



Office of the Governor of Guam

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Office of the Speaker
Vicente C. Pangelinan

NOV 08 2004

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Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

08 NOV 2004

The Honorable Vicente C. Pangelinan
Speaker
Mina' Bente Siete Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 366 (LS), "AN ACT TO APPROVE THE AGREEMENTS AND TRANSACTIONS TO PRIVATIZE THE GUAM TELEPHONE AUTHORITY ("GTA") AND TO AMEND AND REENACT CERTAIN SECTIONS OF PUBLIC LAWS 26-70 AND 27-63 TO EFFECTUATE THE PRIVATIZATION OF GTA," which I signed into law on November 1, 2004 as **Public Law No. 27-109**.

Governor Carlos G. Camacho realized a self-generating revenue source to improve services and strengthen the island's telecommunication industry. In April 1974, he separated the telephone authority from PUAG and made it an autonomous agency with the vision of it eventually being privatized.

The signing of Bill No. 366 into law forges this vision into a reality. It approves the agreements and transactions to privatize the Guam Telephone Authority.

This is a beneficial sale for our island, its consumers, its government, its employees and the community as a whole. Guam will enjoy lower rates, improved telecommunications services and expanded technology for years to come. We can expect diversified services at competitive rates, including cellular, long-distance, internet and cable TV services. Guam will benefit from the \$50-100 million investment TeleGuam will make in the telecommunications system in the next five years.

The sale of the Guam Telephone Authority is the impetus of regional growth in the telecommunications industry. It strengthens Guam's role in the region as a strategic telecommunications hub for Asia and the United States.

Furthermore, with a multibillion dollar company exuding confidence in Guam's economy, it will encourage more investment into our island. This in turn would increase our bond ratings and increase the quality of life on Guam.

This momentous occasion marks for the first time ever the sale of an entire government of Guam entity and the last government-owned telephone utility in the nation. The privatization of GTA epitomizes the belief in a smaller government and in the strength of the private sector. The fostering of private enterprises in Guam will create employment opportunities for our citizens.

All this is made possible by the hardworking and dedicated individuals involved in this endeavor most especially the stakeholders involved including the Board, management, employees, legislature, the community and even the buyers. Guam can now reap the benefits of a job well done.

Sinseru yan Magâhet,

A handwritten signature in black ink, appearing to read 'Camacho', with a long horizontal flourish extending to the right.

FELIX P. CAMACHO

I Maga' Lâhen Guåhan

Governor of Guam

Attachment: copy attached of signed bill

cc: The Honorable Tina Rose Muna-Barnes
Senator and Legislative Secretary

I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2004 (SECOND) Regular Session

Bill No. 366 (LS)

As amended by the
Committee on Utilities and Land,
and further amended on the Floor.

Introduced by:

At the request of *I Maga'lahen Guåhan*,
the Governor of Guam, in accordance
with the Organic Act of Guam.

**AN ACT TO APPROVE THE AGREEMENTS AND
TRANSACTIONS TO PRIVATIZE THE GUAM
TELEPHONE AUTHORITY ("GTA") AND TO AMEND AND
REENACT CERTAIN SECTIONS OF PUBLIC LAWS 26-70
AND 27-63 TO EFFECTUATE THE PRIVATIZATION OF
GTA.**

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

2 **Section 1. Legislative Findings and Intent.** In Public Law 24-36, *I*
3 *Liheslaturan Guåhan* (the Guam Legislature) found that privatizing the Guam
4 Telephone Authority ("GTA") would enable the government to protect its
5 investment in GTA and provide effective and affordable telecommunications
6 essential to economic growth in the competitive communications market
7 following passage of the Telecommunications Act of 1996 (the "Act"). Public
8 Law 24-36 also created a Task Force to submit a plan of action for the
9 privatization of GTA. *I Liheslatura* (the Legislature) approved the Plan of
10 Action submitted by the Guam Telephone Authority Privatization Task Force,
11 as revised, in Public Law 25-126, subject to the condition that the privatization
12 be the subject of a specially legislated Invitation for Bid ("IFB") or Request for

