

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN

2021 (FIRST) Regular Session

VOTING RECORD

Bill No. 36-36 (COR) As substituted by the Committee on General Government Operations, Appropriations, and Housing; and amended on the Floor.	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building August 6, 2021					
NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Senator V. Anthony Ada	✓					
Senator Frank Blas Jr.	✓					
Senator Joanne Brown	✓					
Senator Christopher M. Dueñas	✓					
Senator James C. Moylan	✓					
Vice Speaker Tina Rose Muña Barnes					✓	✓
Senator Telen Cruz Nelson		III ✓				
Senator Sabina Flores Perez	✓					
Senator Clynton E. Ridgell	✓					
Senator Joe S. San Agustin	✓					
Senator Amanda L. Shelton	✓					
Senator Telo T. Taitague	✓					
Senator Jose "Pedro" Terlaje	✓					
Speaker Therese M. Terlaje	✓					
Senator Mary Camacho Torres		III ✓				

TOTAL

12

2

1

1

Aye

Nay

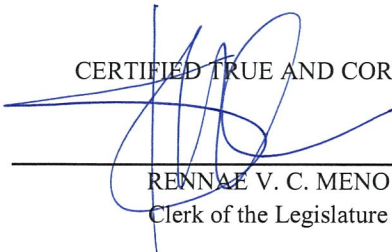
Not
Voting/
Abstained

Out
During
Roll Call

Absent

Excused

CERTIFIED TRUE AND CORRECT:



RENNAE V. C. MENO
Clerk of the Legislature

I = Pass

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2021 (FIRST) Regular Session

Bill No. 36-36 (COR)

As substituted by the Committee on Health,
Land, Justice, and Culture; and amended on the Floor.

*

Introduced by:

Joe S. San Agustin
Therese M. Terlaje
Christopher M. Dueñas
Telo T. Taitague
Tina Rose Muña Barnes
Amanda L. Shelton
Clynton E. Ridgell
James C. Moylan
Joanne Brown
V. Anthony Ada
Frank Blas Jr.
Jose "Pedo" Terlaje

**AN ACT TO AUTHORIZE A COMMERCIAL
SUBMERGED LAND LICENSE AGREEMENT
BETWEEN THE GOVERNMENT OF GUAM,
SPECIFICALLY, THE CHAMORRO LAND TRUST
COMMISSION, AND TELEGUAM HOLDINGS LLC,
DOING BUSINESS AS GTA, FOR THE PURPOSE OF
LANDING SUBMARINE CABLES AT *ALUPANG,*
*TAMUNING, GUAM.***

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds
3 that TeleGuam Holdings LLC, doing business as GTA (hereinafter GTA), had been
4 negotiating with the Chamorro Land Trust Commission (CLTC) for a submerged
5 land license agreement in order to land certain submarine cables in the village of

1 *Tamuning*, Guam. The submerged parcel in *Tamuning* is more particularly described
2 as a section of the *Alupang* reef flat and channel where submarine cables would be
3 buried to render needed and additional connectivity for the island and its residents.

4 *I Liheslaturan Guåhan* further finds that GTA’s proposal to bring in and
5 provide additional submarine cable capacity for global voice and data transmission
6 and global access to planned and existing land-based communication networks in
7 the Guam area will result in improved telecommunications efficiency for the island
8 and its residents and businesses, and additional redundancy critical to ensure that
9 telecommunications remain viable during natural catastrophes and other emergency
10 conditions. Furthermore, there are a number of existing submarine cables traversing
11 Guam that are either coming to its end-of-life or will be decommissioned in the
12 coming years, and there is a necessity for new private investment of state-of-the-art
13 submarine cables for the island to ensure continued economic and social growth.

14 The provision of the Organic Act of Guam regarding tidelands, submerged
15 lands, or filled lands conveyed to Guam states that “subject to valid existing rights,
16 all right, title, and interest of the United States in lands permanently or periodically
17 covered by tidal waters up to but not above the line of mean high tide and seaward
18 to a line three geographical miles distant from the coastlines of the territories of
19 Guam, the Virgin Islands, and American Samoa, as heretofore or hereafter modified
20 by accretion, erosion, and reliction, and in artificially made, filled in, or reclaimed
21 lands which were formerly permanently or periodically covered by tidal waters, are
22 hereby conveyed to the governments of Guam, the Virgin Islands, and American
23 Samoa, as the case may be, to be administered in trust for the benefit of the people
24 thereof.” 48 U.S.C. § 1705(a).

