

GUAM PUBLIC UTILITIES COMMISSION  
SPECIAL MEETING  
January 17, 2019  
Suite 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a special meeting commencing at 6:44 p.m. on January 17, 2019, pursuant to due and lawful notice. Commissioners Johnson, Perez, McDonald, Pangelinan, Montinola, and Miller were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

**1. Teleguam Holdings LLC**

The Chairman announced that the only item on the agenda for this evening's meeting was GTA Docket 18-02, PUC Investigation of Transfers of E911 Funds, ALJ Report, and Proposed Order. Commissioner Miller indicated that he would recuse himself from this matter. Commissioner McDonald recused himself from all items in the Ordering Provisions of the Proposed Order except for item 1.

ALJ Horecky clarified that, although this was listed as a GTA Docket, the only reason for that was that GTA is the primary company handling E911 administrative matters. However, GTA has nothing to do with this investigation or the occurrences herein. This Docket originated from a request from Senator Telenia Nelson for an investigation of whether certain transfers of E911 funds by the Department of Administration to the General Fund violated Guam law in allowing uses of the E911 funds for purposes other than those authorized by law. The authorized purpose for E911 Funds is the upgrade and modernization of Guam's emergency response system. Senator Nelson alleged that nearly \$4M was taken from the E911 fund.

Previously the Commission had authorized the ALJ to conduct an investigation. The ALJ indicated that the PUC does have jurisdiction to investigate this matter. 12 GCA Chapter 12, Article 3, deals with the E911 Surcharge. The Commission has various duties regarding the surcharge, including establishing the amount of such surcharge. The telecom companies are responsible for collecting the surcharge, and their Collection Agents deposit all E911 Surcharge Funds with the Department of Administration. 12 GCA § 12311(a) proposes the responsibility upon the Commission for determining whether any person or entity has violated the Surcharge Law. In accordance with the statutory provisions, the Commission determines whether the surcharge law was violated, and if so, what persons or entities violated the law. If violations have occurred, the Commission is then required to give the parties who violated the law "an opportunity to cure."



The ALJ has been conducting an investigation for the last four months. He interviewed various officials from the Government of Guam, including the Director of Administration and the Acting Fire Chief. He drafted recommendations, and gave all parties involved, including the Department of Administration and former Directors thereof, the opportunity to present their positions at a hearing on the draft recommendations. He scheduled two hearings at the PUC office, but only the Director of Administration attended.

The ALJ first recommended that the PUC require the Department of Administration to have a separate bank account for the E911 Fund. Presently all E911 surcharge funds are deposited into the General Fund of the Government of Guam. The ALJ believes that depositing E911 funds in the General Fund is not consistent with the legal requirement that the E911 fund be created separate and apart from all other funds of the government. Surcharge funds are required by law to be deposited in the E911 fund. The E911 fund should be a separate fund with a separate bank account.

The ALJ found that the Government of Guam, Department of Administration violated the E911 Surcharge Law by transferring E911 funds to the General Fund for uses which did not involve the operation and maintenance of the E911 system. He also found that former Directors of Administration Benita Manglona and Christine Baleto violated the E911 surcharge law by permanently transferring E911 funds to the General Fund and authorizing the uses of E911 funds for other purposes than those specified in the law. The ALJ attributed the discovery of these violations of the E911 law to Speaker Benjamin J. F. Cruz, who is now the Public Auditor. The Speaker initially raised issues concerning the expenditure of E911 funds and investigated the matter in the legislative budget hearing for the Guam Fire Department.

The Department of Administration, each year, between FY2014 and FY2017, transferred E911 funds to the General Fund. Certain journal entries indicate that the Department of Administration would first label the transfers of E911 funds as "inter-fund transfers" from the E911 fund to the General Fund. Subsequently in each year, the funds would be noted as a "permanent transfer" to the General Fund. These E911 funds were no longer available for E911. They were used for purposes other than E911. Although DOA also characterized these transfers as "loans", there is no legal authority in the law for any transfers, loans or "inter-fund" transfers of E911 funds.

12 GCA § 12304(f) expressly provides that E911 funds may not be expended for any purposes except those related to the operation and maintenance of the E911 equipment without the expressed permission of the Legislature. **E911 fund is exempt from any transfer authority.** So DOA cannot transfer such funds at all. There are numerous other provisions which expressly state that E911 funds are only supposed to be used for very specific purposes involving the E911 system. Neither DOA nor its prior Directors had any legal authority to transfer the E911 funds. The transfers are illegal. If the government had "transfer" authority, it could simply transfer all E911 funds for other



purposes. The ALJ Report indicated, that over 4 years, a total of \$3.880M was transferred from the E911 fund to the General Fund. 12 GCA § 12304(d) requires that all E911 funds be used *solely* for enhanced 911 equipment and system costs as described in this Act. E911 funds cannot be used for another purpose unless expressly approved by the Legislature. 12 GCA § 12304(f).

The ALJ found that the current “E911 system” is not a valid enhanced emergency E911 system. It is currently based upon a year 2000 old Motorola System which does not meet the requirements for Enhanced 911; it does not have recording equipment that allows calls to be recorded for members of the public. Although the Fire Department had issued a Request for Proposals for a new system, such RFP was cancelled in December 2018 and only reissued recently. E911 funds should be used to ensure that there is a proper, functioning E911 System. PUC has a duty to ensure that E911 is only used for the purposes and in the manner specified by law.

The ALJ believes that there is clearly a factual basis to find that the former Directors violated the law. They approved the transfers. Under various legal provisions, the Director of Administration is responsible for all actions and activities of the DOA; specifically, the Director is required to enforce all provisions of law imposing a duty upon the department. Such duty would include provisions of the E911 Surcharge Law. There were also memoranda from the Director acknowledging and approving the transfers.

Based upon its duties under the Surcharge Law, the PUC must determine violations of the law and essentially acts as a guardian of the E911 Fund under the surcharge law. The ALJ has drafted an Order with various provisions:

- (1) The Department of Administration would be required to establish a separate bank account for the E911 funds;
- (2) The PUC determines that the Government of Guam, Department of Administration, and former Department of Administration Directors Manglona and Baleto, violated the provisions in 12 GCA § 12301 by unlawfully transferring nearly \$4 million from the E911 fund to the General Fund in fiscal years 2014 through 2017;
- (3) The Department of Administration and the former Directors Manglona and Baleto should be given proper notice and allowed a reasonable opportunity, a period of 120 days, to “cure” the violations. Here the violations would be cured by the parties transferring back, reimbursing, and redepositing the amount of \$3,880,714.62 back into the E911 Fund. Any cure remedy must make the E911 fund “whole” for the illegal transfers of funds to the General Fund.
- (4) If after 120 days the government and the Directors do not “cure” the violations by returning the funds back to the E911 funds, the PUC will have the authority to determine whether violations and failure to cure should be referred to the Attorney



General's Office for prosecution, and to further consider whether civil penalties should be imposed.

Commissioner Montinola suggested that if there were a separate checking account for the E911 fund, there should also be a requirement that the Fire Chief be a part of the signatory list. The ALJ indicated that was a good suggestion and would be incorporated. Commissioner Montinola also clarified that the Commission was not reaching any issue tonight of whether there would be civil penalties for the violations. The ALJ concurred.

Commissioner Pangelinan felt that the ALJ's legal conclusions were clear cut. However, he felt that the former Directors would have no ability to transfer government funds back to the E911 fund, or to compel DOA to do so. He feels that the Directors possibly could not comply with the Order. The ALJ felt that the former Directors could cure, but it is not likely that they would use their own funds. If the former Directors are not included, then they could not be penalized for the illegal actions that were undertaken. The rationale is that there should be a sanction against individual officers of the government that do things that are contrary to law. Otherwise there's no remedy against individuals.


Chairman Johnson wondered whether the government had indicated any willingness to cure this problem. The ALJ felt that DOA Director Birn had discussed with other officials the possibility of resolving this. The ALJ was not certain whether the government would pay, but felt that Mr. Birn was acting in good faith. Therefore, the ALJ agreed to extend the time to repay the funds until 120 days.

Commissioner Montinola felt that if the Directors were not held accountable, there was nothing to prevent others down the road from doing the same thing again. He felt that the individuals should be identified so that they have a chance to cure. It puts individuals on notice that it will not always be just the Government of Guam that would be responsible. Commissioner Pangelinan pointed out that the funds had not been transferred to the individuals' accounts. Commissioner Perez felt that all of the individual directors and entity should be given the opportunity to cure the situation.

Commissioner Montinola moved to approve Ordering Provision No. 1, which would require the Department of Administration to establish a separate bank account for the E911 fund. Commissioner Montinola requested that a provision be included in Ordering Provision No. 1 that the Fire Chief would be included, along with authorized DOA personnel as signatories on the account. Commissioner Perez seconded the motion. Upon motion duly made and seconded, the motion unanimously carried by a vote of 5 to 0. Commissioner Montinola moved that provisions 2 through 7 of the Ordering Provisions be approved, which would give the individual Directors and the Department of Administration 120 days to cure the violations by redepositing funds in the E911 Fund. Commissioner Perez seconded the motion. Upon motion duly made and seconded, the motion carried by a vote of 4 to 0.



There being no further administrative matters or business, the Commissioners moved to adjourn the meeting.



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Jeffrey C. Johnson  
Chairperson



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION  
SPECIAL MEETING  
SUITE 202, GCIC BUILDING  
414 W. SOLEDAD AVE., HAGATNA, GUAM  
6:30 p.m., January 17, 2019**

**Agenda**

- 1. TeleGuam Holdings LLC**
  - GTA Docket 18-02, PUC Investigation of Transfers of E911 Funds, ALJ Report, and Proposed Order**





BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

GTA Docket 18-02

## ALJ REPORT

# Request for Investigation of Certain Transfers of Money from the Enhanced 911 Emergency Reporting System Fund.

## INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Order dated August 30, 2018, approving the request of Senator Telenia Nelson, Chairperson of the Utilities Committee, that the PUC investigate certain transfers of funds from the E911 Fund to the General Fund of the Government of Guam.<sup>1</sup>
2. Senator Nelson’s Request for Investigation alleged that certain transfers of E911 funds to the General Fund violated Guam law by allowing the use of E911 funds for purposes other than those authorized by law, which include the upgrade and modernization of Guam’s Emergency response system.<sup>2</sup>
3. The Request alleged that “\$4 million was taken from the E911 Fund apparently without any notification to the Public Utilities Commission or *I Liheslaturan Guahan*.”<sup>3</sup>
4. Under Title 12 GCA, Article 3, “911” Surcharge (hereinafter referred to as “the Act” or the Surcharge Law), the PUC is granted broad regulatory authority to determine whether “any person or entity” has violated any provision of the “Act”.<sup>4</sup>
5. The PUC instructed its Administrative Law Judge to conduct an investigation of the relevant facts concerning transfers of E911 funds to the General Fund, to determine whether such transfers violated the Act, and to consider appropriate remedies.<sup>5</sup>
6. The ALJ now submits his Report on the E911 Fund Transfer Investigation to address the issues set forth in PUC Order of August 30, 2018.