1 Proposal ("RFP") process. The RFP process and other terms and conditions of
2 the privatization process were adopted and approved in Public Law 26-70 and
3 amended in Public Law 27-63. In accordance with Public Law 26-70, as
4 amended by Public Law 27-63, *I Liheslatura* (the Legislature) has carefully
5 examined the Recommendation Package, the Approval Recommendation, the
6 Employee Financial Advisor ("EFA") Report and Recommendations, and
7 considered other amendments and clarifications to existing laws to effectuate
8 the privatization of GTA.

9 **Section 2. Approval.** *I Liheslatura* (the Legislature) hereby approves
10 the Asset Purchase Agreement attached hereto as Exhibit A (the "Asset
11 Purchase Agreement"), together with all exhibits thereto and agreements
12 executed pursuant to the Asset Purchase Agreement (collectively, and
13 together with the Asset Purchase Agreement, the "Privatization Agreements")
14 without modification. Notwithstanding any other statute enacted by *I*
15 *Liheslaturan Guåhan* (the Guam Legislature), the Privatization Agreements will
16 *not* be modified or amended except as expressly set forth in the Privatization
17 Agreements and the Privatization Agreements will not be repealed or
18 rescinded and any repeal or rescinding of the terms and conditions of the RFP,
19 the Privatization Agreements, or approval of the transaction, shall be deemed
20 a breach of the Privatization Agreements. Notwithstanding the foregoing,
21 GTA may *not*, without the approval of *I Liheslaturan Guåhan* (the Guam
22 Legislature), make any material modification or amendment to any of the
23 following Sections of the Privatization Agreements: (i) Employee matters
24 (Section 8.2); (ii) Purchase price (Section 2.4); (iii) Buyer's ownership
25 commitment (Section 6.10(a)); (iv) Buyer's rate commitments (Section 6.10(d));

1 (v) Buyer's service commitments (Section 6.10(b)); (vi) Buyer's infrastructure
2 enhancement commitments (Section 6.10(e)), and (vii) FCC approval
3 requirements (Section 9.2(c)).

4 **Section 3. Ratification of Actions Taken to Effectuate Privatization,**
5 **Further Authorization, and Assignment and Assumption of GTA Rights**
6 **and Obligations upon Privatization.** *I Liheslatura* (the Legislature) hereby
7 ratifies all actions of GTA, the Board of GTA, and their duly authorized
8 representatives or agents, taken in order to effectuate the privatization of
9 GTA, and further authorizes GTA, the Board of GTA, and their duly
10 authorized representatives or agents to act on their behalf, and on behalf of
11 the Government of Guam, to take any and all actions not inconsistent with
12 this legislation necessary to effectuate the privatization of GTA and the
13 consummation of the Privatization Agreements. Any action taken pursuant to
14 this Section shall be binding upon the Government of Guam and any agency,
15 trust, department, or instrumentality thereof. The Government of Guam is
16 authorized to cause to be performed, and to assume and receive assignment
17 upon the closing under the Privatization Agreements of, (a) all rights,
18 obligations, covenants and liabilities of GTA arising under the Privatization
19 Agreements (or retained thereby), as provided in the Privatization
20 Agreements, and (b) all other agreements entered into by GTA to effectuate
21 the privatization of GTA. Notwithstanding the foregoing, this Section 3 shall
22 in no respect be interpreted or construed as relieving or holding harmless any
23 member of GTA's Board or any general manager of GTA or any of GTA's
24 representatives or agents from any personal liability to the Government of
25 Guam or GTA associated with prior acts by such person not in conformity

1 with Guam laws, rules or regulations; provided, however, that the
2 Government of Guam and the GTA shall remain subject to their respective
3 obligations under the Privatization Agreements and applicable law regardless
4 of any such liability of any such person.