25 CLTC has jurisdiction of submerged lands owned by the Government of
26 Guam. An informational memo from the Attorney General of Guam to the Director
27 of the Department of Land Management dated November 21, 1996, reaffirmed that

1 submerged land owned by the government of Guam or transferred by the United
2 States to the Government of Guam pursuant to the Territorial Submerged Lands Act,
3 48 U.S.C. § 1700 *et seq.* are now under the jurisdiction of the Chamorro Land Trust
4 Commission unless they were specifically reserved pursuant to Sections 2(b) or 2(c)
5 of Public Law 22-18.

6 The proposed license agreement would exceed current statutory time limits,
7 and therefore requires legislative approval. 21 GCA § 75107(c) authorizes the CLTC
8 to grant licenses to public utility companies for terms not to exceed twenty-one (21)
9 years. Additionally, pursuant to 21 GCA § 75122, properties under the jurisdiction
10 of the CLTC may be designated for commercial lease up to five (5) years.
11 Submerged cables have an expected lifespan of approximately twenty-five (25)
12 years.

13 Therefore, it is the intent of *I Liheslaturan Guåhan* to authorize CLTC to enter
14 into a commercial submerged land license agreement with GTA, in accordance with
15 the terms and conditions articulated in this Act, for the purpose of bringing additional
16 telecommunications infrastructure for a period exceeding the twenty-one (21) year
17 limit in existing law, subject to approvals and permits as required by U.S. federal
18 and local laws, including permitting application review and approval from the U.S.
19 Army Corps of Engineers for work in U.S. waters, the Guam Coastal Management
20 Program Consistency Certification in accordance with the Coastal Zone
21 Management Act of 1972, and the Guam Territorial Seashore Protection
22 Commission pursuant to the Guam Territorial Seashore Protection Act of 1974 for
23 work within the seashore reserve, the Guam Environmental Protection Agency, and
24 the National Oceanic and Atmospheric Administration.

25 **Section 2. Authorization to Enter into a Commercial Submerged Land**
26 **License Agreement with GTA.** Notwithstanding any other provision of law, or rule
27 or regulation, *I Liheslaturan Guåhan* authorizes the Chamorro Land Trust

1 Commission (CLTC) to enter into a commercial submerged land license agreement
2 with TeleGuam Holdings LLC, doing business as GTA, as articulated within and in
3 conformance with the provisions of this Act, for the purpose of the construction,
4 installation, operation, maintenance, and use of no more than six (6) fiber-optic cable
5 systems at *Alupang* reef flat and channel.

6 (a) The submerged land to be licensed to GTA (Licensed Property)
7 shall extend from the line of mean high tide and seaward to a line three (3)
8 geographical miles distant from the coastline and shall include an approximate
9 ten (10±) feet wide section of the *Alupang* reef flat and channel starting from
10 the mean high tide watermark to the exit offshore at approximately three
11 thousand six hundred (3,600±) feet and under sixty-five (65) to one hundred
12 thirty-one (131) feet of water in the Philippine Sea for underground conduit
13 infrastructure that would consist of such number of submerged cable ducts
14 and landing pipes as necessary for GTA to operate its cable landing station;
15 provided, that GTA shall not locate more than six (6) submarine cables and
16 landing pipes within the Licensed Property.

17 The landing pipes may be installed using the Horizontal Directional
18 Drilling construction method, if required permits and approvals allow. It is
19 contemplated that the conduit infrastructure will extend from the terrestrial
20 Landing Manhole (LMH) owned or leased by GTA, under the *Alupang* Beach
21 and Bay, exiting approximately four thousand six hundred (4,600±) feet
22 offshore and under approximately sixty-five (65) to one hundred thirty-one
23 (131) feet of water. The fiber-optic cables may be pulled through these
24 landing pipes and brought into the LMH to connect with the cables coming
25 from the cable landing station.

