this**  
15 **Act.**

16           **(c) The bylaws are not subject to the Administrative Procedures Act in**  
17 **Chapter 1 of Title 6 of the Palau National Code. The bylaws become effective when**  
18 **filed with the Office of the President and the Senate and the House of Delegates in the**  
19 **Olbiil Era Kelulau.**

20           **Section 13. Authorized Funding.**

21           **In order to secure the Republic of Palau’s interest in a fiber optic submarine**  
22 **cable, \$410,000 is hereby authorized and appropriated from local revenues in Fiscal**  
23 **Year 2015.**

24           **Section 14. Procurement.**

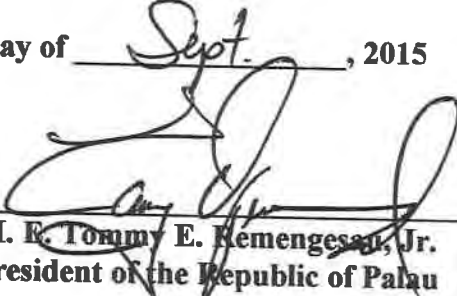
25           **Any agency or division of the National Government acting to effectuate this**  
26 **bill is exempt from the procurement requirements of 40 PNC Chapter 6 as well as**  
27 **that agency or entity’s own procurement requirements.**

28           **Section 15. Effective date.**

29           **This Act takes effect upon its approval by the President of the Republic of**  
30 **Palau, or upon becoming law without such approval.**

**PASSED: September 15, 2015**

Approved this 21<sup>st</sup> day of Sept., 2015

  
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**H. E. Tommy E. Remengesau, Jr.**  
**President of the Republic of Palau**