5 **Section 4.** Rule 10 of Section 2 of Public Law 26-70, as *repealed* and
6 *reenacted* by Section 5 of Public Law 27-63, is *amended* to read:

7 “Rule 10. Retention of Title to Land by the Government of
8 Guam and Permitted Use of Properties. The Government of Guam
9 shall retain title to all land owned by GTA, the Government of Guam or
10 any agency, trust, department, or instrumentality thereof, and which
11 GTA has the right to use for ongoing operations of a telephone authority
12 and ancillary services, and which is identified in Exhibit A and
13 incorporated herein by reference. Notwithstanding any other statute
14 enacted by *I Liheslaturan Guåhan* (the Guam Legislature) (including,
15 without limitation, 21 GCA §75105 (b)) the GTA, with the express
16 authority and approval of *I Maga'lahaen Guåhan* (the Governor of Guam)
17 (together with its agencies, trusts, departments and instrumentalities)
18 and *I Liheslatura* (the Legislature) as provided herein, is hereby
19 authorized to convey, on behalf of the Government of Guam, any such
20 land set forth and described in Exhibit A hereto pursuant to a lease (as
21 described below), and any improvements thereon, to the party acquiring
22 GTA's business regardless of whether title to such land is held by the
23 Government of Guam or any agency, trust, department, or
24 instrumentality thereof (including, without limitation, the *Chamorro*
25 Land Trust Commission). Such land shall be leased for an initial ten (10)

1 year term at nominal value to the party acquiring GTA's business, with
2 options to renew for up to two (2) consecutive terms of twenty (20) years
3 each at the then fair market value. Title to the buildings, fixtures,
4 telecommunications facilities and other improvements now attached or
5 affixed to such land shall be sold to the purchaser of GTA's business
6 pursuant to the Asset Purchase Agreement. Subject to the restrictions
7 that may now or hereafter be imposed by law, the party acquiring
8 GTA's business shall be authorized and empowered to access and use
9 for so long as the term of the lease referred to in this Paragraph, all
10 public property used by GTA as of the effective date of this Act,
11 including, *but not limited to*, public buildings, bridges, and other public
12 property of the Government of Guam or any of its agencies, trusts,
13 departments, or instrumentalities, as well as streets, sidewalks, alleys,
14 and public roads, making excavations therein and restoring the same,
15 for any purpose deemed necessary and appropriate to carry out GTA's
16 business by the party acquiring GTA's business, including, without
17 limitation, erecting, attaching, maintaining, accessing, replacing,
18 repairing, improving, inspecting, upgrading, removing and using poles,
19 pole lines, underground conduits, manholes, cables, wireless, and other
20 facilities necessary to provide telecommunications and related services.
21 With respect to public property that is not identified in Exhibit A or
22 used by GTA as of the effective date of this Act, the party acquiring
23 GTA shall also be authorized and empowered to access and use such
24 property for the same purposes, subject to the same restrictions, and
25 under the same terms and conditions as set forth in the preceding

1 sentence; provided that, if the party acquiring GTA proposes to access
2 or use such property to construct or erect buildings or structures
3 thereon, it shall give sixty (60) days notice to the Director of the
4 Chamorro Land Trust Commission and the Director of Land
5 Management, who shall notify *I Liheslatura* (the Legislature) of such
6 proposed access or use, the party acquiring GTA shall coordinate with
7 appropriate Government of Guam agencies and shall compensate the
8 Government of Guam at a rate equal to the fair market value for such
9 access and use. Use of the public property (1) not identified in Exhibit
10 A, (2) not used by GTA as of the effective date of this Act, or (3) not
11 exclusively leased to the New GTA after the effective date of this Act,
12 shall *not* be exclusive to the New GTA, and nothing herein shall prevent
13 the Government of Guam from entering into agreements with any other
14 entity for access and use of the same property or to prevent any other
15 use of the property by the government on terms, and subject to
16 conditions, that are on a whole substantially equivalent to those offered
17 to the New GTA. The party acquiring GTA's business shall also be
18 empowered to occupy, use and maintain any GTA properties acquired
19 or leased for any purpose relating to the provision and operation of
20 telecommunications, wireless, information technology, and related and
21 ancillary services. Notwithstanding anything to the contrary, but
22 subject to the first sentence of this Rule 10 of Section 2 of Public Law 26-
23 70, as amended, the party acquiring GTA's business shall, by operation
24 of law, be assigned all of GTA's rights and interest in all easements,
25 rights of way, and other property or access rights from third parties and