<sup>1</sup> Letter from Senator Telena Cruz Nelson to PUC Chairman Jeffrey Johnson, dated June 26, 2018, concerning Transfers of Money from the Enhanced 911 Emergency Reporting System.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> 12 GCA §12302(a).

<sup>5</sup> PUC Order, GTA Docket 18-02, dated September 30, 2018; see also 12 GCA §12302(c).



## **BACKGROUND - THE FACTS**

7. On October 25, 2017, the Speaker of the Guam Legislature, Benjamin J.F. Cruz, sent a letter to the Director of Administration regarding “Halt Special Revenue Fund Permanent Transfers to the General Fund.”; in his Letter, Speaker Cruz requested that the Director should “immediately” cease transfers from Special Revenue Funds to the General Fund.<sup>6</sup>
8. Speaker Cruz stated as follows with regard to the E911 Fund:

### **“Enhanced 911 Emergency Reporting System Fund**

The Enhanced E911 Emergency Reporting System Fund (E911 Fund) provides a source of funding for costs associated with Enhanced 911 Emergency Reporting System and equipment and system costs as necessary. Between Fiscal Years 2014-2016, the DOA has permanently transferred approximately **\$3,041,134** out of the E911 Fund to the General Fund, thereby artificially increasing the General Fund balance.

Such transfers are exempted in § 12304(f), Chapter 12, Title 12 of the Guam Code Annotated, which states, “Notwithstanding any other provision of law, no monies in the Fund shall be expended for purposes other than provided for in this Section, without the expressed approval *of I Lehislatura*. The Fund is exempt from any transfer authority.”

9. Further facts came to light in a series of letters written in June, 2018 concerning transfers of E911 Funds to the General Fund. In a letter to Governor Eddie Calvo, a Commissioner of the Federal Communications Commission, Michael O’Rielly, indicated to the Governor that almost \$4 million had been transferred out of Guam’s 911 fund.<sup>7</sup>
10. Commissioner O’Rielly further requested that the Governor cease the diversion of these funds for purposes other than the 911 system, as the “citizens of Guam rely on the 9-1-1 system to work in their most dire times of need.”<sup>8</sup>

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<sup>6</sup> Letter from Speaker Benjamin J.F. Cruz to Christine W. P. Baleto, Director, Department of Administration, Re: Halt Special Revenue Fund Permanent Transfers to the General Fund, dated October 25, 2017, at pgs. 1-2.

<sup>7</sup> Letter from FCC Commissioner Michael O’Rielly to the Honorable Eddie Calvo, Governor of Guam, dated June 20, 2018.

<sup>8</sup> Id.

11. In Governor Calvo's response to Commissioner O'Rielly, the Governor indicated that on September 16, 2017, the Guam Legislature had enacted a budget bill which "authorized the appropriation of monies contained in special funds even though the appropriation was not related to the purposes of the fund..."<sup>9</sup>
12. The Governor stated his belief that the transfers had been made in accordance with both local and federal law, and that there had been no disruption of emergency response services.<sup>10</sup>
13. Speaker Benjamin J.F. Cruz wrote a letter to Commissioner O'Rielly, disputing the claim in Governor Calvo's letter that the Legislature had authorized the transfers from the E911 fund to the General fund; he opined that the transfers violated both Guam and federal law.<sup>11</sup>
14. Governor Calvo contended that the Legislature had authorized the release and transfer of E911 funds by virtue of Public Law No. 34-42, Chapter XIII, Section 22, which provides as follows:

**Authorization to Use Special Funds.** Notwithstanding any provision of law, all appropriations from Special Funds contained in this Act, which are not in conformance with the statutory uses of said funds, shall be authorized for use in FY 2018.
15. However, Speaker Cruz rejected the argument that Section 22 was applicable, and indicated that the same Public Law, 34-42, Chapter XIII, Section 13, authorized the Guam Fire Department to expend **all revenues** collected by their designated Special Funds for "the purpose authorized by statute."
16. The Speaker contended that the E911 funds for fiscal year 2018 were not excess or lapsed funds authorized to be expended. Although not applicable, the section of law relied upon by Governor Calvo could only be applicable, in any event, for FY2018, and clearly was not applicable to transfers of funds which occurred in prior fiscal years, as the section of law was not to be applied retroactively.

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<sup>9</sup> Letter from Eddie Baza Calvo, Governor of Guam, to Michael O'Rielly, Commissioner, Federal Communications Commission, dated June 21, 2018.

<sup>10</sup> Id. at p. 2.

<sup>11</sup> Letter from Speaker Benjamin J.F. Cruz to Commissioner O'Rielly, dated June 22, 2018.



17. Further facts concerning the transfers of E911 funds were established before the Guam Legislature through testimony in the FY2019 Budget Hearing for the Guam Fire Department, conducted on June 15, 2018.<sup>12</sup>
18. The Acting Fire Chief, Joey San Nicolas, presented the GFD proposed budget for FY2018. In attendance for the Legislature were Speaker Cruz and Senator Telena Nelson.
19. The testimony of Acting Fire Chief Joey San Nicolas establishes that the following amounts were withdrawn from the E911 Fund and transferred to the General Fund of the Government of Guam between FY2014 and FY2017:

FY2014	\$1,839,854.00
FY2015	\$ 712,500.62
FY2016	\$ 488,779.00
FY2017	<u>\$ 839,582.81</u>
	\$3,880,716.43

20. The testimony of Acting Chief San Nicolas indicates that a total of \$3,880,716.43 was withdrawn from the E911 fund and transferred to the General Fund of the Government of Guam.
21. Acting Chief San Nicolas testified that the funds transferred out were in part “lapsed” or “unappropriated” funds that were not utilized by GFD for the purchase of the Next Generation E911 System, which was estimated to cost \$2.5 Million. The proposed Fire Department Budget also contained an annual appropriation of \$400,000 for maintenance of the proposed new E911 System.
22. Acting Chief San Nicolas further stated his belief that the transfer of the E911 funds was in violation of federal law; the funds transferred were not given to the Guam Fire Department and were therefore never used for the maintenance and operation of the E911 system, which was the purpose for which the E911 fund was created. The unappropriated funds were “transferred by the Department of Administration.”
23. The testimony of Acting Chief San Nicolas’ establishes that the funds transferred from the E911 fund to the General Fund were not used for the purposes intended

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<sup>12</sup> You Tube Recording of the FY2019 Budget Hearing before the Guam Legislature for the Guam Fire Department, June 15, 2018, (Committee / Budget Hearing - B.J.F. Cruz - Guam Fire Department - June 15, 2018)

under Guam or federal law, that is the operation and maintenance of an E911 system.

24. Acting Chief San Nicolas stated that he did sign acknowledgements to the Directors of Administration that the Department of Administration of the Government of Guam had permanently transferred various amounts out of the E911 Fund. Every fiscal year the Department of Administration transferred funds from the E911 fund that had not been utilized or encumbered by GFD.
25. Acting Chief San Nicolas clarified that it was the Department of Administration which transferred funds from the E911 Fund to the General Fund. Department officials had told him that the transfers were a “part of their accounting principles.” Acting Chief San Nicolas denied responsibility for the transfers but indicated that the Department caused such transfers to be made.
26. Subsequent to the PUC’s authorization of this investigation, on September 2, 2018, the ALJ wrote the Deputy Director of the Bureau of Budget and Management Research, and requested certain information concerning the transfers of E911 funds and the use of such funds for purposes other than E911 operation and maintenance.<sup>13</sup>
27. The ALJ further reviewed legislative testimony regarding the Fire Department Budget, and E911, which was obtained from the Guam Legislature.
28. In October, the Governor’s Chief Legal Counsel, Sandra Miller, contacted the ALJ concerning this matter.
29. On December 13, 2018, through the arrangement of the Governor’s Chief Legal Counsel, the ALJ met with Government of Guam Officials concerning the E911 Fund, including Ms. Miller, Edward Birn, Director of the Department of Administration, Michael Uncangco, Acting Fire Chief, Guam Fire Department, BBMR Deputy Director Lester Carlson, Grace Edrosa (General Accounting Supervisor) and Michael Cabral from the Department of Administration Division of Accounts.<sup>14</sup>
30. Attached hereto as Exhibits 1 through 4 are Journal Vouchers and Permanent Transfer Acknowledgements for Transfers of Funds from the E911 Fund to the General Fund of the Government of Guam for Fiscal Years 2014, 2015, 2016, and

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<sup>13</sup> Email from ALJ Horecky to BBMR Director Lester Carlson, dated September 7, 2016.

<sup>14</sup> The ALJ thanks Chief Legal Counsel Sandra Miller for arranging the meeting; all of the officials present were very helpful in providing all information requested by the ALJ.



2017 respectively. These documents confirm the amounts of the transfers as established in the Testimony of Acting Fire Chief Joey San Nicolas before the Guam Legislature.

31. Director of Administration Edward Birn explained that the E911 Fund is a separate fund, a Special Revenue Fund; however, there is no separate bank account for the E911 fund. Accounting Supervisor Edrosa further explained that the E911 Fund is an account mechanism to track the revenues and expenditures of the Fund. E911 surcharges are deposited in the General Fund Bank Account but recorded as E911 Revenues.
32. Director Birn indicated that funds borrowed by the General Fund from the E911 Funds are "interfund receivables" due from the General Fund. At the end of the fiscal year, these receivables are treated as "permanent transfers" from the E911 Fund to the General Fund, as the General Fund is not able to repay the funds to the E911 Fund. Funds transferred from E911 to the General Fund are used for purposes other than E911. In some cases, such funds could also be used for purposes related to the Fire Department, such as Fire Trucks, but not directly related to E911.
33. The Director and the Accounting Officials emphasized that the Government of Guam is required to comply with certain accounting standards of the Government Accounting Standards Board, such as "GASB 34." With financial statements for the annual audit of the Government of Guam, the Government would be in non-compliance if it failed to record the transfers from the E911 Fund to the General Fund as "permanent transfers"; "all unexpended/unappropriated amounts that are not expected to be collected within a reasonable time become subject to permanent transfer."
34. The ALJ determined that, in this proceeding, the Government of Guam, the Department of Administration, and prior Directors of Administration Benita Manglona and Christine Baleto should have a full and fair opportunity to present any materials relevant to this matter, and any materials or evidence which would justify the transfers of E911 Funds which were made.
35. During the week of December 21, 2018, Notices of Hearing were delivered to Governor's Chief Legal Counsel, Edward Birn, Bonita Manglona, and Christine Baleto, advising them that the ALJ would hold a hearing at the PUC office on January 4, 2019, 10:00 a.m. Each entity/individual was provided with copies of an ALJ Draft Report in this matter. The notice indicated that each entity/individual would be given a full opportunity at the hearing to present testimony, evidence,

arguments or materials concerning their positions in this matter and responses to the “draft” recommendations.

36. Prior to the scheduled hearing, Ms. Miller, Mr. Birn, and Ms. Manglona indicated that they would not be able to attend the hearing on January 4, 2019; Mr. Birn indicated that he was attending a transition meeting for the new administration, and Ms. Manglona was attending a funeral. The ALJ advised all three parties that he would continue the hearing until January 10, 2019, 10 a.m. at the PUC office.
37. None of the entities/individuals appeared for the scheduled hearing on January 4, 2019, including Ms. Christine Baleto.
38. Mr. Birn did attend the continued hearing on January 10, 2019, and stated that the position of the Department of Administration was the Department’s written revision of the draft ALJ Report, submitted to the ALJ on December 31, 2018.

