

THIRTEENTH GUAM LEGISLATURE
1975 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 207, "An Act to authorize the Governor to enter into a lease option agreement for the assets of the Guam Telephone Authority and to amend Section 21201(c), 21204, 21205, 21203.3, and 21214 of the Government Code of Guam relative to the same and for other purposes", was on the 17th day of November, 1975, duly and regularly passed.

15/

JOSEPH F. ADA
Speaker

ATTESTED:

15/

CONCEPCION CRUZ BARRETT
Legislative Secretary

This Act was received by the Governor this _____ day of _____, 1975 at _____ o'clock _____ .M.

15/

RUTH F. WON IAT
Assistant Staff Officer
Governor's Office

APPROVED:

15/

RICARDO J. BORDALLO
Governor of Guam

DATED: 12/5/75
11:10 am

P.L. 13-110

THIRTEENTH GUAM LEGISLATURE
1975 (FIRST) Regular Session

Bill No. 207
Substituted

Introduced by _____
A. A. Sekt

AN ACT TO AUTHORIZE THE GOVERNOR TO ENTER INTO A LEASE OPTION AGREEMENT FOR THE ASSETS OF THE GUAM TELEPHONE AUTHORITY AND TO AMEND SECTIONS 21201(c), 21204, 21206, 21208.3 AND 21214 OF THE GOVERNMENT CODE OF GUAM RELATIVE TO THE SAME AND FOR OTHER PURPOSES.

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

2 Section 1. Authority to enter into lease-option agreement.

3 The Governor is authorized to enter into an agreement to lease
4 for a period of ten (10) years all the assets of the Guam Tele-
5 phone Authority to any recognized and reputable United States
6 common carrier communications company, or its wholly owned sub-
7 diary, which operates communication services within the United
8 States under the jurisdiction of the Federal Communications Com-
9 mission or a state public utility or regulatory commission. Said
10 agreement shall be subject to the terms and conditions herein-
11 after stated. Said agreement may contain a provision granting
12 to said company an option exercisable at the expiration of the
13 term of the lease to renew said lease for an additional term
14 of ten (10) years, or an option exercisable not earlier than two
15 (2) years after commencement of the term of the lease to pur-
16 chase the assets of the Guam Telephone Authority. Said agreement
17 shall be presented to the Legislature and shall be effective
18 ten (10) calendar days after its presentation unless sooner
19 disapproved by Legislative resolution.

1 Section 2. Assets to be leased. The assets of the
2 Guam Telephone Authority to be leased or sold pursuant to the
3 provisions of this Act shall include the following:

4 (1) All existing inside and outside plant.

5 (2) All real estate upon which are located inside
6 and outside plant, either in fee or by assignment of an
7 easement, except that real estate which the parties may
8 determine to be unnecessary for operation under the
9 exclusive telephone company franchise.

10 (3) All testing equipment, switching equipment, in-
11 stalled PBX Boards and related equipment, receivers and
12 tools.

13 (4) All buildings and other improvements and
14 appurtenances on the lands or interests therein to be
15 leased under this Act, except those buildings, improvements
16 and appurtenances, if any, which the parties may determine
17 to be unnecessary for operation under the exclusive
18 telephone company franchise.

19 (5) All inventory of cable, poles, equipment and
20 every other such item of any kind, description or quantity.

21 (6) All motor vehicles and any and all other
22 motorized equipment owned, controlled or assigned to the
23 inventory of the Guam Telephone Authority.

24 (7) All charts, graphs, engineering plans, papers
25 and drawings pertaining to the entire telephone system
26 of Guam.

27 (8) All accounting and billings records, papers and
28 ledgers pertaining to the operations of the Guam Telephone
29 Authority.

1 (9) All toll separation, engineering and auditing
2 studies and all other records, charts and papers re-
3 ferable thereto.

4 (10) All other items of property, supply and
5 material used by the Guam Telephone Authority for its
6 operations, whether on inventory or on an order yet to be
7 delivered; provided, however, that cash, accounts
8 payable and receivable, working capital and deposits
9 from subscribers shall not be assets or liabilities
10 subject to lease or sale under this Section.

