



Office of the Governor of Guam

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Office of the People's Speaker
155 Hessler Street, Hagåtña, Guam

NOV 09 2004

TIME: 4:38 (JAM) PM
RECEIVED BY: [Signature]

Felix Perez Camacho
Governor

Kaleo Scott Moylan
Lieutenant Governor

09 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. 367(LS), "AN ACT TO AMEND TITLES 5, 12, AND 21 OF THE GUAM CODE ANNOTATED TO PROMOTE COMPETITION AND REDUCE REGULATION IN ORDER TO SECURE LOWER PRICES AND HIGHER QUALITY TELECOMMUNICATIONS SERVICES," which I signed into law on November 1, 2004 as Public Law No. 27-110.

The enactment of Public Law No. 27-110 will facilitate improved services and strengthen the island's telecommunication industry. It will protect the consumers and ensure that every person in Guam has access to basic telecommunications services at reasonable and affordable prices. It will promote competition to provide telecommunication services that are universally available, affordable and of higher quality.

Universally available and affordable basic telecommunications services are essential to the health, welfare and prosperity of the people of Guam. It is in the public interest to provide the people of Guam with modern, innovative, accessible, and affordable telecommunications services and products.

The new regulatory environment provided for in Public Law No. 27-110 is conducive to competition and the entry of new providers of telecommunications services, new services and products for the consumers of Guam. It will encourage investment in telecommunications industry in Guam. This measure strengthens Guam's role in the region as a strategic telecommunications hub for Asia and the United States.

Sinseru yan Magåhet,

[Handwritten signature of Felix P. Camacho]

FELIX P. CAMACHO
I Maga' Låhen Guåhan
Governor of Guam

Attachment: copy attached of signed bill

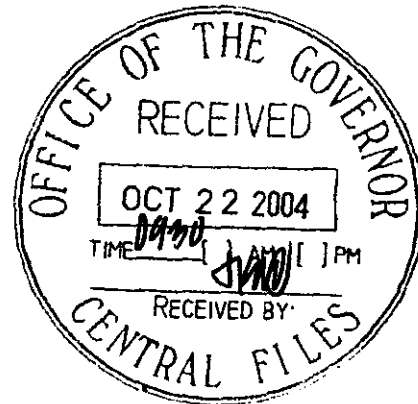
cc: The Honorable Tina Rose Muna-Barnes
Senator and Legislative Secretary



MINA' BENTE SIETE NA LIHESLATURAN GUÅHAN
TWENTY-SEVENTH GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

October 22, 2004

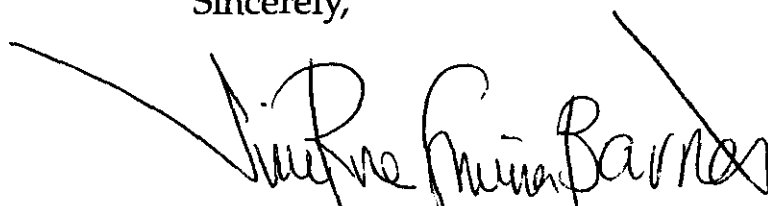
The Honorable Felix P. Camacho
I Maga'lahaen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910



Dear *Maga'lahi* Camacho:

Transmitted herewith are Bill Nos. 366(LS) and 367(LS) which were passed by *I Mina' Bente Siete Na Liheslaturan Guåhan* on October 21, 2004.

Sincerely,


TINA ROSE MUNA BARNES
Senator and Legislative Secretary

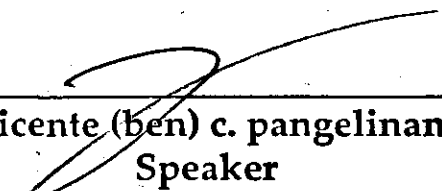
Enclosures (2)

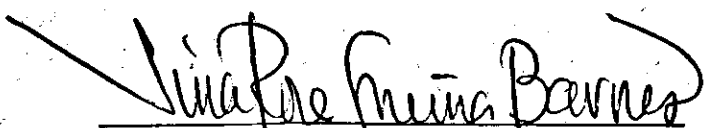
I MINA'BENTE SIETE NA LIHESLATURAN GUÅHAN
2004 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

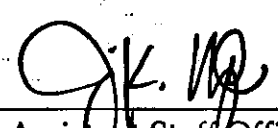
This is to certify that Bill No. 367 (LS), "AN ACT TO AMEND TITLES 5, 12, AND 21 OF THE GUAM CODE ANNOTATED TO PROMOTE COMPETITION AND REDUCE REGULATION IN ORDER TO SECURE LOWER PRICES AND HIGHER QUALITY TELECOMMUNICATIONS SERVICES," was on the 21st day of October, 2004, duly and regularly passed.