### ANALYSIS

39. The ALJ finds that the four transfers of funds by the Department of Administration from the E911 fund to the General Fund between FY2014 through FY2017 were in violation of 12 GCA §12301 at *et. seq.*, Article 3, “911” Surcharge. The transfers were contrary to both the intent of the law and the specific prohibitions in the law.
  - A. E911 FUNDS ARE NOT MAINTAINED “SEPARATE” AND “APART” FROM THE GENERAL FUND. E911 FUNDS MAY ONLY BE UTILIZED FOR THE EXPRESS STATUTORY PURPOSES. DOA HAS NO AUTHORITY TO TRANSFER E911 FUNDS TO THE GENERAL FUND. NO E911 FUNDS CAN BE EXPENDED WITHOUT AN APPROPRIATION BY THE LEGISLATURE AND ITS EXPRESS APPROVAL.
40. Initially, one must consider the nature and intent of the E911 Fund. The 911 surcharge itself was created by the Guam Legislature through Public Law 25-055 on June 30, 1999, **“to fund the just and reasonable expenses of operating and maintaining the “911” system...”**.<sup>15</sup>
41. The Guam Public Utilities Commission established the 911 surcharge in the amount of \$1.00 per month per subscriber line and per line number for commercial mobile radio service.<sup>16</sup> From the inception of the surcharge, the E911 Funds were collected by telecom companies from subscribers for the specific purpose of operating and

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<sup>15</sup> 12 GCA § 12302(d).

<sup>16</sup> 12 GCA § 12302(c).



maintaining the “911” system. When the E911 Fund was created, neither the Legislature nor the PUC intended that the E911 funds would be used by the Government of Guam for expenditures other than those directly related to the operation and maintenance of the 911 System.

42. There is also no intent in the applicable statutes that officials of the Government of Guam would have the discretion to utilize E911 for purposes other than those specifically set forth. Transfers of E911 funds to the General Fund are directly contrary to the specific legislative intent of 12 GCA § 12302(d).
43. The evidence in this matter demonstrates that nearly \$4 Million transferred by the Department of Administration to the General Fund was never used for the purpose mandated by the statute, the operation and maintenance of a 911 system. The Commission should issue an unequivocal ruling that E911 funds can never be used for a purpose contrary to that expressly authorized in the law.
44. 12 GCA § 12304(b) states that the Enhanced 911 Emergency Reporting System Fund is a fund **“created, separate and apart from all other funds of the government...”**. The ALJ learned during his investigation that the “E911 Fund” is not fully maintained “separate and apart” from the General Fund of the Government of Guam. The E911 funds are actually deposited into the General Fund, so that the funds of these accounts, as well as others, are commingled together:

DOA reminds that this fund does not have its own bank account, nor is it required to have one. Therefore, all transactions go through the General Fund Account.<sup>17</sup>

Although DOA contends that it is not required to have a separate account for E911 Funds, there is a legitimate issue as to whether the E911 Fund is truly separate and apart if its funds are all within the General Fund Account.

45. The inclusion of E911 funds in the General Fund Account could exacerbate the possibility that such funds will be used for purposes other than E911. The ALJ recommends that the PUC consider whether E911 funds should be maintained in a separate bank account. The E911 Fund, as currently managed and operated, may not be consistent with 12 GCA § 12304(b).
46. Other provisions of law also prohibit the transfer of E911 funds for expenses other than those related to E911. Under the law, the fund was only created to provide a

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<sup>17</sup> Email from the Governor of Guam’s Chief Legal Counsel Sandra C. Miller to PUC ALJ Frederick Horecky, dated October 29, 2018.

source of funding **“for costs associated with an Enhanced 911 Emergency Reporting System.”**<sup>18</sup> The transfers of E911 funds in this case allowed for such funds to be used for funding of costs other than those associated with an Enhanced 911 Emergency Reporting System, in violation of 12 GCA § 12304(b).

47. Further in this regard, 12 GCA § 12304(c) requires that all 911 surcharges collected by each LEC, VOIP, and CMRS provider **shall be deposited in the fund.**<sup>19</sup> At present E911 funds are deposited in the General Fund, which may not be consistent with this provision. The provision implies the existence of a separate fund for E911 deposits.
48. The law is very specific as to the use of E911 funds: “the money collected and the interest earned *shall* be used by the Department *solely* for enhanced 911 equipment and system costs as described in this Act and for the following:
  - (1) operations of the 911 call/dispatch center,
  - (2) the purchase/lease/maintenance of E911 hardware/software, to include video security cameras and related equipment, supplies, installation and maintenance services; and
  - (3) system/engineering services related to the installation, maintenance and upgrade of E911 hardware/software.<sup>20</sup>
49. The transfers of E911 funds by the Department of Administration violated 12 GCA § 12304(d) by allowing E911 funds to be used for purposes other than those E911 purposes expressly set forth in 12 GCA § 12304(d).
50. 12 GCA § 12304(e) also provides that: “notwithstanding any other provision of law, **no monies in the Fund shall be expended without appropriation by I Liheslatura.**”<sup>21</sup> The Department of Administration violated this provision by allowing the transfer and expenditure of funds from the E911 Fund for purposes other than E911 without appropriation by the Legislature.
51. Finally, “notwithstanding any other provision of law, **no monies in the Fund shall be expended for purposes other than provided for in this Section, without the expressed approval of I Liheslatura.** The fund is *exempt from any transfer authority.*”<sup>22</sup> Unless the Legislature approves an expenditure, the Department of

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<sup>18</sup> 12 GCA § 12304(b).

<sup>19</sup> 12 GCA § 12304(c).

<sup>20</sup> 12 GCA § 12304(d).

<sup>21</sup> 12 GCA § 12304(e).

<sup>22</sup> 12 GCA § 12304(f).



Administration and Government of Guam are prohibited from expending E911 funds for any other purpose. The Legislature never approved the expenditures made by the Department of Administration for non-E911 purposes.

52. The facts indicate herein that nearly \$4 million was transferred from the E911 fund and expended for purposes other than those expressly provided for in 12 GCA § 12304. There is no indication that the Guam Legislature approved these transfers of approximately \$4 million, as referenced in the testimony of Acting Fire Chief San Nicolas and the letters of Senator Nelson, FCC Commissioner O'Rielly, and Speaker Cruz.
53. The transfer of any E911 funds is clearly inconsistent with, and in violation of, numerous provisions of 12 GCA § 12304. Not only is the transfer of E911 funds from the E911 Fund violative of the purpose for which the E911 fund was established, and in derogation of legislative authority, the enhanced E911 system, which GFD so urgently needs, could have been purchased with E911 funds accumulated in prior years had such funds not been transferred out of the E911 Fund.
54. There are clearly needs for which transferred funds could have been spent to improve the E911 system, such as for an adequate and functional recording system to record E911 calls, which has not existed for many years. In addition, to date, there has been no progress in obtaining the equipment for a new E911 System. On December 17, 2018, the Guam Fire Department cancelled its RFP for the Design, Installation, and Maintenance of a Next Generation 911 System.<sup>23</sup> The RFP was recently reissued, thus starting the process over again from the beginning.
55. As pointed by FCC Commissioner O'Rielly in his June 20, 2018 Letter to the Governor:

“beyond the transition to NextGen 911, budgetary shortfalls can lead to longer wait times, delayed emergency responses, greater public safety risk to Guam's citizen's, and lower morale among emergency personnel.”

B. TRANSFERS OF FUNDS FROM THE E911 FUND TO THE GENERAL FUND WERE NOT AUTHORIZED AS “UNAPPROPRIATED OR LAPSED” FUNDS. THE DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, AND PRIOR DIRECTORS OF ADMINISTRATION BENITA

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<sup>23</sup> NOTICE OF CANCELLATION, dated December 17, 2018, from Deputy Fire Chief Joey C. San Nicolas to All Registered Potential Offerors, cancelling RFP No. GFD-001-2018: “Procurement of Professional Services for the Design, Installation, and Maintenance of a Next Generation 9-1-1 System.

MANGLONA AND CHRISTINE BALETO, VIOLATED 12 GCA, ARTICLE 3, "911" SURCHARGE, BY TRANSFERRING E911 FUNDS TO THE GENERAL FUND.

56. Section 22 of Public Law 34-42, Chapter XIII, does not authorize the transfers of E911 funds that occurred between FY2014 and FY2017. It has been argued that transfers from the special fund known as the E911 Fund was authorized on the grounds that appropriations for the E911 Funds were "not in conformance with the statutory uses of said funds", and were therefore "authorized for use in FY2018." The theory is that "unappropriated" or "lapsed" E911 funds were available for use in FY2018. However, nothing suggests that the E911 funds appropriated for FY2018 were "not in conformance with the statutory uses of said funds."
57. As Speaker Benjamin J.F. Cruz pointed out in his letter of June 22, 2018, Section 13 of Public Law 34-42, Chapter XIII, , provided that the Guam Fire Department was authorized to expend **all revenues** collected by its designated Special Fund for "the purposes authorized by statute for those funds...". Thus, all funds appropriated for the E911 Fund were authorized for use in FY2018 in conformance with the statutory uses of such funds.
58. Allowance of transfers of E911 funds for purposes other than the operation and maintenance of the E911 system would seriously undermine the intent and goals of 12 GCA § 12301 *et. seq.*, "911" Surcharge. In any event, the specific restrictions on the expenditure of E911 funds only for operation and maintenance of the E911 system is controlling over, and paramount to, the general language of Public Law 34-42, Chapter XIII, regarding authorization to expend special funds for FY 2018,
59. There is a four- step process by which the PUC performs its regulatory duties in determining violations of 12 GCA §12301 *et. seq.*, Article 3, "911" Surcharge, and determining what corrective action should be taken:
- (1) The PUC determinates whether any person or entity" has violated any provision of the Act;
  - (2) If the PUC determines that there has been a violation of the "911" Surcharge law, it is required to give "proper notice" and a "reasonable opportunity to cure" to "any person or entity" which it determines has violated the law.<sup>24</sup> "Cure" means to remove or remedy a condition or defect that exists. <sup>25</sup> In this case, a "cure" would be a remedy for the unlawful transfers of E911 Funds that occurred;

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<sup>24</sup> 12 GCA §12311(a).

<sup>25</sup> Def. of "cure" in Black's Law Dictionary, 2<sup>nd</sup> ed.



- (3) If any persons or entities who have violated the Act fail to “cure” such violations, after a “reasonable opportunity” to do so, then the Commission determines whether a violation should be referred to the Attorney General’s Office (referral is discretionary with the PUC);<sup>26</sup> and
- (4) Any person or entity who has the responsibility of complying with the Act and fails to cure such violation “shall be fined a civil penalty *not* to exceed Ten Thousand Dollars (\$10,000.00 per infraction.