1 GTA shall provide to CLTC and the Department of Land Management
2 the Global Positioning System (GPS) Survey Depiction of the final permitted
3 underground conduit infrastructure.

4 (b) Term. The license agreement shall be for a term of twenty-five
5 (25) years; and, GTA shall be afforded two (2) five (5)-year options to renew
6 such license agreement at its election upon written notification to CLTC at
7 least one hundred eighty (180) days prior to the end of the twenty-fourth
8 (24th) year of the original term and one hundred eighty (180) days prior to the
9 end of the first (1st) five (5)-year option period. The license agreement shall
10 be subject to termination by GTA in the event that GTA is unable to procure
11 the necessary permits and approvals for the construction and operation of the
12 submarine and terrestrial facilities to support the proposed submarine cable
13 landing activity of GTA within three (3) years of enactment of this Act.

14 (c) Such license agreement, subject to the terms stated herein, shall
15 be binding and enforceable in all respects on the CLTC upon execution and
16 shall require no further approvals on the part of *I Liheslaturan Guåhan*.

17 (d) Non-Exclusivity and Non-Interference. GTA acknowledges that
18 the Licensed Property is non-exclusive; however, CLTC may not
19 unreasonably interfere with the continued operation and maintenance of the
20 GTA landing pipes and manholes and will notify GTA of any proposed
21 crossing or parallel installation at least sixty (60) calendar days (“Notice
22 Period”) prior to any proposed installation unless installation is required due
23 to an emergency. GTA shall notify CLTC within the Notice Period if they
24 object to CLTC’s intention to place conduit, utility lines or any other structure
25 or line within the subject easement and shall support with plans and
26 specifications to the satisfaction of CLTC the basis for any contention there is
27 an unreasonable interference with GTA’s conduit. CLTC shall, at its sole

1 discretion, determine whether there is an unreasonable interference with
2 GTA's landing pipes. CLTC shall be authorized to install any parallel or
3 crossing installation if it reasonably determines there is no interference with
4 GTA's landing pipes.

5 **Section 3. Compensation for Submerged Lands License Agreement.** In
6 exchange for those rights granted under the submerged land license agreement for
7 the six (6) Cables, GTA shall pay CLTC annual license fees according to the
8 following schedule:

9 (a) For the first (1st) cable system: A landing fee of One Hundred
10 Thousand Dollars (\$100,000) shall be paid within thirty (30) days of approval
11 from the Bureau of Statistics and Plans Guam Coastal Management Program's
12 Federal Consistency permit. In addition, an initial annual license payment in
13 the amount of One Hundred Thousand Dollars (\$100,000) shall be paid within
14 thirty (30) days of the System Operational Date (as defined below) of the first
15 (1st) cable system (the First System Operational Date), and thereafter an
16 annual license payment adjusted in accordance with Section 3(h) shall be paid
17 beginning on the first (1st) anniversary of the First System Operational Date
18 and continuing annually for the term of the license agreement.

19 (b) For the second (2nd) cable system: A landing fee of One Hundred
20 Thousand Dollars (\$100,000) shall be paid within thirty (30) days of approval
21 from the Bureau of Statistics and Plans Guam Coastal Management Program's
22 Federal Consistency permit. In addition, an initial annual license payment in
23 the amount of One Hundred Thousand Dollars (\$100,000) shall be paid within
24 thirty (30) days of the System Operational Date of the second (2nd) cable
25 system (the Second System Operational Date), and thereafter an annual
26 license payment adjusted in accordance with Section 3(h) shall be paid

1 beginning on the first (1st) anniversary of the Second System Operational Date
2 and continuing annually for the term of the license agreement.

3 (c) For the third (3rd) cable system: A landing fee of One Hundred
4 Thousand Dollars (\$100,000) shall be paid within thirty (30) days of approval
5 from the Bureau of Statistics and Plans Guam Coastal Management Program's
6 Federal Consistency permit. In addition, an initial annual license payment in
7 the amount of One Hundred Thousand Dollars (\$100,000) shall be paid within
8 thirty (30) days of the System Operational Date of the third (3rd) cable system
9 (the Third System Operational Date), and thereafter an annual license
10 payment adjusted in accordance with Section 3(h) shall be paid beginning on
11 the first (1st) anniversary of the Third System Operational Date and continuing
12 annually for the term of the license agreement.