Attested:



vicente (ben) c. pangelinan
Speaker


Tina Rose Muña Barnes
Senator and Legislative Secretary

This Act was received by I Maga'lahaen Guåhan this 21st day of October, 2004,
at 9:30 o'clock A.M.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


FELIX P. CAMACHO
I Maga'lahaen Guåhan

Date: Nov. 1, 2004

Public Law No. 27-110

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

Bill No. 367 (LS)

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

Introduced by:

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

**AN ACT TO AMEND TITLES 5, 12, AND 21 OF THE
GUAM CODE ANNOTATED TO PROMOTE
COMPETITION AND REDUCE REGULATION IN
ORDER TO SECURE LOWER PRICES AND HIGHER
QUALITY TELECOMMUNICATIONS SERVICES.**

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

2 **Section 1. Legislative Findings and Intent. Section 4115 of Title 5,**
3 **Chapter 4 of the Guam Code Annotated is hereby *repealed and reenacted to***
4 **read:**

5 **"Inapplicability of §4113 and §4114. The provisions of §4113 and**
6 **§4114 of this Chapter shall *not* apply to the Guam Power Authority,**
7 **Guam Waterworks Authority, Guam Memorial Hospital Authority, Jose**
8 **D. Leon Guerrero Commercial Port, Guam Housing and Urban Renewal**
9 **Authority, Guam Housing Corporation, A. B. Won Pat International**
10 **Airport Authority Guam, and Guam Economic Development and**
11 **Commerce Authority."**

12 **Section 2. Section 9102 of Title 5, Chapter 9 of the Guam Code**
13 **Annotated is hereby *repealed and reenacted to read:***

1 “Agency. The word *agency* whenever used in this Chapter, shall
2 mean and include any board, commission, department, division, bureau
3 or officer of the territory of Guam authorized by law to make rules or
4 adjudicate contested cases. Agency does *not* include any entity in the
5 legislative and judicial branches and for the purposes of establishing
6 charges of utility services, it does *not* include the Guam Power
7 Authority or the Guam Waterworks Authority.”

8 **Section 3. Section 22205 of Title 5, Chapter 22 of the Guam Code**
9 **Annotated is hereby *repealed* and *reenacted* to read:**

10 “Exceptions. The provisions of this Act shall *not* apply to the
11 accounting operations of the Guam Waterworks Authority, the Guam
12 Power Authority, the A. B. Won Pat International Airport Authority
13 Guam, the Guam Housing and Urban Renewal Authority, the Guam
14 Housing Corporation, the Guam Economic Development and
15 Commerce Authority, the Judicial Branch, the Legislative Branch, the
16 Guam Community College, the Department of Education, the
17 University of Guam and the Guam Mass Transit Authority.”

18 **Section 4. Section 22421 of Title 5, Chapter 22 of the Guam Code**
19 **Annotated is hereby *repealed* and *reenacted* to read:**

20 “(a) It is *I Liheslatura’s* (the Legislature’s) findings that for the risk
21 assumed by Guam’s taxpayers in operating the power, water, sewer,
22 and air and sea port operations, a fund transfer policy should be
23 instituted as a General Fund reimbursement. It is furthermore found
24 that these non-tax paying utilities benefit from services provided by the
25 General Fund, such as police and fire protection, road systems and

1 other governmental facilities. In many cases, several of the services
2 require additional General Fund expenditures. Further, rather than
3 assess the actual levy of real estate taxes, as if they were of a private
4 venture which is commonly called *payment-in-lieu-of-taxes*, a transfer
5 policy would be more equitable and fair.

6 (b) Notwithstanding any other provision of law, *I Maga'lahi* (the
7 Governor) and the Boards of Directors of the Jose D. Leon Guerrero
8 Commercial Port of Guam, the Guam Power Authority, and the A. B.
9 Won Pat International Airport Authority Guam shall transfer in the
10 aggregate the sum of Three Million Five Hundred Thousand Dollars
11 (\$3,500,000.00) from operating surpluses generated by these agencies to
12 the General Fund of the government of Guam by the end of each fiscal
13 year. The proportionate contribution of each of the above agencies
14 which will in the aggregate make up the Three Million Five Hundred
15 Thousand Dollars (\$3,500,000.00) transferred shall be determined by a
16 formula decided upon by *I Maga'lahi* (the Governor) in consultation
17 with the Boards of Directors of the above agencies. In no event shall
18 the formula decided upon or the transfer of sums from the agencies to
19 the General Fund violate the terms and conditions of any bond
20 covenant of any of the above agencies that is in effect on the effective
21 date of this Section."

22 Section 5. Section 22604 of Title 5, Chapter 22 of the Guam Code
23 Annotated is hereby *repealed* and *reenacted* to read:

24 "*I Maga'lahi* (the Governor) is authorized to enter into agreements
25 with the United States of America, or any agency or instrumentality

1 thereof, for the furnishing by the government of Guam of services,
2 including labor and use of equipment, on a reimbursable basis. All
3 proceeds derived from such agreements shall be paid into the General
4 Fund of the government of Guam, *except* that to the extent such services
5 are furnished by the Jose D. Leon Guerrero Commercial Port of Guam or
6 the Guam Waterworks Authority, and the Guam Power Authority,
7 reimbursement shall be paid into the treasuries of the respective
8 agencies.”

9 **Section 6. Title 12, Chapter 7, GCA, Guam Telephone Authority is**
10 **deleted.**

11 Title 12, Chapter 7 of the Guam Code Annotated entitled the Guam
12 Telephone Authority is hereby *repealed* along with all the provisions
13 contained therein and designated as follows:

14 “[Deleted]”

15 **Section 7. Section 10113 of Title 12, Chapter 10 of the Guam Code**
16 **Annotated is *amended* by replacing the existing paragraph (c) with a new**
17 **paragraph to read:**

18 “(c) The Council shall be composed of eighteen (18) members: ten
19 (10) members from the government, including the Manager of the Jose
20 D. Leon Guerrero Commercial Port of Guam; the Executive Manager of
21 the A. B. Won Pat International Airport Authority Guam; the General
22 Managers of the Guam Visitors Bureau and the Guam Mass Transit
23 Authority; the Directors of the Department of Public Works, the Guam
24 Economic Development and Commerce Authority, the Department of
25 Revenue and Taxation, the Bureau of Planning; the President of the