- 60. The ALJ has determined that there have been violations of numerous provisions of 12 GCA §12301 *et. seq.*, as previously set forth in this Analysis Section of this Report. The issue arises in this matter as to which “person” or “entity” should be determined to have violated the law by improperly or illegally transferring E911 Funds, and to give each such person or entity an opportunity to “cure” the violation or violations.
- 61. Each of the transfers of E911 funds to the General Fund were authorized by past Directors of the Department of Administration. Benita Manglona was the Director of Administration when the FY2014 Fund transfers was made. Tony Blaz was the Director of Administration when the FY 2015 Fund transfer was made. Christine Baleto was the Director of Administration when the FY 2016 and 2017 E911 Fund transfers were made.<sup>27</sup>
- 62. For FY 2014 through 2016, there are memoranda from the Fire Chief to the Director of Administration acknowledging that E911 funds were permanently transferred to the General Fund. See Exhibits 1-3 attached hereto. Each Director was clearly aware that the transfers had been made. On January 9, 2018, Director of Administration Christine Baleto signed a memorandum giving notice that a permanent transfer had been initiated for E911 funds to the General Fund in the amount of \$839,583.00. See Exhibit 4 attached hereto.
- 63. The Department of Administration Journal Voucher included within Exhibit 1 indicates that \$1,839,854.00 was transferred from the E911 Fund to the General Fund effective September 30, 2014. Benita Manglona was Director of Administration when this transfer occurred.

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<sup>26</sup> 12 GCA §12311(b).

<sup>27</sup> An email from Governor’s Chief Legal Counsel Sandra Miller to PUC ALJ Horecky dated December 31, 2018, indicates the following dates for Employment of prior Directors of Administration:  
“You also asked DOA to confirm the dates of employment of its previous directors. Here are the dates:  
Benita Manglona: June 20, 2011 to February 1, 2015;  
Tony Blaz: February 9, 2015 to January 30, 2016;  
Kathy Kagigi (Acting): February 1, 2016 to February 23, 2016;  
Christine Baleto: February 23, 2016 to February 2, 2018.”

64. The Department of Administration Journal Voucher included within Exhibit 2 indicates that \$712,500.62 was transferred from the E911 Fund to the General Fund effective September 30, 2015. Tony Blas was Director of Administration when the transfer occurred.
65. The Department of Administration Journal Voucher included within Exhibit 3 indicates that \$488,779.00 was transferred from the E911 Fund to the General Fund effective September 30, 2016. Christine Baleto was Director of Administration when the transfer occurred.
66. The Department of Administration Journal Voucher included within Exhibit 4 indicates that \$839,582.81 was transferred from the E911 Fund to the General Fund effective September 30, 2017. Christine Baleto was Director of Administration when the transfer occurred.
67. Exhibit "5" attached hereto is a "Enhanced 911 Emergency Report System FY2013 to FY 2017 Details". The Report was provided to the ALJ by the Governor's Chief Legal Counsel on October 26, 2018. It further indicates that some E911 revenues were permanently transferred from the E911 Fund and were not used for E911 purposes.<sup>28</sup>
68. Director of Administration Edward Birn became Director in 2018; there is no indication that E911 funds were transferred to the General Fund during his Directorship.
69. The laws governing the Department of Administration and its Directors establish that it is appropriate to hold such Directors responsible for transfers of E911 Funds that occurred during their terms. The Director of Administration "is the head of the Department of Administration."<sup>29</sup> Each division and organizational unit within the Department "shall be subject to the supervision and direction of the Director..."<sup>30</sup>
70. Furthermore, the Director administers the Department<sup>31</sup>; he "shall exercise and discharge the powers and duties of the Department through such divisions or other organizational units as he may establish pursuant to this Division or as otherwise provided by law..."<sup>32</sup>. The Director "shall enforce the provisions of this Division

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<sup>28</sup> Email from Sandra C. Miller, Chief Legal Counsel to the Governor, to PUC ALJ Frederick Horecky, dated October 29, 2018.

<sup>29</sup> 5 GCA §3101.

<sup>30</sup> 5 GCA §20105.

<sup>31</sup> 5 GCA §20106(a).

<sup>32</sup> 5 GCA §20106(b).



and of any other laws imposing any power, duty or other function upon the Department...”<sup>33</sup>

71. Directors Manglona, Blaz and Baletto violated 12 GCA §12301 *et. seq.*, Article 3, “911” Surcharge by transferring E911 Funds to the General Fund. However, the ALJ notes that Director Blaz passed away in 2016.
72. The Department of Administration is an entity “within the Executive Branch of the government of Guam.”<sup>34</sup> The Governor of Guam is responsible for appointing the Head of an executive agency such as the Department of Administration.<sup>35</sup> The ALJ concludes that the Government of Guam has violated 12 GCA §12301 *et. seq.*, Article 3, “911” Surcharge, through the acts of its agency, the Department of Administration, and its agent, the Director of Administration, in permanently transferring E911 Funds to the General Fund.
73. On the other hand, Fire Chief San Nicolas is not responsible for the transfers of E911 funds to the General Fund, as he only acknowledges that such funds were transferred and has no personal responsibility for actually transferring such funds.

C. THE ALJ REJECTS THE JUSTIFICATIONS OFFERED BY THE  
DEPARTMENT OF ADMINISTRATION FOR THE TRANSFERS OF E911  
FUNDS; SAID TRANSFERS WERE ILLEGAL.

74. On December 31, 2018, the Governor’s Chief Legal Counsel submitted a “revised” draft ALJ Report on behalf of the Department of Administration.<sup>36</sup> A true and correct copy thereof is attached hereto as Exhibit “6”. The revised ALJ Report, as proposed by DOA, altered the draft ALJ Report to conclude that there was no violation by DOA resulting from the “transfer” of funds from the E911 Fund to the General Fund and expenditure of E911 funds for purposes with no relation to E911.
75. The revised ALJ Report would find that the Department of Administration did not violate 12 GCA § 12301 *et. seq.* by virtue of the four transfers of funds from the E911 Fund to the General Fund between FY2014 through FY2018.<sup>37</sup>
76. DOA claims legal authority to transfer funds from the E911 Fund to the General Fund as “interfund receivables” under GASB Statement No. 34. “GASB” refers to

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<sup>33</sup> 5 GCA §20106(c).

<sup>34</sup> 5 GCA §3101.

<sup>35</sup> 48 U.S.C. §1422c

<sup>36</sup> Email from Governor’s Chief Legal Counsel Sandra Miller to PUC ALJ Frederick Horecky re: Response to draft ALJ Report, dated December 31, 2018.

<sup>37</sup> *Id.*

the Government Accounting Standards Board. The Board established generally accepted accounting principles for state and local government entities to “guide the preparation of external financial reports of those entities.”<sup>38</sup>

77. DOA points out that Guam law requires the Government of Guam to comply with the GASB standards. 5 GCA §22204 provides: “Unless otherwise found to be impracticable, such rules and regulations shall provide that the principles of the governmental accounting and reporting, classification of funds and accounts, and accounting terminology shall conform to those recommended by the National Committee on Governmental Accounting.”
78. 5 GCA §22204 refers to accounting and reporting standards for the Government. GASB 34 is an accounting standard as to how a local government reports revenues, receipts and other transactions. GASB does not, nor does it purport to, create independent legal authority for transfers or expenditures of E911 funds that violate Guam law and 12 GCA § 12301 *et. seq.*
79. DOA further claims that, under GASB 34, “an *interfund receivable* is a legally permissible short-term loan made between individual funds where monies are transferred between the funds, usually for working cash purposes.” However, interfund receivables of E911 funds are not authorized under Guam law and violate the express provisions of the E911 Surcharge Law, 12 GCA § 12301 *at et. seq.* Transfer authority for E911 Funds is expressly prohibited under the Surcharge Law.
80. The transfers by DOA of E911 Funds out of the E911 Fund to the General Fund violate numerous provisions of the E911 Surcharge Law. The law requires that all 911 surcharges “*shall* be deposited in the Fund.”<sup>39</sup> Nothing in the surcharge law allows “interfund” transfers of E911 funds from the E911 fund to the General Fund.
81. In addition, DOA is only authorized to use money collected from the surcharges *solely* for enhanced 911 equipment and system costs.<sup>40</sup> There is no authorization or authority for DOA to *loan* money from the E911 fund to the General Fund. In DOA’s view, GASB 34 authorizes it to “pay an interfund loan withdrawn from a special fund.” No provision of the Surcharge Law or other law of Guam authorizes DOA to use E911 funds for “loans.” Numerous provisions of the Surcharge Law expressly provide that E911 funds may only be used for purposes related to the operation and maintenance of E911 system.

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<sup>38</sup> <https://searcherp.techtarget.com/definition/GASB>

<sup>39</sup> 12 GCA § 12304(c).

<sup>40</sup> 12 GCA § 12304(d).



82. DOA maintains inconsistent positions on the “transfer authority” of the Governor. Initially it claims that the Governor is authorized to transfer funds from a special fund to the General Fund, citing 4 GCA § 4103.1. Subsequently, however, DOA’s position claims that the Governor’s transfer authority is not applicable to E911 funds as “the E911 Fund is primarily funded by telecom surcharge collections and not by budgetary appropriations to which the transfer authority would apply.”
83. 5 GCA § 4103.1 does not authorize the Governor to transfer funds from the E911 Fund to the General Fund. 12 GCA § 12304 expressly *exempts* the E911 Fund from any transfer authority of the Governor. Where a specific statute appears to conflict with a general statute, the more specific statute prevails. *In re I Mina’ Trentai Dos Na Liheslaturan Guahan*, 2014 Guam 24 ¶12. By prescribing the uses for E911 Funds, the Legislature never contemplated that E911 funds would be transferred to the General Fund for non-E911 uses.
84. Under the DOA “loan” theory, DOA would be entitled to transfer funds from the E911 Fund to the General Fund for any purpose and at any time it felt that the General Fund needed a “loan.” Administrative power to loan E911 Fund would frustrate the statutory purpose that E911 funds only be used to maintain and operate the E911 system; the E911 Fund would become an unrestricted fund for **any and all** General Fund purposes.
85. The Department of Administration not only made a series of “loans” of E911 Funds to the General Fund; when it became evident to the Department that the General Fund would not be able to repay the “loans” from the E911 Fund, it determined that the “loans” would be converted into “permanent transfers” from the E911 Fund to the General Fund. See Exhibits 1 through 4 attached hereto. Thus, nearly \$4 Million was “permanently transferred” from the E911 Fund to the General Fund.
86. The funds permanently transferred from the E911 Fund to the General Fund were not used for the purposes intended under Guam or Federal law, that is the operation and maintenance of an E911 system. The nearly \$4 Million transferred to the General Fund was expended for non-E911 purposes. Expenditure of funds by the Department of Administration which were clearly E911 Funds, intended for the operation and maintenance of the E911 system, violates the requirement of law that the Department of Administration use all surcharge monies collected *solely* for enhanced 911 equipment and system costs.<sup>41</sup>
87. The very nature of the E911 fund establishes that DOA has no authority to transfer E911 Funds to the General Fund. E911 Funds are “separate and apart from all other

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<sup>41</sup> 12 GCA § 12304(d).