11 Section 3. Exclusive franchise. The government, in
12 executing any lease-option agreement pursuant to this Act shall
13 grant to the lessee or lessee/purchaser (both hereinafter
14 referred to as "Lessee") an exclusive franchise to conduct in
15 Guam all civil telephone operations and related and usual
16 allied service of a regulated public utility engaged in the
17 business of providing telephone services, including but not
18 limited to any operation or service utilizing voice grade
19 circuit or circuits or channels derived from voice grade cir-
20 cuits. Such exclusive franchise shall be subject to all appli-
21 cable rules and regulations validly issued by any authorized
22 regulatory agency of the Government of Guam and the Federal
23 Communications Commission. Any assignment of any franchise
24 granted pursuant to this Act shall be subject to the approval
25 of the Governor, and such approval shall be granted only for an
26 assignment or transfer which is determined by the Governor
27 to be in the public interest. In the event that the
28 Government of the United States shall seek to divest itself of
29 the telephone system which it operates on Guam, the Government

1 of Guam, to the extent it is able, shall seek to have the lessee
2 tender a right of first refusal to acquire said system and
3 its assets. In no event shall the Government of Guam enfran-
4 chise any other non-government agency to operate said Federally
5 operated telephone system.

6 The lessee shall additionally be granted a right of first
7 refusal to provide the extension of commercial telephone
8 services to the United States or to overseas points, including
9 international services; provided, however, that nothing in
10 this Act shall contravene any rights which any person may
11 have under any existing valid agreement executed between the
12 Government of Guam and any such person concerning said services.

13 Section 4. Revenues. On and after the date of the
14 transfer of the assets of the Guam Telephone Authority, pursuant
15 to the lease contemplated herein, the lessee shall be exclu-
16 sively entitled to all revenues, which shall include but not
17 be limited to the following:

18 (1) Billings for local exchange services.

19 (2) Tolls for non-local exchange service.

20 (3) Telephone directory income.

21 (4) All revenue derived from other commercial and
22 operational activities of a regulated public utility
23 engaged in the business of providing telephone and related
24 services in the customary and ordinary conduct of its
25 business.

26 Section 5. Eminent domain. The lessee shall exercise
27 the power of eminent domain in the name of the Government of
28 Guam as provided by law for the acquisition of needed lands
29 or easements for telephone facilities, provided that lessee

1 shall first secure the approval for such acquisition from the
2 Governor.

3 Section 6. Proceeds. All monies paid or realized as a
4 result of the lease or sale of the assets of the Guam Telephone
5 Authority and exclusive franchise as provided for by Sections 2
6 and 3 shall be covered into the General Fund.

7 Section 7. Authority to invite offers. The Governor may
8 at such time or times as he deems to be appropriate invite
9 that offers be submitted to the government for the implementation
10 of the provisions of this Act. The Governor may establish
11 criteria in the said invitations which, in his judgment, will
12 secure an agreement most advantageous to the people of Guam,
13 and may, in his discretion, reject any and all offers made to
14 the government by any offeror. Each bid submitted shall be
15 accompanied by an affidavit executed by the president and
16 Secretary of the offeror to the effect that neither the offeror
17 nor any of its directors, officers, or employees have conspired
18 or colluded with any other offeror or potential offeror with
19 respect to its bid for the lease option to be granted under
20 this Act.

21 Section 8. Licensing and other approval. The lessee
22 shall comply with all licensing and other requirements which
23 are or may be necessary for approval of the transaction and
24 operation of a public utility, including requirements of the
25 Federal Communications Commission and any other appropriate
26 Federal or local regulatory agency.

27 Section 9. Collective bargaining. The Governor shall not
28 enter into any agreement granting the franchise to operate a
29 telephone system unless the lessee shall agree to honor any

1 collective bargaining agreement in force for employees of the
2 Guam Telephone Authority at the time of the execution of said
3 agreement, subject, however, to the further provisions set
4 forth in Section 11 of this Act.