1 Mayors Council; a representative from the Guam Public Utilities
2 Commission involved with regulating the New Guam Telephone
3 Authority; and eight (8) appointed by *I Maga'lahi* (the Governor) with
4 the advice and consent of *I Liheslatura* (the Legislature) from among the
5 Guam business community as follows: one (1) representing the shipping
6 industry; one (1) representing the airline/cargo industry; one (1)
7 representing the telecommunications industry; one (1) representing the
8 trucking industry; one (1) representing the construction industry; one (1)
9 representing the wholesalers/retailers; one (1) representing the
10 Chamber of Commerce; and one (1) representing the disabled
11 community. Appointed members shall serve four (4) year terms, and
12 every effort shall be made to appoint a representative number of women
13 members. Each member appointed as a representative of the business
14 community must have background or experience within the respective
15 industry."

16 **Section 8. Designation of Article 1 to Title 12, Chapter 12 of the**
17 **Guam Code Annotated.**

18 (a) Sections 12000 through 12027, inclusive, of Title 12, Chapter 12 of the
19 Guam Code Annotated shall be designated as Article 1 of Title 12, Chapter 12
20 of the Guam Code Annotated.

21 (b) Section 12000(a) is hereby *repealed* and *reenacted* to read:

22 "*Public Utility* means the Guam Power Authority, the Guam
23 Waterworks Authority or any duly licensed private contractor
24 operating: (i) a facility or subsystem of the community-wide water
25 production and distribution system, or (ii) a facility or subsystem of the

1 community-wide waste water disposal system, or both, or any private
2 golf course management corporation leasing public property providing
3 preferential golf rates and reservations to Guam residents.”

4 **Section 9. Section 12017 of Title 12, Chapter 12 of the Guam Code**
5 **Annotated is hereby *repealed* and *reenacted* to read:**

6 “The term ‘just and reasonable’ as used in this Article is defined as
7 that rate, charge or assessment cost which enables the public utility to
8 repay its debts, finance its obligations, finance its capital improvement
9 needs and cover all its operating expenses. This Section shall have *no*
10 application to Article 2 of this Chapter.”

11 **Section 10. A new Article 2 is *added* to Title 12, Chapter 12 of the**
12 **Guam Code Annotated, to read:**

13 “§12101. **Legislative Findings and Intent.**

14 (a) This Article shall be known and may be cited as the ‘Guam
15 Telecommunications Act of 2004.’

16 (1) The privatization of Guam Telephone Authority (“GTA”)
17 requires that *I Liheslatura* (the Legislature) establish an appropriate
18 regulatory environment for a non-governmental successor to GTA,
19 which shall be known herein as ‘New GTA’ or ‘NGTA.’

20 (2) It is in the public interest to provide the people of Guam
21 with modern, innovative, accessible, and affordable
22 telecommunications services and products.

23 (3) A new regulatory environment conducive to
24 competition will promote the development of modern, innovative,

1 accessible, and affordable telecommunications services and
2 products for the people of Guam.

3 (4) Investment in telecommunications infrastructure
4 encouraged through competition will further economic growth in
5 Guam and meet the growing demands of Guam's consumers.

6 (5) Universally available and affordable basic
7 telecommunications services are essential to the health, welfare
8 and prosperity of the people of Guam.

9 (b) Consistent with *I Liheslatura's* (the Legislature's) findings, it
10 is the intent of this Act to:

11 (1) Provide an appropriate regulatory environment for
12 New GTA.

13 (2) Provide the people of Guam with modern, innovative,
14 accessible, and affordable telecommunications services and create
15 a regulatory environment conducive to the promotion of
16 competition in telecommunications services.

17 (3) Encourage the entry of new providers of
18 telecommunications services, encourage the introduction of new
19 telecommunications services and products for the consumers of
20 Guam, and increase investment in telecommunications
21 infrastructure in Guam.

22 (4) Protect the consumers of Guam during the transition
23 to a competitive telecommunications market and ensure that every
24 person in Guam has access to basic telecommunications services at
25 reasonable and affordable prices.

1 (5) Create a new regulatory and competitive
2 telecommunications framework consistent with federal policies
3 and practices in telecommunications, including the policies and
4 practices found in the Communications Act of 1934, as amended
5 by the Telecommunications Act of 1996.

6 **§12102. Definitions.**

7 (a) '*Carrier of last resort*' means that telecommunications company
8 who is the sole provider of a telecommunications service or
9 who has been designated by the Commission as a carrier of
10 last resort.

11 (b) '*Commercial mobile service*' shall have the meaning set forth in
12 47 U.S.C. § 332(d).

13 (c) '*Commission*' means the Guam Public Utilities Commission.

14 (d) '*Just and reasonable*', as applied to telecommunications
15 companies, shall be interpreted to be consistent with
16 generally accepted regulatory practices in other United
17 States jurisdictions.

18 (e) '*New GTA*' or '*NGTA*' means the entity purchasing the assets
19 and business of Guam Telephone Authority pursuant to
20 duly enacted legislation and such entity's successors in
21 interest.

22 (f) '*Person*' means any person, firm, partnership, corporation,
23 association, public corporation, governmental entity, or
24 other legal entity.

1 (g) *'Telecommunications'* shall have the meaning set forth in 47
2 U.S.C. §153 (43).

3 (h) *'Telecommunications company'* means any person providing or
4 reselling telecommunications services, but only with respect
5 to the person's provision of telecommunications services.

