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April 12, 1977

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Mr. Emmett Rice
Acting Director of
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Office of Territorial Affairs
Department of the Interior
Washington, D.C. 30240

Dear Emmett:

During the meeting of the Joint Commission a few weeks ago, you were kind enough to give me a copy of a memorandum prepared by C. Brewster Chapman, Jr. regarding the availability of federal programs and services to the Northern Marianas under the Covenant. As you suggested, we have considered the matter further and would like to share our views with you.

We have no basic disagreement with Mr. Chapman's analysis of Sections 502 and 703(a) of the Covenant. We agree with the conclusion that Section 502 is self-executing and that the laws mentioned in Section 502(a) and (b) become applicable in the Northern Marianas upon the effective date of Section 502 without the need for any additional action by Congress. We agree also with his analysis of Section 703(a) and his treatment of these two sections as complementary rather than contradictory.

We understand, however, that some misunderstanding has developed within federal agencies regarding the need for specific congressional action in order to extend federal

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programs and services to the Northern Marianas upon the institution of constitutional government under the Covenant. It may be that this difficulty has arisen from a sentence in Mr. Chapman's letter which, if taken out of context, might appear to suggest that legislative amendments are required to make particular federal programs and services available in the Northern Marianas "to the extent that laws of the United States providing for such services and programs cannot be construed as permitting the extension of their programs and services to the Northern Mariana Islands. . . ."

In order to make certain that the provisions of the Covenant are promptly and properly implemented, it might be useful to inform all interested federal agencies of the procedure which should be followed to ascertain if specific federal programs and services are available to the Northern Marianas. Such a procedure would consist of the following:

(1) If a federal law is specifically referred to in Section 502(a)(1), such as the Public Health Service Act, it applies in the Northern Marianas upon the effective date of Section 502.

(2) Any law which extends federal services or financial assistance programs to Guam also automatically applies to the Northern Marianas under Section 502(a)(1) upon the effective date of Section 502. A federal law applies to Guam because it refers specifically to Guam, because it refers to all territories and possessions of the United States, or because it has been construed to apply to Guam in the absence of any such specific language. If the law in question applies to Guam, no further analysis or congressional action is required; the law automatically applies to the Northern Marianas upon the effective date of Section 502.

(3) Only if a federal law providing federal programs and services is not covered by one of the preceding two paragraphs do the provisions of Section 703(a) of the Covenant come into effect. As

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Mr. Chapman properly points out, Section 703 is only a commitment by the United States to make other services and programs available to the Northern Marianas beyond those made available by Section 502(a). If, for example, there is a federal program or service which does not apply to Guam but does apply to one or more of the other territories, then it would be necessary to secure congressional action in order to extend that program or service to the Northern Marianas.

If you agree with this analysis, I hope that your office will take the lead in informing other federal agencies regarding the proper reading of Section 502(a)(1) of the Covenant. As you know, the availability of federal programs and services was a very important aspect of the negotiations between the United States and the Northern Marianas leading to the Covenant and I think it is very important that no misunderstanding exist with respect to the provisions of the Covenant on this subject.

I am available to discuss this matter further with you at your convenience.

Sincerely,

Howard P. Willens

cc: Mr. Edward DLG. Pangelinan
Mr. C. Brewster Chapman, Jr.

bc: Paul Koffsky