13 (d) For the fourth (4th) cable system: A landing fee of One Hundred
14 Thousand Dollars (\$100,000) shall be paid within thirty (30) days of approval
15 from the Bureau of Statistics and Plans Guam Coastal Management Program's
16 Federal Consistency permit. In addition, an initial annual license payment in
17 the amount of One Hundred Thousand Dollars (\$100,000) shall be paid within
18 thirty (30) days of the System Operational Date of the fourth (4th) cable system
19 (the Fourth System Operational Date), and thereafter an annual license
20 payment adjusted in accordance with Section 3(h) shall be paid beginning on
21 the first (1st) anniversary of the Fourth System Operational Date and
22 continuing annually for the term of the license agreement.

23 (e) For the fifth (5th) cable system: A landing fee of One Hundred
24 Thousand Dollars (\$100,000) shall be paid within thirty (30) days of approval
25 from the Bureau of Statistics and Plans Guam Coastal Management Program's
26 Federal Consistency permit. In addition, an initial annual license payment in
27 the amount of One Hundred Thousand Dollars (\$100,000) shall be paid within

1 thirty (30) days of the System Operational Date of the fifth (5th) cable system
2 (the Fifth System Operational Date), and thereafter an annual license payment
3 adjusted in accordance with Section 3(h) shall be paid beginning on the first
4 (1st) anniversary of the Fifth System Operational Date and continuing annually
5 for the term of the license agreement.

6 (f) For the sixth (6th) cable system: A landing fee of One Hundred
7 Thousand Dollars (\$100,000) shall be paid within thirty (30) days of approval
8 from the Bureau of Statistics and Plans Guam Coastal Management Program's
9 Federal Consistency permit. In addition, an initial annual license payment in
10 the amount of One Hundred Thousand Dollars (\$100,000) shall be paid within
11 thirty (30) days of the System Operational Date of the sixth (6th) cable system
12 (the Sixth System Operational Date), and thereafter an annual license payment
13 adjusted in accordance with Section 3(h) shall be paid beginning on the first
14 (1st) anniversary of the Sixth System Operational Date and continuing
15 annually for the term of the license agreement.

16 (g) The System Operational Date of each Cable shall be that date at
17 which the Cable is fully installed, the associated system-wide testing is
18 completed, and the Cable is approved to carry commercial traffic. GTA shall
19 notify CLTC within thirty (30) days after the establishment of the System
20 Operational Date of each cable landing within its submerged land license
21 agreement.

22 (h) The annual fees for each cable system set forth in this Section
23 shall be adjusted annually on the anniversary of the System Operational Date
24 of each Cable, and for the remainder of the term. All recurring fees shall be
25 adjusted and increased annually for inflation at a fixed rate of two percent
26 (2%) per annum.

1 **Section 4. License Agreement Requirements.** From and after the effective
2 date of this Act, the following requirements shall apply to and be incorporated in any
3 submerged land license agreement entered into with the CLTC:

4 (a) Interest for Late Payment. All license fees in arrears shall bear
5 interest at a rate of four percent (4%) per annum in excess of the prime rate,
6 calculated daily and compounded monthly, without demand, from the date it
7 should have been paid to CLTC, until actual payment to CLTC.

8 (b) Taxes. Any and all taxes, fees and assessments, to include taxes
9 on gross receipts, and improvements to the Licensed Property levied upon the
10 Licensed Property, shall be borne and paid by GTA upon execution of the
11 license agreement.

12 (c) Insurance. The license agreement shall require GTA to have
13 business liability insurance that indemnifies and holds CLTC and the
14 government of Guam harmless, and shall require GTA to respond to CLTC
15 requests for information on a timely basis. GTA shall procure, at its own cost
16 and expense, and keep in force during the term of the license agreement for
17 the mutual benefit of CLTC and GTA, a policy of comprehensive liability
18 insurance in such amounts, form, and with such insurance company as CLTC
19 shall approve. A copy of such policies shall be provided to CLTC at CLTC's
20 request. CLTC may review the foregoing limits of coverage and require
21 increases therein but shall not require increases more frequently than annually.
22 The policy or policies shall contain a clause stating that the insurer will not
23 cancel or change insurance coverage without first giving CLTC and GTA
24 thirty (30) days prior written notice of such change or cancellation.