6 (i) *'Telecommunications service'* means the offering of
7 telecommunications, between originating and terminating
8 points in Guam, for a fee directly to the general public, or to
9 such classes of users as to be effectively available directly to
10 the public, regardless of the facilities used.

11 **§12103. Certificates of Authority for Telecommunications Companies.**

12 (a) No person shall provide or resell telecommunications services
13 in Guam without a certificate of authority issued by the Commission,
14 except that a certificate of authority shall not be required for any person
15 to provide commercial mobile service. The provisions of Section 12108
16 of this Title shall apply in circumstances where a telecommunications
17 company is providing or reselling telecommunications services without
18 a certificate of authority issued by the Commission. On the effective
19 date hereof, New GTA and any other telecommunication company then
20 providing telecommunications service in Guam shall be deemed to have
21 a certificate of authority under this Article with respect to the
22 telecommunications services then provided by such telecommunications
23 company or, with respect to New GTA, such telecommunications
24 services provided immediately prior thereto by GTA (each a
25 *'Grandfathered Certificate'*). The Commission shall promptly issue

1 Grandfathered Certificates to New GTA and any other such
2 telecommunications company within sixty (60) days of the effective date
3 hereof. To obtain a Grandfathered Certificate, each telecommunications
4 company other than New GTA shall represent to the Commission that
5 such company and the intra-Guam telecommunications services it
6 provides are subject to jurisdiction of the Commission in accordance
7 with this Act and that the provision of such telecommunications services
8 and the possession of a Grandfathered Certificate do not entitle such
9 telecommunications company to any of the rights afforded to local
10 exchange carriers under the Communications Act of 1934, as amended.
11 Any other person that seeks to offer telecommunications services or any
12 certificated telecommunications company that seeks to provide new or
13 additional telecommunications services shall first obtain a certificate or
14 other authority as required by this Section 12103 and the rules and
15 regulations adopted by the Commission pursuant hereto.

16 (b) Applications for a certificate of authority shall be in such form
17 and contain such information, including information regarding the
18 financial and technical capability of the applicant, as the Commission
19 may reasonably require. Each applicant shall publish notice of the
20 application, in a form prescribed by the Commission, in a newspaper
21 having general circulation in Guam.

22 (c) After notice and opportunity for a hearing, the Commission
23 shall approve an application for a certificate of authority if the
24 Commission finds both of the following:

1 (1) The applicant possesses sufficient technical, financial,
2 and managerial resources and abilities to provide the
3 telecommunications services in Guam for which it seeks a
4 certificate of authority; and

5 (2) The granting of a certificate of authority to the applicant
6 would not be contrary to the public interest.

7 (d) In appropriate circumstances, the Commission may require,
8 as a precondition to certification, the procurement of a performance
9 bond sufficient to cover any advances or deposits the
10 telecommunications company may collect from its customers, or order
11 that such advances or deposits be held in escrow or trust.

12 (e) The Commission shall approve or deny an application for a
13 certificate of authority within ninety (90) days of its having been filed.
14 Failure to approve or deny an application within such ninety (90) days
15 shall be considered an automatic grant of a certificate of authority.

16 (f) The Commission may upon complaint or its own motion, after
17 notice to the affected telecommunications company and opportunity for
18 hearing, revoke or suspend a telecommunications company's certificate
19 of authority for violation of any law, any rule, regulation or order of the
20 Commission, or any term or condition under which the certificate of
21 authority was originally granted.

22 (g) A telecommunications company shall *not* sell, assign, or
23 transfer a certificate of authority, or any portion thereof, issued under
24 this Article, or transfer control of a telecommunications company
25 holding a certificate of authority issued under this Article, without the

1 prior approval of the Commission and a determination by the
2 Commission that the proposed sale, assignment or transfer satisfies the
3 requirements for granting a certificate of authority under Subsection (c).
4 Prior approval shall *not* be required for transfers of control that do not
5 result in a substantial change in ultimate ownership of a
6 telecommunications company holding a certificate of authority. The
7 Commission shall issue a decision on a request to sell, assign, or transfer
8 a certificate of authority or to transfer control within ninety (90) days of
9 the request, which period may be extended by an additional thirty (30)
10 days for good cause shown and upon prior notice by the Commission to
11 the applicant(s).

12 (h) A telecommunications company may not cancel a certificate of
13 authority or discontinue or abandon a telecommunications service
14 thereunder unless and until it shall:

15 (1) Provide at least thirty (30) days advance written notice
16 to its customers of such cancellation, discontinuance or
17 abandonment; and

18 (2) Provide at least thirty (30) days advance written notice
19 to the Commission verifying compliance with subsection (1)
20 hereof, which thirty (30)-day period may run concurrently with
21 the period set forth in subsection (1) hereof.

22 The Commission may by rule or orders in specific cases provide for
23 further notice to affected customers and disposition of deposits and final
24 bills. Notwithstanding the foregoing, any carrier of last resort, may not
25 cancel a certificate of authority or discontinue or abandon

1 telecommunications service thereunder unless and until it shall
2 demonstrate, and the Commission finds, that such cancellation,
3 discontinuance or abandonment will not deprive customers of any
4 necessary or essential telecommunications service or access thereto.

5 **§12104. Jurisdiction and Authority of the Commission.**

6 (a) The Commission may exercise, with respect to
7 telecommunications companies, those general powers and duties
8 prescribed by Article 1 of Title 12, Chapter 12 of the Guam Code
9 Annotated, including, without limitation, those powers prescribed by
10 Sections 12001, 12002 and 12014. In the case of a conflict between the
11 provisions of Article 1 and Article 2, Article 2 shall apply with respect to
12 telecommunications companies.