funds of the government...". All E911 surcharges are required to be deposited in the E911 Fund; there is no statutory authority for the transfer of any E911 Funds to the General Fund.<sup>42</sup>

88. The Department of Administration further claims that it did not violate 12 GCA § 12304(e) and § 12304(f) "because no monies in the Fund were "expended", claiming that "Interfund loans are not expenditures". As previously established "Interfund loans" are not authorized at all under the 911 Surcharge Law, whether they are "expenditures" or not. E911 funds that are transferred to the General Fund retain their character as E911 funds and continue to be "E911" Funds.
89. As Speaker Cruz indicated during the FY2019 Budget Hearing for the Guam Fire Department, the E911 Funds which DOA transferred to the General Fund could have been used to purchase a new E911 system. Chief San Nicolas stated that the Fire Department was prevented from purchasing equipment or using those E911 funds as a result of non-availability of funds. DOA also violated the prohibition on expenditure of E911 Funds without the express approval of *I Liheslatura*.
90. In the meeting between the ALJ and officials of the Government on December 13, 2018, the Director of Administration indicated that E911 Funds had been used for other purposes, and stated that such E911 Funds could be used by the General Fund for purposes other than E911.
91. The holding of the Supreme Court of Guam *In Re Request of I Mina' Trentai Dos Na Liheslaturan Guahan*, relative to the Use of Funds from the Tax Refund Efficient Payment Trust Fund, 2014 Guam 15, is directly contrary to the position that the Department of Administration argues in this case. There the Supreme Court held that the Government could not use monies in a Trust Fund designed to pay Income Tax Refunds for any other obligations, including those of the General Fund.<sup>43</sup>
92. Similarly, in this case, a plain reading of 12 GCA § 12301 *et. seq.* makes it clear that no E911 Funds may be committed to pay other obligations of the General Fund. Contrary to DOA's assertion that no "expenditures" were made from the E911 Fund, the Supreme Court held even if there are fund advances or withdrawals of restricted funds, any disbursement would still constitute an "expenditure."<sup>44</sup>
93. Here, as in the above Supreme Court case, the maintenance of the E911 Fund "separate and apart from all the other funds of the Government", and the

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<sup>42</sup> 12 GCA § 12304(a) and § 12304(c).

<sup>43</sup> Id. at [61].

<sup>44</sup> Id. at [63].



prohibitions on uses of such funds except for the operation and maintenance of the E911 system, indicate the Legislative intent to restrict the use of such E911 Funds.<sup>45</sup>

94. The PUC must take strong remedial action to ensure the sanctity of the E911 Fund and to ensure that such funds are only used for the upgrade and operation of the enhanced E911 emergency system, and for other permitted statutory purposes. E911 revenues are not funds generated for expenditure by the Government of Guam, the Department of Administration, or its Directors for any purposes desired. Both the Guam Legislature and the PUC, in establishing the E911 surcharge, intended that the funds would only be used for the express purposes set forth in the statute.

### RECOMMENDATIONS

95. The Department of Administration should be required to establish a separate bank account for the E911 Fund.
96. Pursuant to 12 GCA § 12311, the PUC should determine that the Government of Guam, the Department of Administration, and Department of Administration Directors Benita Manglona and Christine Baleto, have violated the provisions of 12 GCA §12301 *et seq.*, Article 3, “911” Surcharge, as set forth in this Report, by unlawfully transferring nearly \$4 Million from the E911 fund to the General Fund in fiscal years 2014 through 2017.
97. The Government of Guam, Department of Administration, through its current Director Edward Birn, and Directors of Administration Benita Manglona and Christine Baleto should be given proper notice and allowed a reasonable opportunity, within a period of sixty (60) days from the date of the PUC Order herein, to cure the violations of 12 GCA §12301 *et. seq.*, Article 3, “911” Surcharge, as set forth in this Report, by transferring or redepositing the amount of \$3,880,714.62 back into the E911 Fund. Any “cure” remedy must make the E911 Fund “whole” for the illegal transfer of funds to the General Fund.
98. Copies of the PUC Order herein should be served upon the Government of Guam, Department of Administration through its present Director, and to former Directors Benita Manglona and Christine Baleto.
99. If the Government of Guam, the Department of Administration, and former Directors of Administration Benita Manglona and Baleto do not cure such

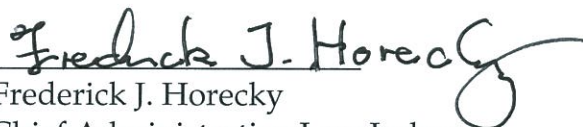
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<sup>45</sup> Id. at [64].

violations, and transfer the amount of \$3,880,714.62 back to the E911 Fund within sixty (60) days from the date of the PUC Order herein, the Commission should then, at its next meeting: (1) determine whether the violations of 12 GCA §12301 *et. seq.*, Article 3, "911" Surcharge, upon the failure to cure such violations, should be referred to the Attorney General's Office for Prosecution; and (2) further consider the imposition of civil penalties, not to exceed Ten Thousand Dollars (\$10,000.00) per infraction, upon the Government of Guam, the Department of Administration, and former Directors of Administration Manglona and Baleto.

- 100.If the violations are not cured, the ALJ shall prepare further recommendations for the Commissioners, in subsequent proceedings before the PUC, for determination of whether to refer the violations to the Attorney General's Office for prosecution, upon which persons or entities civil penalties should be imposed, and the recommended amount(s) of such civil penalties.
- 101.In accordance with law and Commission past practice, the PUC expenses in conducting the investigation hereunder shall be deducted from the E911 Fund.
- 102.An Order is submitted herewith for the consideration of the Commissioners.

Dated this 15th day of January, 2019.

  
Frederick J. Horecky  
Chief Administrative Law Judge  
Guam Public Utilities Commission





DEPARTMENT OF ADMINISTRATION  
DIVISION OF ACCOUNTS  
POST OFFICE BOX 884  
HAGATNA, GUAM 96932

J.V. Number J14FC00017  
Date September 30, 2014  
Page 1 OF 2

JOURNAL VOUCHER

TRAN CODE	ACCOUNT NUMBER	PRIOR REFERENCE	VENDOR NUMBER	DEBIT	CREDIT
604	128141110	FY14 Fund Transfer		1,839,854.00	
TOTAL					

EXPLANATION: FY14 To record permanent transfers from special revenue funds to General Fund.

AGENCY USE ONLY

PREPARER TO CHECK:

- ☒ Transactions Codes Are Correct  
☒ Account Numbers Are Correct  
☒ Prior References Are Correct  
☐ Vendor Number is Correct  
☒ Journal Voucher is Balanced

Prepared By  
Jennifer A. Carlos Accountant II  
April 22, 2015

APPROVING OFFICIAL TO CHECK:

- ☐ I CERTIFY FUNDS ARE AVAILABLE (REQUIRED FOR ALL APPROPRIATION ACCOUNTS)  
☐ I CERTIFY ALL COSTS CHARGED ARE CONSISTENT WITH REQUIREMENT OF APPROPRIATION LAW OR FEDERAL GRANT OR AGREEMENT AND ELIGIBLE TO BE CHARGED (APPROPRIATION ACCOUNTS ONLY)  
☐ I CERTIFY ENTRIES ARE PROPER AND AUTHORIZED BY LAW, RULE OR REGULATION

Approved By \_\_\_\_\_

Date \_\_\_\_\_

DIVISION OF ACCOUNTS USE ONLY

GENERAL ACCOUNTING SUPERVISOR \_\_\_\_\_

DATE \_\_\_\_\_

☐ OVERRIDE IS AUTHORIZED BY MANAGER

Manager Reviewing: \_\_\_\_\_

Gaudencio Rosario

Date \_\_\_\_\_

104-22-15

Posted By: \_\_\_\_\_

Date \_\_\_\_\_

Batch Posted \_\_\_\_\_

N FY14 Permanent Transfers

Exhibit "1"



**DEPARTMENT OF ADMINISTRATION  
DIVISION OF ACCOUNTS  
POST OFFICE BOX 884  
HAGATNA, GUAM 96932**





Eddie Baza Calvo  
Governor

Ray Tenorio  
Lt. Governor

**GUAM FIRE DEPARTMENT**  
**DIPATTAMENTON GUAFI GUAHAN**  
*Professionalism \* Respect \* Integrity \* Dedication \* Empathy*



Joey C. San Nicolas  
Fire Chief

March 24, 2015

**To:** Director of Administration  
**From:** Fire Chief, Guam Fire Department  
**Subject:** Permanent Transfer Acknowledgment

**Hafa Adai!** This is to acknowledge that the following funds have recorded an Interfund Receivable due from the General Fund totaling \$2,760,548 as of September 30, 2014.

1. Enhanced 911 Emergency Reporting Fund \$1,839,854.00
2. GFD Capital Revolving Fund \$920,694.00

It is my understanding that the General Fund is not in a position to repay this amount and, as a result, I agree that such represents a permanent transfer from the above listed funds to the General Fund.

I further acknowledge and understand that these funds, as a result of this permanent transfer, will no longer be available for any future obligations of the Enhanced 911 Emergency Reporting Fund and the GFD Capital Revolving Fund.

Your attention to this matter is greatly appreciated.

*Senseramente,*

GUAM FIRE DEPARTMENT  
Division of Accounts

APR 22 2015

SYSTEMS WIDE SUPPORT

Building 1617 East Sunset Blvd, Tiyan Guam 96921  
Phone: (671) 642-3454 • Fax: (671) 642-2012  
Mailing Address: P.O. Box 2950, Hagaña, Guam 96932





DEPARTMENT OF ADMINISTRATION  
DIVISION OF ACCOUNTS  
POST OFFICE BOX 884  
HAGATNA, GUAM 96932

J.V. Number J150612346  
Date September 30, 2015  
Page 1 OF 9

JOURNAL VOUCHER

604	128141110	FY15 Fund Transfer		712,500.62	
693	310050281	FY15 Fund Transfer			712,500.62
TOTAL					

EXPLANATION: FY15 To record permanent transfers from special revenue funds to General Fund

PREPARER TO CHECK:

- ☒ Transactions Codes Are Correct
- ☒ Account Numbers Are Correct
- ☒ Prior References Are Correct
- ☐ Vendor Number Is Correct
- ☒ Journal Voucher Is Balanced

Prepared By:  
Jennifer A. Carlos Accountant  
December 10, 2015

APPROVING OFFICIAL TO CHECK:

- ☐ I CERTIFY FUNDS ARE AVAILABLE (REQUIRED FOR ALL APPROPRIATION ACCOUNTS)
- ☐ I CERTIFY ALL COSTS CHARGED ARE CONSISTENT WITH REQUIREMENT OF APPROPRIATION LAW OR FEDERAL GRANT OR AGREEMENT AND ELIGIBLE TO BE CHARGED (APPROPRIATION ACCOUNTS ONLY)
- ☐ I CERTIFY ENTRIES ARE PROPER AND AUTHORIZED BY LAW, RULE OR REGULATION