1 any and all leases entered into with third parties that are currently held
2 by GTA.”

3 **Section 5. Identification of Land.** Exhibit A in Rule 10 of Section 2 of
4 Public Law 26-70 is *amended* and *restated* to read as Exhibit B attached hereto.

5 **Section 6. Approval of Ground Lease.** *I Liheslatura* (the Legislature)
6 hereby approves without modification the Ground Lease attached hereto as
7 Exhibit C (the “Ground Lease”), although, with the consent of the party
8 acquiring GTA’s business, (prior to closing under the Privatization
9 Agreements) GTA or the Board of GTA, or (after such closing) *I Maga’lahen*
10 *Guåhan* (the Governor of Guam), and any of its duly authorized
11 representatives, may further modify the Ground Lease, as contemplated by
12 the Ground Lease. During the term of the Ground Lease, the Government of
13 Guam or any agency, trust, department, or instrumentality thereof, acting
14 through the GTA, shall be the sole landlord under the aforementioned lease.
15 Notwithstanding any other statute enacted by *I Liheslaturan Guåhan* (the
16 Guam Legislature) (including, without limitation, 21 GCA § 60112), *I*
17 *Liheslatura* (the Legislature) hereby expressly approves any assignment and
18 sublease of the Ground Lease made pursuant to Articles 5 and 16 thereof.

19 **Section 7. Approval of Basic Rate Schedule.** The basic rate schedule
20 as identified in the attached Exhibit D, which contains the same basic rates as
21 currently charged by GTA and as set forth on Schedule 6.10(d) of the Asset
22 Purchase Agreement, is hereby approved. Such rates are found to be just and
23 reasonable as of the date hereof and do *not* unreasonably discriminate
24 between similarly situated customers, and these legislative findings shall be
25 binding upon the Guam Public Utilities Commission (“Commission”) upon

1 closing under the Privatization Agreements. Such rates shall *not* be increased
2 during the five (5) years period following such closing, and thereafter may be
3 modified pursuant to applicable law and the rules of the Commission. All
4 such rates shall be submitted to the Commission in such form as the
5 Commission may require. Nothing in this Section shall be construed to limit
6 the Commission from approving at any time other rates in addition to the
7 rates set forth in Exhibit D so long as such rates and the services associated
8 therewith remain available to such customers. Notwithstanding anything to
9 the contrary, this Section shall *not* be construed to prohibit the buyer of the
10 GTA's assets from establishing rates for services or combinations of services
11 other than those set forth on attached Exhibit D in accordance with applicable
12 Commission requirements. Provided that with respect to any combination of
13 services offered by the buyer of the GTA's assets, no customer shall be
14 required to purchase any such combination.

15 Section 8. Rule 11 of Section 2 of Public Law 26-70, is hereby *amended*
16 to read as follows:

17 **"Indemnification.** The Government of Guam acting through GTA
18 is authorized to provide, as set forth in the Privatization Agreements,
19 the indemnification to the buyer of the assets of GTA for liability
20 associated with (a) pre-privatization environmental contamination of
21 government of Guam or GTA sites leased to the buyer; (b) claims arising
22 from title defects or any title matter, including, without limitation,
23 monetary liens, lis pendens, possessory rights, condemnation actions
24 and any other that does *not* relate to a beneficial interest in the real
25 property to the extent that such defects exist on the effective date of this