13 (b) In addition to the other powers and duties prescribed by law,
14 the Commission shall have the authority and jurisdiction to implement
15 and enforce the provisions of this Article through rulemakings or
16 orders. In promulgating rules pursuant hereto, the Commission shall
17 adhere to the principles of due process, reasonableness, fairness, and
18 non-discrimination; provided that the Commission shall make no rule
19 that is contrary to the provisions of this Act.

20 (c) Without limiting the scope of subsection (a), the Commission
21 shall have the authority and jurisdiction to:

22 (1) Adopt reasonable rules governing certification of
23 persons providing or reselling telecommunications services and to
24 grant, deny, modify, impose conditions upon, suspend, or revoke
25 a certificate of authority;

1 (2) Determine what are just and reasonable rates, charges,
2 classifications, terms and conditions for any telecommunications
3 service and to adopt Link-Up and Lifeline rates for
4 telecommunications services;

5 (3) Adopt reasonable rules governing the availability and
6 quality of telecommunications services provided by
7 telecommunications companies in Guam;

8 (4) Adopt reasonable rules to make telecommunications
9 services and telecommunications relay services available to the
10 hearing impaired;

11 (5) Make provision for discovery and the protection of
12 trade secrets and confidential information in proceedings before
13 the Commission;

14 (6) Adopt reasonable rules regarding customer billing and
15 authorization and verification of a customer's selection of
16 telecommunications companies;

17 (7) Adopt reasonable rules to apportion the Commission's
18 necessary operating expenses among telecommunications
19 companies for the regulation of such companies and the
20 administration of this Article;

21 (8) Establish reasonable accounting, discrimination,
22 structural separation, affiliate transaction and other safeguards
23 consistent with the legislative findings and intent set forth in
24 Section 12101 of this Title; and

1 (9) Designate public interest payphones and establish a
2 competitively neutral funding mechanism therefor.

3 (d) The Commission shall apply, to the extent practicable,
4 generally accepted regulatory practices in other United States
5 jurisdictions.

6 (e) Subject to subsections (c) (5) and (d) of this Section, the
7 Commission shall have access to the books and records of each
8 telecommunications company as may be necessary to examine the
9 financial condition of the company, to ensure compliance with the
10 provisions of this Article and with the Commission's rules, regulations,
11 and orders and to carry out the Commission's responsibilities under this
12 Article.

13 (f) Notwithstanding any other provision of law, upon request or
14 at its own initiative, the Commission shall order protected from
15 disclosure trade secrets, as defined in Public Law 27-60, Section 7(e), and
16 may order protected from disclosure any commercial and financial
17 information obtained or submitted under this Article.

18 **§12105. Services and Charges.**

19 (a) The New GTA shall not refuse any reasonable application for
20 telecommunications services which it is certificated by the Commission
21 to provide; provided, however, that nothing herein shall be construed to
22 prevent any telecommunications company from seeking authorization
23 as a carrier of last resort.

1 (b) Each telecommunications company offering local exchange
2 service on Guam shall provide access to operator services and
3 emergency "911" services.

4 (c) All rates, charges, classifications, terms and conditions for and
5 in connection with telecommunications services provided by a
6 telecommunications company shall be just and reasonable and shall not
7 unreasonably discriminate between similarly situated customers.
8 Except as provided in Section 12111 of this Title, the Commission shall
9 have the power to determine what are just and reasonable rates,
10 charges, classifications, terms and conditions for and in connection with
11 telecommunications services provided by telecommunications
12 companies. In making such determination, the Commission may
13 consider such alternatives to traditional rate of return regulation as
14 flexible pricing, banded pricing, incentive regulation, tariffing of
15 maximum and current rates, modified tariff requirements, detariffing,
16 and other such manner and methods of regulation that are deemed
17 consistent with the legislative findings and intent set forth in Section
18 12101 of this Title. It is the intent of this section to provide the
19 Commission authority to establish appropriate frameworks governing
20 the rates, charges, classifications, terms and conditions of
21 telecommunications services offered by dominant and non-dominant
22 telecommunications companies.

23 (d) A telecommunications company shall not give unreasonable
24 preference or advantage to any person or class of persons when

1 providing telecommunications services or engage in any anti-
2 competitive act or practice.

3 (e) Nothing contained herein shall restrict any
4 telecommunications company from contracting with, or providing
5 services to, the government of Guam or any of its agencies or
6 instrumentalities; provided that the telecommunications company is
7 properly authorized to offer such services.

8 (f) The buyer of the GTA's business shall continue, subject to
9 applicable federal law, regulations, and orders, to provide services being
10 provided by GTA to other telecommunications companies as of the
11 effective date of the acquisition ('Existing Services') for a period of sixty
12 (60) days following the acquisition of GTA's business, on the same terms
13 and conditions as such Existing Services were provided to such
14 telecommunications companies by GTA immediately prior to such
15 acquisition. During such sixty (60) day period, at the request of any
16 other telecommunications company, the buyer of the GTA's business
17 and such telecommunications company shall negotiate in good faith to
18 reach a written agreement, on commercially reasonable terms and
19 consistent with the requirements of the Communications Act of 1934, as
20 amended, and the rules, regulations and orders of the Federal
21 Communications Commission, pursuant to which the buyer of the
22 GTA's business shall provide to such telecommunications company
23 such Existing Services that are not then subject to a written agreement or
24 tariff. Thereafter, the buyer of GTA shall provide such Existing Services
25 in accordance with the terms of such written agreement or tariff, subject

1 to applicable federal law, regulations and orders, and the rules and
2 regulations of the Commission (and any future modifications thereto).