Approved By: \_\_\_\_\_

Date: \_\_\_\_\_

GENERAL ACCOUNTING SUPERVISOR \_\_\_\_\_

DATE \_\_\_\_\_

☐ OVERRIDE IS AUTHORIZED BY MANAGER  
Manager Reviewing \_\_\_\_\_

Date \_\_\_\_\_

Gaudencia Rosario Katherine Kakigi

Posted By: Maria

Date: 12/11/15

Batch Posted: 01

JV FY15 Permanent Transfers

Exhibit "2"



Fund Balance Calculation as of 12/9/2015

	655	659	281	203	325	235	600	636	604	630	603	629
Revenue	1,733,563.79	2,713,124.12	2,180,361.30	1,156,206.65	8,488.25	600,807.41	1,223,787.77	77,407.26	861,218.36	261,061.41	872,733.02	162,194.33
Expenditure	643,982.54	1,366,383.80	1,418,364.66	783,929.57	0.00	481,234.35	508,214.45	6,278.06	839,629.00	168,016.37	888,675.75	121,769.15
	1,089,581.25	1,346,740.32	761,996.94	372,276.48	8,488.25	118,573.08	715,573.32	71,129.20	21,788.36	92,045.04	3,857.23	40,425.18
Appropriations	2,737,713.86	2,953,747.02	2,118,650.83	997,384.85	0.00	1,062,160.22	1,225,295.73	557,511.00	839,429.00	563,911.80	596,761.91	303,607.94
Unappropriated Surplus	1,048,054.43	953,336.06	2,118,650.83	572,920.80	(599,085.42)	600,807.87	1,225,295.42	73,904.27	300,595.67	220,636.40	483,064.54	0.00
	1,589,648.51	2,000,410.88	0.00	424,464.88	590,085.42	481,332.35	0.31	483,608.22	508,863.33	343,275.40	502,088.77	203,402.84
Fund Balance:	2,778,280.78	3,347,181.88	783,988.84	786,740.84	887,550.67	580,926.41	715,522.63	594,704.43	830,682.69	455,230.44	608,784.60	344,348.12
Encumbrances	94,088.49	2,276,664.00	51,488.02	182,365.86	0.00	11,208.85	153,840.82	0.00	0.00	21,925.84	138,686.73	37,887.48
	848,937.00											
Adjusted FB	2,684,192.29	2,070,517.88	732,500.82	604,374.98	887,550.67	569,717.56	561,681.81	594,704.43	830,682.69	433,304.60	470,097.87	306,460.64

655	659	281	203	325	235	600	636	604	630	603	629
2,684,192.29	876,137.00	711,094.07	694,985.04	807,551.00	569,718.05	561,883.38	554,734.00	530,603.00	413,394.16	389,785.27	306,480.52
(300.45)	1,194,487.58	1,406.55	(150.46)	(0.39)	0.41	(0.37)	0.43	(0.31)	0.44		0.12



Eddie Baza Calvo  
Governor

Ray Tenorio  
Lt. Governor

**GUAM FIRE DEPARTMENT**  
**DIPATTAMENTON GUAFI GUAHAN**  
*Professionalism \* Respect \* Integrity \* Dedication \* Empathy*



Joey C. San Nicolas  
Fire Chief

February 12, 2016

**To: Director of Administration**  
**From: Fire Chief, Guam Fire Department**  
**Subject: Permanent Transfer Acknowledgment**

**Hafa Adai!** This is to acknowledge that the following fund(s) has/have recorded an Interfund Receivable due from the General Fund of \$712,500.62 as of September 30, 2015.

1. Enhanced 911 Emergency Report System \$712,500.62

It is my understanding that the General Fund is not in a position to repay this amount and, as a result, I agree that such represents a permanent transfer from the above named Fund(s) to the General Fund.

I further acknowledge and understand that these funds, as a result of this permanent transfer, will no longer be available for any future obligations.

Your attention to this matter is greatly appreciated.

Senserramente

Building 1617 East Sunset Blvd, Tiyen Guam 96921  
Phone: (671) 642-3454 • Fax: (671) 642-2012  
Mailing Address P.O. Box 2950 Hagåtña, Guam 96932



JV# 116920185  
DATE 09/30/18  
PAGE 1 OF 1

### Explanation

**PREPARER TO CHECK:**

Prepared By: Alexa Navarro

APPROVING OFFICIAL TO CHECK:

**Approved By:**

Date \_\_\_\_\_

#### DIVISION OF ACCOUNTS USE ONLY:

11 12/2/2



Eddie Baza Cacho  
Governor

Ray Tenorio  
Lt. Governor

**GUAM FIRE DEPARTMENT**  
**DIPATTAMENTON GUAFI GUAHAN**  
*Professionalism • Respect • Integrity • Dedication • Empathy*



Jose C. San Nicolas  
Fire Chief

December 13, 2016

DEC 13 7  
HL 2 1:58  
D-1-01

To: Director of Administration  
From: Fire Chief, Guam Fire Department  
Subject: Permanent Transfer Acknowledgment

*Hafa Adai!* This is to acknowledge that the following funds have recorded an Interfund Receivable due from the General Fund of \$885,923.00 as of September 30, 2016.

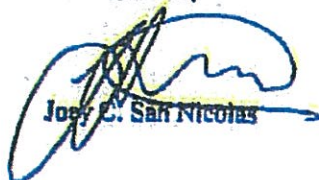
1. GFD Capital Revolving Fund	\$397,144.00
2. Enhanced 911 Emergency Report System	488,779.00
	<u>\$885,923.00</u>

It is my understanding that the General Fund is not in a position to repay this amount and, as a result, represents a permanent transfer from the GFD Capital Revolving to the General Fund.

I further acknowledge and understand that these funds, as a result of this permanent transfer, will no longer be available for any future obligations of the GFD Capital Revolving Fund. Should any unanticipated shortfalls arise, I will appeal to the Administration for assistance.

Your attention to this matter is greatly appreciated.

*Senseramenta,*

  
Jose C. San Nicolas

Building 1617 East Sunset Blvd., Tiyon Guam 96921  
Phone: (671) 642-3454 • Fax: (671) 642-3012  
Mailing Address: P.O. Box 2950, Hagåtña, Guam 96932



Government of Guam  
Nonmajor Governmental Funds - Special Revenue Funds  
Combining Balance Sheet  
30-Sep-18  
DRAFT

	236 Assets Fund Bal	247 Liabilities Fund Bal	250 Capital Assets Fund Bal	251 Debt Fund Bal	252 Deferred Inflows Fund Bal	253 Deferred Outflows Fund Bal
ASSETS						
Cash and cash equivalents						1,011,116
Time certificates of deposit						
Investments						
Receivables, net						
Taxes						
Other						
Due from other funds	9,752	1,011,116		618,221	514,958	2,944,918
Due from component units						
Deposits and other assets						
Total assets	9,752	1,011,116		618,221	514,958	2,944,918
LIABILITIES AND FUND BALANCES (DEFICIT)						
Liabilities						
Accounts payable						
Accrued payroll and other		1,011,116		618,221		2,150
Due to component units						
Due to other funds						
Deferred revenue						
Deposits and other liabilities						
Total liabilities		1,011,116		618,221		2,150
Fund balance (deficit)						
Non-spendable						
Restricted						
Committed	1,011			458,778		1,011,116
Assigned	6,741	1,011,116		159,443		1,011,116
Unassigned		1,011,116		159,443		1,011,116
Total fund balance (deficit)	7,752	2,022,232		618,221		2,022,232
Total liabilities and fund balances (deficit)	7,752	2,022,232		618,221		2,022,232

Government of Guam  
 Nonmajor Governmental Funds Special Revenue Funds  
 Combining Balance Sheet  
 30-Sep-18  
 DRAFT

	218 Accruals Funding	261 Air Pollution Control	219 DPW SURFACING & DESIGN Building & Design	254 Emergency Emergency Response	211 CSP Capital Improvement	618 Funding Revenue
<b>Revenues</b>						
Taxes						
Property						
Hotel						
Liquidated						
Tobacco						
Alcoholic beverages						
Salaries, benefits, fees and permits	12,152	410,973	1,340,588	1,102,474	511,031	2,001,194
Use of money and property						
Federal contributions						
Grants and related interest						
Other						
<b>Total revenues</b>	12,152	410,973	1,340,588	1,102,474	511,031	2,001,194
<b>Expenditures by object</b>						
Salaries and wages - regular		11,112	170,877	870,167		41,024
Salaries and wages - overtime				50,704		
Salaries and wages - fringe benefits		17,001	50,873	142,879		13,571
Salaries and wages - fringe benefits health						
Salaries and wages - fringe benefits life						
Travel		7,371				
Contractual services	1,000	10,113	11,576	112,734	11,534	1,010,464
Operating lease		1,000				
Supplies			24,914	10,910	82,409	
Utilities - communication						
Operating lease						
Equipment			10,816	12,557	651,797	
Utilities - power		10,000	12,705	42,487		
Utilities - water						
Communications		7,941	1,487	49,601		
Capital outlay				50,011	191,194	694,873
Payments to component units						
Miscellaneous				1,139		67,021
<b>Total expenditures</b>	1,000	311,544	447,571	1,342,667	955,914	1,103,978
<b>Excess (deficiency) of revenues over</b>						
<b>(under) expenditures</b>	7,952	91,429	892,917	761,737	555,117	897,216
<b>Other financing sources (uses)</b>						
Transfers in from other funds						
Transfers out to other funds						
Total other financing sources (uses), net						
<b>Net change in fund balances (deficit)</b>	1,952	91,429	892,917	761,737	555,117	897,216
<b>Fund balances (deficit) at beginning of year</b>	1,900	15,127	27,076	91,490	546,114	1,329,421
<b>Fund balances (deficit) at end of year</b>	3,852	106,556	919,993	783,227	1,101,231	2,226,637



Government of Guam  
 Nonmajor Governmental Funds - Special Revenue Funds  
 Combining Balance Sheet  
 30-Sep-18  
 DRAFT

	218 Accounts Payable	219 Due Payables	220 Due Payables	221 Due Payables	222 Due Payables	223 Due Payables
	Payable	Payable	Payable	Payable	Payable	Payable
Revenues						
Taxes						
Property						
Hotel						
Excise						
Tobacco						
Alcoholic beverages						
Sales, license, and permits						
Use of money and property						
Redevelopment						
Interest and dividends						
Other						
Total revenues	11,912	458,920	1,340,502	1,022,424	918,937	2,901,377
Expenditures by Federal						
Capital						
General equipment						
Improvement of lands and interests						
Public health						
Community services						
Recreation						
Individual and collective rights						
Transportation						
Public education						
Intermunicipal projects						
Economic development						
Capital improvement projects						
Provisional						
Chamorro Land Trust Corporation						
Government of Guam Retirement Fund						
Guam Community College						
Guam Housing and Urban Renewal Authority						
Guam Memorial Hospital Authority						
Guam Development Trust						
Guam Regional Transit Authority						
Guam Tourism Bureau						
University of Guam						
and various other agencies						
Total expenditures	9,000	11,534	447,971	1,368,609	955,934	2,831,978
Excess (deficiency) of revenues over						
expenditures	2,912	447,386	892,531	653,815	962,903	669,399
Other financing sources (uses)						
Transfers in from other funds						
Transfers out to other funds						
Total other financing sources (uses), net						
Net change in fund balance (deficit)	2,912	447,386	892,531	653,815	962,903	669,399
Fund balance (deficit) at beginning of year	1,800	52,887	11,118	51,490	544,134	1,179,411
Fund balance (deficit) at end of year	4,712	499,273	903,649	1,165,305	1,507,037	1,848,810
	0	0	865,252	429,779	947,134	4,210,440

## 4 OF 8

**To record permanent transfers from various SRF to General Fund**

Exhibit "4"



Once subjected to permanent transfer, the fund balance for these special revenue accounts will not be available to your department for any future use and cannot be reversed. We therefore ask that you not consider this amount as available for carryover appropriations or use in the FY2018 fiscal year.