5 Section 10. Retention of existing work force. The
6 Governor shall not enter into any lease-option agreement unless
7 the lessee shall agree to retain as employees for a minimum of
8 ten (10) years classified civil servants of the government who
9 are at the time of the execution of said agreement assigned to
10 the Guam Telephone Authority; provided, however, that any employee
11 may be discharged for cause pursuant to the provisions of
12 Chapter I, Title V of the Government Code of Guam.

13 Section 11. Government of Guam benefit limitations. The
14 Governor shall not enter into any lease-option agreement unless
15 the lessee agrees to make a continuing contribution to the
16 government for retirement benefits to be accrued by each re-
17 tained employee for a period of ten (10) years; provided that
18 any such contribution shall be in lieu of retirement benefits
19 otherwise payable by the lessee; and provided further that each
20 retained employee shall have the election of remaining under
21 the Government of Guam Retirement Fund for a period of ten (10)
22 years or coming under the retirement plan established by the
23 lessee. Employees hired subsequent to the date of the transfer
24 of the assets of the Guam Telephone Authority to the lessee shall
25 not be eligible to enroll in the Government of Guam Retirement
26 Fund. Nothing contained in this Section shall be construed to
27 in any way limit or abrogate the rights and privileges of any
28 employees of the Guam Telephone Authority as established by any
29 collective bargaining agreement in force at the time of execu-

1 tion of any lease or sale made pursuant to this Act.

2 Section 12. Limitation on terms. Any lease or sale of
3 the assets of the Guam Telephone Authority executed pursuant
4 to this Act shall include but not be limited to the following
5 terms:

6 (1) The government-owned assets assigned pursuant to
7 the agreement shall be identified by the lessee as such,
8 and shall remain so identified while in the custody or
9 possession of the company.

10 (2) The lessee shall replace at its own expense any
11 government-owned assets being used by the company when
12 such replacement is needed to provide telephone service
13 in accordance with sound telephone industry practices.
14 The account of the Government of Guam shall be credited
15 with the salvage value of all assets replaced. All equip-
16 ment provided by the company to make such replacement
17 shall become the property of the lessee.

18 (3) The lessee shall immediately make those capital
19 improvements necessary to provide adequate telephone
20 service for the territory of Guam. Any equipment acquired
21 pursuant to this subparagraph shall be the property of
22 the lessee.

23 (4) In the event the agreement provides for an
24 option to purchase the government assets of the telephone
25 system and said option is exercised by the lessee, the
26 lessee shall purchase the assets of the government at
27 fair market value as determined by agreement between the
28 parties, such agreement to be executed at the time of
29 the original lease option agreement and to be included

1 with the agreement submitted to the Legislature under the
2 provisions of Section 1 of this Act.

3 (5) In the event the agreement does not provide
4 for an option to extend the lease or an option to purchase
5 the government assets or in the event that lessee does
6 not exercise said option, the government shall purchase
7 the assets of the lessee at the end of the lease period
8 at fair market value as determined by agreement between
9 the parties or by arbitration if agreement cannot be
10 reached; provided, however, that payment therefore to
11 the lessee shall be payable only from revenues derived
12 from the operation of the telephone system.

13 (6) In the event the agreement provides for an
14 option to purchase the government assets of the telephone
15 system, and the lessee exercises said option, the lessee
16 shall make a public intra-territorial offering to the
17 residents of Guam of shares of its voting common stock in
18 an amount equal to twenty percent (20%) of its outstanding
19 voting shares. The offering price of said shares shall
20 be established at Book Value, as determined between the
21 parties or by arbitration if agreement cannot be reached.

22 (7) The lease option agreement shall include a
23 tariff or schedule of rates to be charged by the lessee.
24 These rates shall be approved by the Governor prior to the
25 effective date of the lease option agreement, and shall
26 be included in the agreement submitted to the Legislature
27 under the provisions of Section 1 of this Act. Any
28 rate increased by the lessee must receive the prior approval
29 of the Governor.