3 **§12106. Tariffs of Rates and Charges.**

4 (a) Unless otherwise ordered by the Commission, all
5 telecommunications companies, except commercial mobile service
6 providers, shall file a tariff indicating the rates and charges and the
7 classifications, terms, and conditions of its telecommunications services.
8 The tariff shall be in such form, contain such other information, and be
9 made available to the public in such manner as the Commission may
10 require by rule or order.

11 (b) Except as provided in subsection (c), no telecommunications
12 company shall make any change in any rate or charge or any
13 classification, term or condition for any telecommunications service in
14 its tariff except after thirty (30) days prior notice to the Commission or
15 unless the Commission has previously authorized or approved the
16 change. Any notice hereunder shall be in such form, contain such other
17 information, and be made available to the public in such manner as the
18 Commission may require.

19 (c) Unless otherwise ordered by the Commission or provided by
20 or under authority of this Article, no telecommunications company shall
21 provide or resell any telecommunications service unless tariffs relating
22 to that telecommunications service have been filed and the notice period
23 has expired. Unless otherwise ordered by the Commission or provided
24 by or under authority of this Article, no telecommunications company
25 shall (1) charge, demand, collect or receive a greater or less or different

1 compensation for such service than the charges specified in its tariffs,
2 (2) refund or remit by any means or device any portion of the charges so
3 specified, or (3) extend to any person any privileges or facilities or
4 employ or enforce any classifications, terms and conditions, except as
5 specified in such tariffs.

6 (d) A telecommunications company may discount or reduce any
7 rate or charge for a telecommunications service in its tariff of current
8 rates and charges by filing notice of such discount or reduction with the
9 Commission. A discount or reduction in any rate or charge under this
10 subsection shall become effective without Commission review or
11 approval.

12 (e) Whenever any notice is filed under this Section, the
13 Commission may, upon complaint or its own initiative, suspend in
14 whole or in part the operation and effectiveness of any revised rate,
15 charge, classification, term or condition for a period of not more than
16 four (4) months and enter upon an investigation concerning the
17 lawfulness thereof. After notice to the affected telecommunications
18 company and opportunity for a hearing, the Commission may approve,
19 reject, or approve with conditions the proposed tariff or make such
20 other order with reference thereto as would be proper in a proceeding
21 initiated after such rate, charge, classification, term or condition had
22 become effective. In the event the Commission does not reject or
23 approve with conditions the proposed revision within the
24 aforementioned four months, the proposed revision shall be deemed
25 approved.

1 (f) The Commission may, in its discretion and for good cause
2 shown, modify any requirement in this Section either in particular
3 instances or by general order applicable to special circumstances or
4 conditions, except that the Commission may not increase the notice
5 period specified in subsection (b).

6 **§12107. Petitions, Complaints, and Investigations.**

7 (a) Any interested person complaining of anything done or
8 omitted to be done by any telecommunications company in violation of
9 this Article or the rules, regulations and orders of the Commission may
10 file a petition or complaint with the Commission.

11 (b) A petition or complaint filed under this Section shall be in
12 writing, plainly and distinctly state the grounds thereof, and contain all
13 information on which the person intends to rely to support the petition
14 or complaint. Petitions or complaints that do not meet the requirements
15 of this subsection, or that the Commission determines are frivolous or
16 fail to state a claim, shall be dismissed or suspended pending the receipt
17 by the Commission of the required information. Petitions or complaints
18 that are accepted for filing shall be promptly forwarded by the
19 Commission to the telecommunications company against whom the
20 petition or complaint was filed.

21 (c) Unless otherwise ordered by the Commission, for (i) all
22 petitions or complaints involving a dispute of One Thousand Dollars
23 (\$1,000.00) or less and (ii) at the option of the complainant or the
24 telecommunications company against whom the petition or complaint
25 was filed, for a period of sixty (60) days after the petition or complaint is

1 received by the telecommunications company against whom the petition
2 or complaint was filed, the parties shall attempt in good faith to resolve
3 the dispute through alternative means.

4 (d) If the petition or complaint is not dismissed or suspended
5 under subsection (b) or resolved pursuant to subsection (c), the
6 Commission shall provide the telecommunications company against
7 whom the petition or complaint was filed the opportunity to respond in
8 writing. Following the submission of the telecommunications
9 company's response, the Commission shall conduct a hearing at which
10 the complainant and the telecommunications company shall have the
11 opportunity to be heard. Sections 12008, 12010, 12011, and 12013 of this
12 Title shall apply to any investigation and hearing by the Commission
13 under this Section. If, after notice and opportunity for hearing and a
14 finding of a violation on the part of the telecommunications company,
15 the Commission determines that the complainant is entitled to an award
16 of damages sustained in consequence of such violation, it may order the
17 telecommunications company to pay to the complainant the sum to
18 which the complainant is entitled. The Commission may also impose
19 attorneys' fees against a party and impose penalties under this Article if
20 the Commission determines, after notice and opportunity for hearing,
21 that a party has failed to act in good faith.

22 (e) Except as otherwise provided in subsection (b), the
23 Commission shall issue a final order resolving the petition or complaint
24 within one hundred eighty (180) days after the filing of the petition or
25 complaint; provided, however, the Commission may extend the time for

1 issuing a final order resolving the petition or complaint if the principal
2 parties of record agree to such extension.