1 legislation; (c) the breach or falsity of any representation or warranty in
2 the Privatization Agreements; (d) the breach or nonperformance of any
3 covenant, indemnity or agreement made in the Privatization
4 Agreements; (e) any claims, demands, liabilities and/or liens arising at
5 any time out of or in connection with the GTA's benefit plans
6 (including, without limitation, the Government of Guam Retirement
7 Fund, the Government of Guam Defined Contribution Retirement Plan
8 (also known as the Government of Guam Defined Contribution
9 Retirement System) and the Government of Guam Deferred
10 Compensation Plan (also known as the Government of Guam Deferred
11 Compensation Program)) and (f) to the extent *not* assumed by the buyer
12 of the GTA's assets: (i) claims or liabilities of any present or former
13 employees (or their spouses, dependents or beneficiaries) on account of
14 sums due to, or paid to, such employees, spouses, dependents or
15 beneficiaries or otherwise, arising in connection with their employment
16 by GTA prior to, or upon giving effect to, privatization; (ii) claims,
17 demands, liabilities, debts asserted by any creditor of GTA incurred
18 prior to privatization; and (iii) all claims arising out of the ownership,
19 use, maintenance or operation of the telecommunications system or
20 business with respect to any period of time prior to the privatization.
21 GTA is also authorized to provide indemnification for the escrow agent
22 to be employed in connection with the transaction consistent with the
23 terms of the Privatization Agreements."

24 **Section 9. Rule 15 of Section 2 of Public Law 26-70, is hereby**
25 *amended and restated to read as follows:*

1 **“Administration and Enforcement of Privatization Agreements.**

2 (a) There is hereby created an interim group to be known as the
3 ‘Interim Transition Coordinating Committee’. The Interim Transition
4 Coordinating Committee shall consist of the Attorney General of Guam
5 or his designee; the Director of the Department of Administration or his
6 designee; the Director of the Bureau of Budget and Management
7 Research or his designee; the Director of the Department of Public
8 Works or his designee; and the Director of the Department of Land
9 Management or his designee. The Interim Transition Coordinating
10 Committee shall administer the Privatization Agreements (including
11 indemnification claims) and any assets and liabilities of GTA retained by
12 the Government of Guam after closing of the privatization transaction.
13 The Interim Transition Coordinating Committee shall be under the
14 direction of an Executive Secretary appointed by *I Maga’lahi* (the
15 Governor). Should *I Maga’lahi* (the Governor) wish to establish a
16 permanent office overseeing the duties and responsibilities granted to
17 the Interim Transition Coordinating Committee, he shall submit to *I*
18 *Liheslatura* (the Legislature) a detailed budget for such office.

19 (b) In addition to the general powers vested above, the Interim
20 Transition Coordinating Committee shall have the following powers:

21 (i) Administer the Privatization Agreements on behalf of
22 the Government of Guam, including, without limitation, the
23 receipt and provision of notices under the Privatization
24 Agreements and the provision of direction to the Escrow Agent
25 appointed pursuant to such Agreements;

1 (ii) Receive, deposit and administer on behalf of the
2 Government of Guam any assets and liabilities of GTA retained by
3 the Government of Guam after the closing under the Privatization
4 Agreements;

5 (iii) Acquire, subject to the laws of Guam and upon the
6 reasonable request of the purchaser of the assets of GTA, by grant,
7 purchase, gift, devise, or lease, or by the exercise of eminent
8 domain in accordance with the provisions and subject to the
9 limitations of 21 GCA Chapter 15, and by virtue thereof lease or
10 sublease to the purchaser of GTA, any real or personal property
11 necessary, convenient or useful for the provision and operation of
12 telecommunications, wireless, information technology, and related
13 and ancillary services;

14 (iv) Enter into contracts and execute all instruments
15 necessary or convenient in the exercise of its powers, adopt a seal,
16 and sue or be sued in its own name;

17 (v) Adopt such rules and regulations or do any and all
18 other things that, in each case, are *not* inconsistent with the
19 Privatization Agreements and of this Act as may be necessary for
20 the exercise of the powers and the performance of the duties
21 conferred or imposed upon the Interim Transition Coordinating
22 Committee by law; and

23 (vi) Cause the Government of Guam, or any agency, trust,
24 department or instrumentality thereof, to take such actions as are

1 required by it to be performed under the Privatization
2 Agreements.