Should you have any questions, or wish to discuss the matter further, please do not hesitate to contact me.

Sincerely,



Christine Baleto  
Director

**ACKNOWLEDGEMENT:**

Fund: GFD capital Revolving Fund/Enhanced 911 Emergency Report System Fund

Amount: \$331,345.00 \$839,583.00

  
Joey San Nicolas  
Acting Fire Chief

1/19/18  
Date

1	Government of Guam	
2	Nonmajor Governmental Funds - Special Revenue Funds	
3	Combining Balance Sheet	
4		30-Sep-17
5		281
6		Enhanced 911
7		Emergency
8		Reporting
9	ASSETS	
10		
11	Cash and cash equivalents	
12	Time certificates of deposit	
13	Investments	
14	Receivables, net	
15	Taxes	
16	Other	
17	Due from other funds	1,040,803
18	Due from component units	
19	Deposits and other assets	
20	Total assets	1,040,803
21		
22	LIABILITIES AND FUND BALANCES (DEFICIT)	
23		
24	Liabilities	
25	Accounts payable	
26	Accrued payroll and other	42,387
27	Due to component units	
28	Due to other funds	
29	Deferred revenue	
30	Deposits and other liabilities	
31	Total liabilities	42,387
32		
33	Fund balance (deficit)	
34	Non-spendable	
35	Restricted	839,383
36	Committed	
37	Assigned	158,833
38	Unassigned	
39	Total fund balance (deficit)	998,416
40		
41	Total liabilities and fund balances (deficit)	1,040,803
42		
43	Revenues	
44	Taxes	
45	Property	
46	Hotel	
47	Liquid fuel	
48	Tobacco	
49	Alcoholic beverages	
50	Sales, licenses, fees and permits	2,209,374
51	Use of money and property	
52	Federal contributions	
53	Indirect cost reimbursement	
54	Other	
55	Total revenues	2,209,374
56		
57	Expenditures by Function	
58	Current	
59	General government	
60	Protection of life and property	1,327,804
61	Public health	
62	Community services	
63	Recreation	
64	Individual and collective rights	
65	Transportation	
66	Public education	
67	Environmental protection	
68	Economic development	
69	Capital Improvement Projects	
70	Payments to	
71	Chamorro Land Trust Commission	
72	Government of Guam Retirement Fund	
73	Guam Community College	
74	Guam Housing and Urban Renewal Authority	
75	Guam Memorial Hospital Authority	
76	Guam Preservation Trust	
77	Guam Regional Transit Authority	
78	Guam Visitors Bureau	
79	University of Guam	
80	Miscellaneous appropriations	
81	Total expenditures	1,327,804
82		
83	Excess (deficiency) of revenues over	



1	Government of Guam	
2	Nonmajor Governmental Funds - Special Revenue Funds	
3	Combining Balance Sheet	
4		30-Sep 17
5		281
6		Enhanced 911
7		Emergency
8		Reporting
84	(under) expenditures	831,770
85		
86	Other financing sources (uses)	
87	Transfers in from other funds	
88	Transfers out to other funds	
89	Total other financing sources (uses), net	
90		
91	Net change in fund balance (deficits)	831,770
92		
93	Fund balance (deficit) at beginning of year	116,646
94		
95	Fund balance (deficit) at end of year	938,416
96		<u>839,583</u> ***
	Fund Balance	938,416
	Encumbrance	138,833
	Cash	0
	Available for PT	<u>839,583</u> ****
	Journal Voucher # J17PC00011	839,583
	Journal Voucher # J17PC00012	
	Journal Voucher # J17PC00024	
	Fund balance/interfund	1,040,803
	Encumbrance	<u>138,833</u>
		<u>831,970</u>

Department

**Enhanced 911 Emergency Report System FY2013 to FY2017 Details**

<b>FY2013</b>				
	<b>Revenue</b>	<b>Expenditures</b>	<b>Variance</b>	<b>Permanent Transfers</b>
October	172,566.00	73,692.35	98,873.65	
November	95,692.65	81,643.77	14,048.88	
December	182,924.42	88,911.58	94,012.84	
January	145,940.49	126,856.66	19,083.83	
February	183,737.30	79,036.96	104,700.34	
March	142,730.96	67,433.95	75,297.01	
April	172,082.73	84,136.83	87,945.90	
May	142,653.09	112,824.76	29,828.33	
June	159,018.00	54,575.14	104,442.86	
July	172,945.00	108,035.80	64,909.20	
August	139,524.00	96,151.22	43,372.78	
September	140,960.00	231,282.69	(90,322.69)	
<b>Total</b>	<b>1,850,774.64</b>	<b>1,204,581.71</b>	<b>646,192.93</b>	<b>-</b>

<b>FY2014</b>				
	<b>Revenue</b>	<b>Expenditures</b>	<b>Variance</b>	<b>Permanent Transfers</b>
October	188,673.75	78,679.92	109,993.83	
November	140,286.00	95,793.44	44,492.56	
December	175,660.50	140,719.00	34,941.50	
January	160,654.00	159,564.94	1,089.06	
February	155,185.00	140,771.09	14,413.91	
March	124,043.45	87,185.38	36,858.07	
April	158,343.00	103,134.33	55,208.67	
May	242,062.00	91,384.59	150,677.41	
June	145,507.50	129,284.47	16,223.03	
July	208,729.00	178,942.84	29,786.16	
August	141,889.00	108,534.61	33,354.39	
September	215,111.10	380,595.55	(165,484.45)	1,839,854.00
<b>Total</b>	<b>2,056,144.30</b>	<b>1,694,590.16</b>	<b>361,554.14</b>	<b>1,839,854.00</b>

<b>FY2015</b>				
	<b>Revenue</b>	<b>Expenditures</b>	<b>Variance</b>	<b>Permanent Transfers</b>
October	177,083.50	62,671.74	114,411.76	
November	106,077.00	106,094.88	(17.88)	
December	182,740.50	137,858.96	44,881.54	
January	143,899.00	119,093.57	24,805.43	



February	271,682.00	119,929.44	151,752.56	
March	201,166.00	97,361.83	103,804.17	
April	164,385.00	125,055.91	39,329.09	
May	109,152.00	113,806.28	(4,654.28)	
June	275,475.74	145,352.56	130,123.18	
July	180,896.79	101,792.15	79,104.64	
August	185,126.74	127,445.42	57,681.32	
September	182,677.03	159,901.92	22,775.11	712,500.62
<b>Total</b>	<b>2,180,361.30</b>	<b>1,416,364.66</b>	<b>763,996.64</b>	<b>712,500.62</b>

FY2016				
	Revenue	Expenditures	Variance	Permanent Transfers
October	121,664.93	52,432.84	69,232.09	
November	242,205.00	110,778.41	131,426.59	
December	123,914.61	156,590.58	(32,675.97)	
January	235,856.00	102,217.01	133,638.99	
February	124,424.00	105,212.53	19,211.47	
March	225,723.00	129,166.78	96,556.22	
April	100,973.39	146,978.45	(46,005.06)	
May	279,529.74	108,573.36	170,956.38	
June	102,086.73	172,686.30	(70,599.57)	
July	189,904.00	107,764.64	82,139.36	
August	251,960.50	110,671.80	141,288.70	
September	104,182.00	734,201.22	(630,019.22)	488,779.00
<b>Total</b>	<b>2,102,423.90</b>	<b>2,037,273.92</b>	<b>65,149.98</b>	<b>488,779.00</b>

FY2017				
	Revenue	Expenditures	Variance	Permanent Transfers
October	109,216.00	50,469.94	58,746.06	
November	236,915.46	155,026.46	81,889.00	
December	256,221.50	101,362.33	154,859.17	
January	68,200.40	97,818.43	(29,618.03)	
February	261,046.50	104,207.16	156,839.34	
March	108,799.00	95,107.16	13,691.84	
April	106,470.10	89,835.31	16,634.79	
May	260,030.84	127,891.88	132,138.96	
June	182,757.85	119,239.49	63,518.36	
July	106,657.52	99,512.54	7,144.98	
August	255,025.22	104,484.08	150,541.14	
September	258,033.45	182,649.20	75,384.25	839,582.81
<b>Total</b>	<b>2,209,373.84</b>	<b>1,327,603.98</b>	<b>881,769.86</b>	<b>839,582.81</b>

## BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:	)	
	)	GTA Docket 18-02
	)	
	)	ALJ REPORT
Request for Investigation of Certain	)	
Transfers of Money from the Enhanced	)	
911 Emergency Reporting System Fund.	)	
	)	

### INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Order dated August 30, 2018, approving the request of Senator Telena Nelson, Chairperson of the Utilities Committee, that the PUC investigate certain transfers of funds from the E911 Fund to the General Fund of the Government of Guam.<sup>1</sup>
2. Senator Nelson's Request for Investigation alleged that certain transfers of E911 funds to the General Fund violated Guam law by allowing the use of E911 funds for purposes other than those authorized by law, which include the upgrade and modernization of Guam's Emergency response system.<sup>2</sup>
3. The Request alleged that "\$4 million was taken from the E911 Fund apparently without any notification to the Public Utilities Commission or *I Liheslaturan Guahan*."<sup>3</sup>
4. Under Title 12 GCA, Article 3, "911" Surcharge (hereinafter referred to as "the Act"), the PUC is granted broad regulatory authority to determine whether "any person or entity" has violated any provision of the "Act."<sup>4</sup>
5. The PUC instructed its Administrative Law Judge to conduct an investigation of the relevant facts concerning transfers of E911 funds to the General Fund, to determine whether such transfers violated the Act, and to consider appropriate remedies.<sup>5</sup>

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<sup>1</sup> Letter from Senator Telena Cruz Nelson to PUC Chairman Jeffrey Johnson, dated June 26, 2018, concerning Transfers of Money from the Enhanced 911 Emergency Reporting System.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> 12 GCA §12302(a).

<sup>5</sup> PUC Order, GTA Docket 18-02, dated September 30, 2018; *see also*, 12 GCA §12302(c).



6. The ALJ now submits his Report on the E911 Fund Transfer Investigation to address the issues set forth in PUC Order of August 30, 2018.