1 Section 13. Subsection (c) of Section 21201 of the
2 Government Code of Guam is hereby amended to read as follows:

3 "(c). There shall be covered into the Public Utility
4 Agency of Guam Fund hereinafter in Section 21208(a),
5 defined and created, all moneys which (1) were appropriated
6 by the Legislature to the various departments of the
7 Government of Guam, and which (2) were or shall be
8 allocated, as determined by the Governor for utility use
9 in connection with administration of electric power, water
10 or other utility services now or to be furnished by the
11 Government of Guam."

12 Section 14. Section 21204 of the Government Code of Guam
13 is hereby amended to read as follows:

14 "Section 21204. Authority. The Agency has the
15 authority to supply to individuals, firms, corporations,
16 and governments, including the Government of Guam,
17 installation and generation services for water and other
18 utilities, except electric power which has been transferred
19 to the exclusive control and operation of the Guam Power
20 Authority and telephone service, or to request that such
21 installation be performed by any governmental agency or,
22 where it is in the public interest, any private contractor,
23 upon such terms and conditions as shall be determined by
24 the Agency."

25 Section 15. Section 21206 of the Government Code of Guam
26 is hereby amended to read as follows:

27 "Section 21206. Powers. The Agency shall have the
28 power, duty and responsibility for the administration and
29 operation of all water and other utility services now

1 furnished by the Government of Guam or hereafter by the
2 Agency, except electric power which has been transferred
3 to the exclusive control and operation of the Guam Power
4 Authority, and telephone service. Such powers shall
5 include the authority to make a monetary charge, in
6 the amount provided by Section 21205 herein, to all
7 persons, firms, corporations and governments, including
8 the Government of Guam, to whom public utility services
9 are furnished by the Agency."

10 Section 16. Section 21208.3 of the Government Code of
11 Guam is hereby amended to read as follows:

12 "Section 21208.3. Improvements for subdivisions.
13 Where economically feasible, the installation of water,
14 and fire hydrants, in subdivisions qualifying under the
15 Subdivision Law, is authorized to be paid from the
16 Public Utility Agency of Guam Fund."

17 Section 17. Section 21214 of the Government Code of Guam
18 is hereby repealed and reenacted to read as follows:

19 "Section 21214. Installment payment. Whenever the
20 Agency authorizes the installation of any water facility
21 as provided under Section 21204 above, it may provide for
22 the installment payment of the charges assessable
23 therefore, pursuant to its rules."

24 Section 18. The Governor's authority to enter into a
25 lease option agreement for the assets of the Guam Telephone
26 Authority as provided in this Act shall expire upon the
27 exercise of his authority to authorize the Guam Telephone
28 Authority to issue revenue bonds with contingency backing
29 by the government of Guam.

1 Section 19. Section 21702.1 is added to Chapter IX,
2 Title XXII, of the Government Code to read:

3 "Section 21702.1. Advance of Revenue Deficiencies.

4 (a) Notwithstanding other provisions of this
5 Chapter, the Authority may issue bonds containing
6 covenants concerning advance of revenue deficiencies
7 by the Government of Guam contained in this Section,
8 subject to the conditions herein. It is the purpose
9 of this Section to permit the issuance of bonds by
10 the Authority which will have additional security,
11 but which will not, by the addition of the covenants
12 herein, be a charge against or be considered public
13 indebtedness of Guam as set forth in Section 11 of
14 the Organic Act.

15 (b) Subject to approval of the Legislature and
16 Governor and other provisions of this Chapter, the
17 Authority may issue bonds containing covenants here-
18 inafter set forth by providing in the indenture:

19 (1) for the creation and maintenance until
20 all bonds are redeemed, or otherwise provided
21 for, of

22 (i) a bond reserve fund equal to at
23 least one year's average annual debt
24 service, and

25 (ii) a revenue delinquency fund equal
26 to at least ten percent of the estimated
27 gross revenues of the Authority from year
28 to year;

29 (2) for the prompt collection of all

1 delinquent rates and charges.