3 (c) Except for such oversight and enforcement powers that *I*
4 *Liheslaturan Guåhan* (the Guam Legislature) may grant the Guam Public
5 Utilities Commission, the power and authority to administer post-
6 privatization matters for GTA shall rest with the Interim Transition
7 Coordinating Committee and the power and authority to enforce the
8 Privatization Agreements shall rest with the Attorney General of
9 Guam."

10 **Section 10. Rule 8(c) of Section 2 of Public Law 26-70, is hereby**
11 *amended and restated to read as follows:*

12 "(c) Notwithstanding anything to the contrary herein, this Section
13 shall *not* preclude or in any way penalize the offeror of GTA from: (i)
14 offering any GTA employee, including members of the ECC, shares in
15 the new privatized GTA or its parent company, subsidiaries or affiliates,
16 either as individual shares or as part of an employee stock purchase
17 program; or (ii) employing as required under the RFP, ECC members
18 who are full-time classified employees of GTA employed on or before
19 December 31, 2001 and working for GTA at the time of privatization."

20 **Section 11. Transfer Taxes.** The transfer of ownership of the assets of
21 GTA, including without limitation, GTA's vehicles, equipment and buildings
22 and other improvements to real estate, from GTA (or GovGuam) to the party
23 acquiring GTA's business at the closing under the Privatization Agreements
24 shall be exempt from taxation by the Government of Guam by reason and at
25 the time of such transfer.

1 **Section 12. Requirements of Buyer of GTA's Assets.** For purposes of
2 clarification, references to the GTA in the following statutes enacted by *I*
3 *Liheslaturan Guåhan* (the Guam Legislature) to govern the GTA, acting in its
4 capacity as an agency of the Government of Guam, shall *not* be deemed to be
5 references to the buyer of the GTA's assets following privatization including
6 *but not limited to*: (1) Title 1 GCA §1921 (relative to the supervision of audits in
7 autonomous agencies and grantees, manpower audits by the Office of the
8 Public Auditor); (2) Title 4 GCA relative to public officers and employees,
9 including *but not limited to* 4 GCA §§ 4105, 6504 and 8137 (imposing
10 obligations on the GTA with respect to public employees); and (3) Title 5 GCA
11 (relative to Government Operations). For purposes of clarification, references
12 to the GTA in the following statutes enacted by *I Liheslaturan Guåhan* (the
13 Guam Legislature) to govern the GTA, acting in its capacity as an agency of
14 the Government of Guam, shall be deemed to be references to the buyer of the
15 GTA's assets following privatization: (1) Title 21 GCA §70116 (relative to the
16 grounds for revocation, suspension and renewal of licenses for willful failure
17 to pay when due a debt or penalty incurred for damaging a public utility);
18 and (2) Title 21 GCA Chapter 71 (relative to underground utility damage
19 prevention).

20 Notwithstanding the foregoing, Section 61.20(f) of Title 9, Guam Code
21 Annotated, is *amended* to read as follows:

22 "Any offense committed by use of a telephone or telefax machine
23 as set out in this section may be deemed to have been committed at
24 either the place at which the telephone calls or telefax transmissions
25 were made or received. In the event that a customer of a telephone

1 service provider receives harassing telephone calls, such customer may
2 file an injunction complaint under the name of John Doe, although the
3 telephone service provider may release the name, address, and
4 telephone number of the plaintiff to the Superior Court of Guam. The
5 telephone service provider shall disconnect all telephone services to any
6 subscriber who has violated the provisions of this section more than one
7 (1) time.”