25 (d) The general public shall have the continuing right to use the reef
26 flat and the waters above to enter on or cross any portion of the Licensed
27 Property for fishing and other recreational purposes, and CLTC reserves the

1 right to itself and to the agents and representatives of the government of Guam
2 to enter on and cross any portion of the Licensed Property for the purpose of
3 performing any public or official duties; provided, however, that in the
4 exercise of such rights, CLTC and the general public shall not unreasonably
5 interfere with GTA's use and enjoyment of the rights granted by the license
6 agreement.

7 (e) The Licensed Property may be occupied and used by GTA solely
8 for the activities proposed by GTA and for incidental purposes related to the
9 landing of submarine cables. In no event shall GTA conduct any activity on
10 the Licensed Property without obtaining all requisite authorizations and
11 permits from the appropriate Guam and federal government agencies or
12 authorities.

13 (f) Compliance with Environmental Laws. All activities on the
14 Licensed Property shall be in compliance and maintained in accordance with
15 existing federal and local environmental laws, including permitting
16 application review and approval from the U.S. Army Corps of Engineers for
17 work in U.S. waters, the Guam Coastal Management Program Consistency
18 Certification in accordance with the Coastal Zone Management Act of 1972,
19 and the Guam Territorial Seashore Protection Commission pursuant to the
20 Guam Territorial Seashore Protection Act of 1974 for work within the
21 seashore reserve, the Guam Environmental Protection Agency, and the
22 National Oceanic and Atmospheric Administration. Failure to comply with
23 environmental laws shall be a material default by GTA.

24 (g) GTA shall comply with all requirements imposed under all such
25 authorizations and permits and, more generally, shall comply with all
26 applicable Guam and federal government laws, rules and regulations relating
27 to its activities on the Licensed Property. GTA shall comply with applicable

1 federal laws, including the Submarine Cable Act of 1921 and the
2 Communications Acts of 1934, as amended, and rules and regulations of the
3 Federal Communications Commission applicable to its interstate and
4 international submarine cable landing authorizations and licensure, including
5 annual reporting obligations. The rights of GTA under the license agreement
6 are personal to GTA and may not be transferred or assigned to any other
7 person, firm, corporation, or other entity without the prior written consent of
8 CLTC, which consent shall not be unreasonably withheld; provided, however,
9 that GTA may, without CLTC's consent, lease or transfer conduit or duct
10 space to third parties landing submarine cables; and provided, further, that
11 GTA may, without CLTC's consent, assign its rights to any person acquiring
12 all of GTA's assets in Guam on condition that the assignee assumes all of
13 GTA's obligations under the license agreement.

14 (h) Improvements to CLTC Property. The license agreement shall
15 require that any improvements made to or upon the Licensed Property shall
16 belong in title to the CLTC upon termination or expiration of the license
17 agreement, and that any removal required by the CLTC of improvements or
18 items remaining on the property shall be the responsibility of GTA at no cost
19 to the CLTC.

20 **Section 5. Default and Termination.** From and after the effective date of
21 this Act, the following provisions shall apply to and be incorporated into any
22 submerged land license agreement entered into with the CLTC:

23 (a) Any failure to comply with this Act, the license agreement, or a
24 material term of the conditions of any government approval or permit shall be
25 considered a material breach of the license agreement. The party aggrieved by
26 such breach may deliver a Notice of Default to the party in breach specifying
27 such noncompliance and the appropriate cure. Except as otherwise provided

1 in this Act, if the breach has not been corrected within a period of ninety (90)
2 days after receipt of the Notice of Default, then the aggrieved party may
3 terminate the license agreement. Notwithstanding the foregoing, if the breach
4 cannot reasonably be corrected during its applicable cure period, then the
5 aggrieved party may not terminate the license agreement if the breaching party
6 begins to correct such noncompliance during the cure period and diligently
7 pursues corrective measures to completion.

8 (b) Upon termination or expiration of the license agreement, unless
9 extended pursuant to the terms of the license agreement, the license agreement
10 shall become null and void, except that CLTC may enforce any and all
11 obligations of GTA arising out of acts or omissions occurring prior to such
12 termination or expiration.