3 (f) A final order of the Commission shall be subject to review as
4 provided by Section 12018 of this Title.

5 **§12108. Penalties Recoverable by the Commission.**

6 (a) The Commission, after a hearing conducted after not less than
7 thirty (30) days' notice, shall have the power to impose upon any
8 telecommunications company which willfully violates any law
9 administered by the Commission or any rule, regulation, or order of the
10 Commission, or which willfully fails, neglects, or refuses to comply with
11 any order after notice thereof, a penalty for each offense not to exceed
12 One Thousand Dollars (\$1,000.00), which penalty shall be fixed,
13 imposed and collected by the Commission. Each day that such
14 violation, failure, neglect or refusal continues constitutes a separate
15 offense. Penalties collected by the Commission shall be deposited in the
16 Public Utilities Commission Fund.

17 (b) Any party aggrieved by a decision of the Commission under
18 this Section may seek review as provided in Section 12018 of this Title.

19 (c) The Commission may, at its discretion, institute in any court
20 of competent jurisdiction a proceeding for injunctive relief to compel
21 compliance with this Article or any Commission rule, regulation or
22 order.

23 **§12109. Commission Expenses.**

1 Notwithstanding Section 12024(b) of this Title, it is the intention of
2 *I Liheslatura* (the Legislature) that the costs of regulating
3 telecommunications companies and administering this Article be
4 apportioned among all telecommunications companies operating in
5 Guam. The Commission is authorized to establish by rule or order that
6 each telecommunications company operating in Guam shall be
7 assessed, on a reasonable basis determined by the Commission, for the
8 payment of necessary operating expenses of the Commission in
9 administering this Article. The Commission is further authorized to
10 establish by rule or order application and regulatory fees to recover the
11 cost of providing services to individual telecommunications companies
12 pursuant to this Act including, *but not limited to*, the review of
13 applications for certificates of authority, review of applications to sell,
14 assign, or transfer a certificate of authority or transfer control of a
15 telecommunications company, provision of services by the Commission,
16 and review of tariffs and revisions thereto. The fees assessed pursuant
17 to this provision may be modified from time to time in accordance with
18 the requirements of this Act and Guam law. It is the intent of *I*
19 *Liheslatura* (the Legislature) that the basis of assessment of expenses be
20 consistent with the legislative findings and intent set forth in Section
21 12101 of this Title. With regard to any assessment made under this
22 Section, the Commission may require a telecommunications company to
23 make an advanced deposit against estimated expenses, subject to true
24 up and may condition the effectiveness of any regulatory action on the
25 timely payment of an assessment.

1 §12110. Technical Standards.

2 (a) The Commission shall, within one (1) year of the effective date
3 hereof, complete a rulemaking to adopt minimum technical standards
4 for New GTA, including standards for:

- 5 (1) construction and maintenance of plant and equipment;
6 (2) construction and maintenance practices;
7 (3) adequacy of service;
8 (4) basic telephone service standards;
9 (5) standard performance characteristics for customer lines;
10 (6) interexchange trunking connections;
11 (7) PBX and multichannel lines;
12 (8) trouble report response; and
13 (9) adequacy of facilities.

14 (b) Such minimum technical standards shall be adopted after
15 consideration of previous Commission standards, New GTA actual
16 performance and comparable nationwide standards.

17 (c) Notwithstanding anything to the contrary in this Act, for a
18 period of thirty-six (36) months from the effective date hereof, the
19 Commission shall not be authorized, without the prior consent of New
20 GTA, to adopt financial, infrastructure, technical or performance
21 standards or commitments for New GTA that are greater than the scope
22 of the commitments set forth in Schedule 6.10(b) (d) and (e) of that
23 certain Asset Purchase Agreement by and among TeleGuam Holdings,
24 LLC, GTA and the government of Guam, dated as of August 31, 2004,
25 except as required by the Communications Act of 1934, as amended, and

1 the rules, regulations and orders of the Federal Communications
2 Commission.

3 **§12111. Competition and Regulatory Flexibility.**

4 (a) Notwithstanding any provision of law, the Commission may,
5 upon its own motion or a petition of an interested party, forbear from
6 applying any provision of this Article to a telecommunications company
7 or telecommunications service if the Commission determines that:

8 (1) enforcement of such provision is not necessary to ensure
9 that the rates, charges, classifications, terms and conditions by, for,
10 or in connection with that telecommunications company or
11 telecommunications service are just and reasonable and are not
12 unjustly or unreasonably discriminatory;

13 (2) enforcement of such provision is not necessary for the
14 protection of consumers; and

15 (3) forbearance from applying such provision is consistent
16 with the public interest and the legislative findings and intent set
17 forth in Section 12101 of this Title.

18 (b) In determining what actions, if any, are to be taken under
19 subsection (a), the Commission shall also consider the extent to which
20 competing telecommunications services are available from competitive
21 providers in Guam and the ability of competitive providers to make
22 functionally equivalent or substitute services readily available. Market
23 Share shall not be the sole criterion for making this determination.

24 (c) A telecommunications company shall give notice to its
25 customers if a telecommunications service is to be deregulated or

1 detriffed. The notice shall be included in or on the bill of each affected
2 customer of the telecommunications company before the effective date
3 of such deregulation or detriffing.

4 (d) Upon petition of any person or upon its own motion, the
5 Commission may rescind its forbearance from any provision of this
6 Article if, after notice and hearing, it finds that the conditions set forth in
7 subsection (a) can no longer be satisfied."