2 (c) In the event all of the covenants and con-
3 ditions set forth above shall have been provided for
4 in the bond indenture, and in the event the Authority
5 shall have collected insufficient revenues to pay
6 in full all interest and principal due in any year,
7 requiring satisfaction of such debt service out of
8 the bond reserve fund, the Board shall adopt a resolu-
9 tion determining the amount of such deficiency in-
10 curred for debt service in said bond reserve fund
11 each year, and from year to year. A certified copy
12 of such resolution shall be transmitted to the Guam
13 Legislature and shall be conclusive as to the amount
14 of such deficiency. Upon the receipt of such resolu-
15 tion, the Legislature shall promptly appropriate
16 from any funds of the Government of Guam available
17 therefor and cause to be transferred to the Authority
18 for deposit in such bond reserve fund, the full amount
19 of such deficiency. In the event such funds or any
20 part thereof are not immediately available, the
21 Legislature shall cause the amount of such deficiency
22 to be included in the budget for the Government of Guam
23 for the next succeeding fiscal year and shall provide
24 such funds as promptly as possible in such fiscal
25 year out of tax or any other revenues available to the
26 Government so that all deficiencies in said bond re-
27 serve fund shall be restored. After satisfaction of
28 all annual debt service, maintenance and operation
29 costs, and restoration of deficiencies in the revenue

1 delinquency fund and bond reserve fund, the Authority
2 shall reimburse to the Government of Guam all sums
3 hereafter to be advanced to the Authority as promptly
4 as possible."

5 (d) In the event the Authority at any time
6 receives sufficient funds from the Federal government
7 or any agency thereof on such terms and conditions
8 as the Authority may deem appropriate and such funds
9 are adequate to pay the principal amount of the
10 bonds outstanding at that time, the Authority may
11 repurchase or refund all such outstanding bonds."

12 Section 20. Subsection (b) of Section 21702 of the
13 Government Code is amended to read:

14 "(b) All indebtedness incurred and bonds issued by
15 the Board except as provided in Section 21702.1 are
16 special obligations of the Authority, and are secured
17 by a pledge of an charge upon, and shall be payable,
18 as to the principal thereof, interest thereon, and
19 any premiums upon the redemption of any thereof, solely
20 from and secured by a lien upon the revenues and such
21 other funds as are described in the indenture."

22 Section 21. Section 21703 of the Government Code is
23 amended to read:

24 "Section 21703. Rates and charges. Rates and charges
25 shall be fixed to yield annual revenues not less than the
26 aggregate of the annual payments to the bond, sinking,
27 reserve and other funds provided in an indenture for the
28 bonds, operation and maintenance costs, and obligations
29 to the General Fund incurred pursuant to Section 21702.1.

1 Any proposal for change, in rates and charges shall be
2 presented in public hearings."

3 Section 22. Subsection (c) of Section 21705 of the
4 Government Code is amended to read:

5 "(c) Every bond except as provided in Section 21702.1
6 shall recite that it is not a general indebtedness of the
7 Authority or of the territory of Guam, but rather is a
8 special obligation of the Authority payable solely from the
9 revenues specified in the indenture providing for its
10 issuance."

11 Section 23. Subsection (a) of Section 21708 of the
12 Government Code is amended to read:

13 "(a) Bonds shall bear interest at the rate of not to
14 exceed nine percent (9%) per annum payable annually or
15 semi-annually or in part annually and in part semi-annually
16 except that the first coupon on any bonds may be payable
17 twelve (12) months or any number of months less than twelve
18 (12) after the date of such bond."

19 Section 24. No bonds shall be issued by the Authority
20 under the provisions of Section 21702.1 of this Chapter until
21 a court of competent jurisdiction has ruled that such
22 contingent guarantee does not constitute an indebtedness
23 of the Government of Guam within the meaning of the Organic Act.

24 Section 25. The Governor's authority to authorize
25 the Guam Telephone Authority to issue revenue bonds with
26 contingency backing by the Government of Guam as provided
27 in this Act shall expire upon the exercise of his authority
28 to enter into a lease option agreement for the assets of the
29 Guam Telephone Authority."