13 (c) Without limiting any other remedies the CLTC may have arising
14 out of the license agreement or at law in respect of any default in the
15 performance of GTA's obligations under the license agreement, the CLTC
16 shall have the right, in the case of any default and without any re-entry or
17 termination of the license agreement, to enter upon the Licensed Property and
18 cure or attempt to cure such default (but this shall not obligate the CLTC to
19 cure or attempt to cure any such default or, after having commenced to cure
20 or attempt to cure such default, prevent the CLTC from ceasing to do so) and
21 GTA shall promptly reimburse to the CLTC any expense incurred by the
22 CLTC in so doing and the same shall be recoverable.

23 (d) The license agreement may be terminated in any of the following
24 events (each an "Event of Default"):

25 (1) if license fees or any part thereof shall not be paid on any
26 day when such payment is due, CLTC may, at any time, thereafter, give

1 notice of such failure to GTA, and if the failure is not remedied by GTA
2 within five (5) days after the giving of such notice; or

3 (2) if GTA fails or neglects to perform or comply with any of
4 the terms, covenants, or conditions contained in the license agreement
5 (other than the covenants to pay license fees) on the part of GTA to be
6 performed or observed, CLTC may, at any time, thereafter, give notice
7 of such failure or neglect to GTA and GTA:

8 (A) if the matter complained of in such notice is capable
9 of being remedied by the payment of money, has not corrected
10 the matter complained of within a period of five (5) days after
11 the giving of such notice; or

12 (B) if the matter complained of in such notice is not
13 capable of being remedied by the payment of money, has not
14 corrected the matter complained of within a period of twenty (20)
15 days after the giving of such notice, or if a period of more than
16 such twenty (20) days is reasonably required to remedy, with
17 reasonable diligence, the matters complained of in such notice,
18 has not forthwith commenced to remedy the same and diligently
19 prosecute the remedying of the same to completion; or

20 (C) if an event of insolvency shall have occurred with
21 respect to GTA; or

22 (D) a breach of an obligation by GTA which has
23 resulted in cancellation of insurance coverage where GTA has
24 not prior to or concurrent with such cancellation replaced such
25 coverage with comparable coverage or breach of an obligation
26 where there has been a notice of cancellation of insurance
27 coverage which has not been cured and where GTA has not,

1 within the period of time set out in such notice, or within ten (10)
2 days where no period is set out therein, replaced such coverage
3 with comparable coverage or which is otherwise a breach of the
4 obligations respecting insurance; or

5 (E) abandonment of the project by GTA; the CLTC, at
6 its option, may terminate the license agreement by notice to
7 GTA, in which event such termination shall be effective
8 immediately upon the delivery of such notice and may enter upon
9 the Licensed Property with or without process of law and take
10 possession thereof.

11 **Section 6. Deposit of Revenues and Fees.** Revenues from fees and interest
12 generated from the commercial submerged land license agreement authorized in this
13 Act shall be deposited in the Chamorro Land Trust Survey and Infrastructure Fund
14 to be used for all authorized purposes of that Fund, including to survey and subdivide
15 CLTC property, to ensure access to water and access to sewer infrastructure for
16 properties over the aquifer, and to improve telecommunications infrastructure and
17 technology resources for the CLTC communities and other disadvantaged
18 communities as determined by the CLTC.

19 **Section 7. Exemption from Appraisals.** 2 GCA § 2107(b) and Section
20 6.04(c)(1) of the Standing Rules of *I Mina'trentai Sais Na Liheslaturan Guåhan*
21 relative to land appraisals, shall not apply to this Act.

22 **Section 8. Exemption from Commercial Leases and Licenses.** The
23 Licensed Property in this Act shall not be subject to § 75A122 of Chapter 75A and
24 § 75122 of Chapter 75, both of Title 21, Guam Code Annotated.

25 **Section 9. Effective Date.** This Act shall be effective upon enactment.

26 **Section 10. Severability.** If any provision of this Act or its application to any
27 person or circumstance is found to be invalid or contrary to law, such invalidity shall

1 not affect other provisions or applications of this Act that can be given effect without
2 the invalid provision or application, and to this end the provisions of this Act are
3 severable.