8 **Section 11. Section 13102(1) and (2) of Title 12, Chapter 13 of the**
9 **Guam Code Annotated is hereby *repealed* and *reenacted* to read:**

10 “(1) *Customer* means a person standing in contractual relationship
11 with the Guam Waterworks Authority or the Guam Power Authority
12 whereby said contract calls for the respective agency to supply the
13 customer with water or power, respectively.

14 (2) *Agency* means the Guam Waterworks Authority and the
15 Guam Power Authority, as may appear from the context.”

16 **Section 12. Section 50103 of Title 12, Chapter 50 of the Guam Code**
17 **Annotated is hereby *repealed* and *reenacted* to read:**

18 “The Corporation shall act as a central financial manager and
19 consultant for those agencies or instrumentalities of the Government
20 requiring financial guidance and assistance. Such technical assistance
21 by the Corporation shall include, *but not be limited to*, obtaining of funds
22 through bond or other obligations, structuring such bond issuances,
23 preparation and dissemination of financial and investment information,
24 including bond prospectuses, development of interest among
25 investment bankers and bond brokers, maintenance of relationships

1 with bond rating agencies and brokerage houses and, generally, acting
2 as the centralized and exclusive financial planner and investment
3 banker for all the agencies and instrumentalities of the Government. For
4 purposes of this Subsection, 'agencies and instrumentalities of the
5 Government' include, *but are not limited to*, such public corporations as
6 the Guam Economic Development and Commerce Authority, the Jose D.
7 Leon Guerrero Commercial Port of Guam, the A. B. Won Pat
8 International Airport Authority Guam, the Guam Power Authority, the
9 Guam Memorial Hospital Authority, the University of Guam, and all
10 other agencies or instrumentalities of the Government given the power,
11 now or in the future, to issue and sell bonds or other obligations for the
12 purpose of raising funds. Such agencies or instrumentalities of the
13 Government shall issue bonds and other obligations only by means of
14 and through the agency of the Corporation, and each such agency or
15 instrumentality shall furnish the Corporation long-term estimates of
16 financial needs so that the Corporation can coordinate a long-term plan
17 for obtaining necessary funds for all such agencies and instrumentalities
18 on a rational, non-competitive and efficient basis. The Corporation shall
19 not issue or sell any bond without the approval of *I Liheslatura* (the
20 Legislature) of the terms and conditions of the issuance of the bonds.
21 The failure of *I Liheslatura* (the Legislature) to adopt a resolution
22 rejecting the terms and conditions of the issuance of the bonds within
23 forty-five (45) calendar days of the date of its submission to the
24 Legislative Secretary shall be concurrence to the issuance of the bonds.
25 For the purposes of this Subsection, the terms 'bond or other

1 obligations' does not include an instrument evidencing debt for a term
2 of one (1) year or less. The provisions of this section whereby the
3 Corporation shall act as a central financial manager and consultant for
4 those agencies requiring financial assistance shall not apply to those
5 bonds or obligations which are sold by or to an agency of the
6 Government of the United States, however, the provisions of this Section
7 whereby *I Liheslatura* (the Legislature) must approve the terms and
8 conditions of the issuance of the bonds shall apply to said bonds or
9 obligations. The provisions of this subsection shall not apply to bonds
10 or other obligations issued pursuant to Article V or Article VI of this
11 Division on or before March 31, 1984, provided such bonds or other
12 obligations are secured by a pledge of and lien upon the revenues and
13 other funds or moneys derived from the projects or programs financed
14 by the proceeds of the sale of such bonds or other obligations and not by
15 revenues or other funds or moneys derived from other projects or
16 programs of the Corporation."

17 **Section 13. Section 71104 of Title 21, Chapter 71 of the Guam Code**
18 **Annotated is hereby *repealed* and *reenacted* to read:**

19 "Except as provided in §71155 of this Chapter, before commencing
20 any excavation or demolition operation designated in §71152 of this
21 Chapter, each person responsible for that excavation or demolition shall
22 serve written notice or intent to excavate or demolish at least three (3)
23 but not more than ten (10) full working days on Guam Power Authority,
24 New Guam Telephone Authority as defined in §12101, Guam
25 Waterworks Authority and the village Mayors of the project site, if such

1 operator has underground utilities located in the proposed area of
2 excavation or demolition. The written notice shall contain the name,
3 address and telephone number of the person filing the notice of intent
4 and, if different, the person responsible for excavation or demolition, the
5 starting date, anticipated duration, and type of excavation or demolition
6 operation to be conducted, the location of the proposed excavation or
7 demolition, and whether or not explosives are to be used."

8 **Section 14. Report to *I Liheslatura* (the Legislature).** Eighteen (18)
9 months after the effective date hereof, the Commission shall submit a report
10 to *I Liheslatura* (the Legislature) concerning the operation and implementation
11 of the Act, including such further legislative recommendations, if any, as the
12 Commission finds advisable.

13 **Section 15. Effective Date.** (a) The provisions of this Act shall
14 become effective on the date upon which, all legislative and regulatory
15 approvals having been received, the assets and business of Guam Telephone
16 Authority are transferred to its successor, New GTA.

17 (b) Unless otherwise provided by law, Commission Orders applicable
18 to Guam Telephone Authority as of the effective date hereof, shall apply to
19 New GTA.

20 **Section 16. Severability.** *If any provision of this Act or its application*
21 *to any person or circumstances is found to be invalid or contrary to law, such*
22 *invalidity shall not affect other provisions or applications of this Act which*
23 *can be given effect without the invalid provisions or applications, and to this*
24 *end the provisions of this Act are severable.*