### **BACKGROUND-THE FACTS**

7. On October 25, 2017, the Speaker of the Guam Legislature, Benjamin J.F. Cruz, sent a letter to the Director of Administration regarding "Halt Special Revenue Fund Permanent Transfers to the General Fund."; in his Letter, Speaker Cruz requested that the Director should "immediately" cease transfers from Special Revenue Funds to the General Fund.<sup>6</sup>
8. Speaker Cruz stated as follows with regard to the E911 Fund:

#### **"Enhanced 911 Emergency Reporting System Fund**

The Enhanced E911 Emergency Reporting System Fund (E911 Fund) provides a source of funding for costs associated with Enhanced 911 Emergency Reporting System and equipment and system costs as necessary. Between Fiscal Years 2014-2016, the DOA has permanently transferred approximately \$3,041,134 out of the E911 Fund to the General Fund, thereby artificially increasing the General Fund balance.

Such transfers are exempted in § 12304(f), Chapter 12, Title 12 of the Guam Code Annotated, which states, "Notwithstanding any other provision of law, no monies in the Fund shall be expended for purposes other than provided for in this Section, without the expressed approval of *I Liheslatura*. The Fund is exempt from any transfer authority."

9. Further facts came to light in a series of letters written in June, 2018 concerning transfers of E911 Funds to the General Fund. In a letter to Governor Eddie Calvo, a Commissioner of the Federal Communications Commission, Michael O'Rielly, indicated to the Governor that almost \$4 million had been transferred out of Guam's 911 fund.<sup>7</sup>

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<sup>6</sup> Letter from Speaker Benjamin J.F. Cruz to Christine W. P. Baleto, Director, Department of Administration, Re: Halt Special Revenue Fund Permanent Transfers to the General Fund, dated October 25, 2017, at pgs. 1-2.

<sup>7</sup> Letter from FCC Commissioner Michael O'Rielly to the Honorable Eddie Calvo, Governor of Guam, dated June 20, 2018.

applicable to expenditures of funds which occurred in prior fiscal years, as the section of law was not to be applied retroactively.

17. Further facts concerning the transfers of E911 funds were established before the Guam Legislature through testimony in the FY2019 Budget Hearing for the Guam Fire Department, conducted on June 15, 2018.<sup>12</sup>
18. The Acting Fire Chief, Joey San Nicolas, presented the GFD proposed budget for FY2018. In attendance for the Legislature were Speaker Cruz and Senator Telena Nelson.
19. The testimony of Acting Fire Chief Joey San Nicolas establishes that the following amounts were "withdrawn" from the E911 Fund and "transferred" to the General Fund of the Government of Guam between FY2014 and FY2017:

FY2014	\$1,839,854.00
FY2015	\$ 712,500.62
FY2016	\$ 488,779.00
FY2017	\$ 839,582.81
	\$3,880,716.43
20. Acting Chief San Nicolas indicated his belief that the funds transferred out were in part "lapsed" or "unappropriated" funds that were "transferred by the Department of Administration."
21. Acting Chief San Nicolas indicated the funds were not utilized by GFD for the procurement of the Next Generation E911 System, which was estimated to cost \$2.5 Million. The proposed Fire Department Budget also contained an annual appropriation of \$400,000 for maintenance of the proposed new E911 System.
22. Acting Chief San Nicolas stated that he did sign acknowledgements that the Department of Administration of the Government of Guam had permanently transferred various amounts out of the E911 Fund. Every fiscal year the Department of Administration transferred funds from the E911 fund that had not been utilized or encumbered by GFD.
23. Acting Chief San Nicolas clarified that it was the Department of Administration that transferred funds from the E911 Fund to the General Fund. The Department had told him that the transfers were a "part of their accounting principles." Acting Chief San

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<sup>12</sup> YouTube Recording of the FY2019 Budget Hearing before the Guam Legislature for the Guam Fire Department, June 15, 2018, (Committee / Budget Hearing - B.J.F. Cruz - Guam Fire Department - June 15, 2018)



Nicolas denied responsibility for the transfers but indicated that the Department caused such transfers to be made.

24. In addition to reviewing records and testimony, on December 13, 2018, the ALJ met with Government of Guam Officials concerning the E911 Fund, including Chief Legal Counsel Sandra Miller, Office of the Governor, Edward Birn, Director of the Department of Administration, Deputy Fire Chief Michael Uncangco, BBMR Deputy Director Lester Carlson, Acting Fire Chief, Guam Fire Department, and Grace Edrosa (General Accounting Supervisor) and Michael Cabral from the Department of Administration Division of Accounts.<sup>13</sup>
25. Attached hereto as Exhibits 1 through 4 are *Journal Vouchers and Permanent Transfer Acknowledgements for Transfers of Funds from the E911 Fund to the General Fund of the Government of Guam* for Fiscal Years 2014, 2015, 2016, and 2017 respectively. These documents confirm the amounts of the transfers as established in the Testimony of Acting Fire Chief Joey San Nicolas before the Guam Legislature.
26. Guam law at 5 GCA § 22204 requires the Government of Guam to comply with the accounting standards promulgated by the Governmental Accounting Standards Board ("GASB"), which is the successor to the National Committee on Governmental Accounting.<sup>14</sup>
27. Director of Administration Edward Birn explained that the E911 Fund is a separate fund, a Special Revenue Fund; however, there is no separate bank account for the E911 fund. Rather, as explained by Accounting Supervisor Edrosa, E911 surcharges are deposited in the General Fund Bank Account but recorded as E911 Revenues originating from the E911 surcharges. The designation of the E911 surcharge revenue as an "E911 Fund" is a GASB accounting mechanism that is designed to track the origin of the surcharge revenues as they are deposited in the General Fund and the amount of expenditures, if any, made from those same revenues.
28. Director Birn indicated that under GASB Statement No. 34, the funds transferred from the E911 Fund to the General Fund are "interfund receivables." In governmental accounting and per GASB 34, an *interfund receivable* is a legally

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<sup>13</sup> The ALJ thanks Chief Legal Counsel Sandra Miller for arranging the meeting; all of the officials present were very helpful in providing all information requested by the ALJ.

<sup>14</sup> 5 GCA § 22204; P.L. 13-96:1 (1975) ("Unless otherwise found to be impracticable, such rules and regulations shall provide that the principles of the governmental accounting and reporting, classification of funds and accounts, and accounting terminology shall conform to those recommended by the National Committee on Governmental Accounting.")



permissible short-term loan made between individual funds where monies are transferred between the funds, usually for working cash purposes.<sup>15</sup>

29. Guam law directly incorporates GASB 34 and the interfund accounting procedure by authorizing the Governor of Guam to transfer to the General Fund any cash available “from any appropriated Special Fund to fund the general appropriations authorized by the Annual or Supplemental Budget.”<sup>16</sup> Guam law also acknowledges, and usually expressly restricts, interfund transfers for certain special funds.<sup>17</sup>
30. Under GASB 34, if repayment of an interfund receivable is not expected within a “reasonable time,” the interfund balances should be reduced and the amount that is not expected to be repaid should be reported as a transfer from the fund that made the loan (e.g., the E911 Fund) to the fund that received the loan (e.g., the General Fund).<sup>18</sup>
31. For interfund transfers involving special funds, Guam law establishes a period of sixty (60) days as being a “reasonable time” under GASB 34 within which the General Fund is supposed to pay an interfund loans withdrawn from a special fund.<sup>19</sup>
32. In compliance with GASB 34 and 5 GCA § 4103.1, the corresponding interfund receivables in the E911 Fund that were not expected to be repaid by the General Fund within the 60-day timeframe were reported as permanent transfers to the General Fund.
33. At the meeting on December 13, 2018, Deputy Fire Chief Michael Uncangco who has been involved with the E911 system almost since its beginnings in 1999 confirmed that interfund accounting transfers to and from the E911 fund have occurred for nearly all years since 1999, and not just FY2014 through FY2017.

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<sup>15</sup> GASB STATEMENT NO. 34 at ¶ 112(a)(1) [Reporting Interfund Activity], *Basic Financial Statements—and Management’s Discussion and Analysis—for State and Local Governments*.

<sup>16</sup> 5 GCA § 4103.1.

<sup>17</sup> See, e.g., 4 GCA § 4302.3 (disallowing interfund transfers from the Section 2718 [Medical Loss Ratio] Fund); 5 GCA § 15151(i)(1)(D) (authorizing reimbursements to the Guam Preservation Trust interfund payables); 11 GCA § 26208.3 (disallowing interfund transfers out of the GMHA Medicaid Matching Fund); 17 GCA § 14203 (disallowing interfund borrowing from the GDOE First General Trust Fund).

<sup>18</sup> Id.

<sup>19</sup> 5 GCA § 4103.1 (“





**Eddie Baza Calvo**  
Governor  
**Ray Tenorio**  
Lieutenant Governor

**Department of Administration**  
(DIPATTAMENTON ATEMENSTRASION)  
**DIRECTOR'S OFFICE**  
(UFISINAN DIREKTOT)

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**Christine IV. Balete**  
Director  
**Vincent P. Arrigla**  
Deputy Director

**January 9, 2018**

**To:** Acting Fire Chief, Guam Fire Department  
**From:** Director of Administration  
**Subject:** Permanent Transfer

**Buenas yan Háfa Adnil**

This memo will serve as notice of the permanent transfer that will be initiated for the following funds: GFD Capital Revolving (Fund 231) in the amount of \$331,345.00; and, Enhanced 911 Emergency Report System (281) in the amount \$839,583.00.

The General Fund is not able to pay or transfer this fund balance due to the perpetual cash shortage that has been experienced for decades by our Government. Government Accounting Standards Board (GASB) Statement No. 34, 112 a. (1) states: If repayment is not expected within a reasonable time, the interfund balances should be reduced and the amount that is expected to be repaid should be reported as a transfer from the fund that made the loan to the fund that received the loan" (GASB 34 copy attached).

As a result of the legal mandate, 5 G.C.A., Article 2, § 22204; Rules & Regulations, the Director of the Department of Administration is required to provide that the principles of governmental accounting and reporting; classification of funds and accounts; and mandated to ensure that accounting terminology *shall* conform to those recommended by the National Committee on Governmental Accounting. For government entities, the Government Accounting Standards Board is the authority for Government Accounting Standards. Also contained in, 5 G.C.A., Article VI, § 6.06, financial statements are required to be prepared in accordance with Generally Accepted Accounting Principles (GAPP). In addition, § 11.11, requires that accounting records shall be maintained in accordance with GAPP.

When preparing the financial statements for the Government of Guam's annual audit, we would be in non-compliance with GASB 34 if we failed to record permanent transfers. All unexpended/unappropriated amounts that are not expected to be collected within a reasonable time become subject to permanent transfer. If we did not do so, our financial statements would not be in compliance with GAPP or GASB. This would result in a modified opinion which would place the Government of Guam in Jeopardy. Our Credit Rating, Investors, Bond Holders, Federal partners and all stakeholders who rely on financial statements to be prepared in accordance with these requirements would be very concerned with our failure to do so.



## ANALYSIS

34. The ALJ finds that the four transfers of funds by the Department of Administration from the E911 Fund to the General Fund between FY2014 through FY2018 do not constitute a violation of 12 GCA § 12301 *et. seq.*, Article 3, “911” Surcharge.
35. The 911 surcharge was created by the Guam Legislature through Public Law 25-055 on June 30, 1999, “to fund the just and reasonable expenses of operating and maintaining the ‘911’ system, which shall the responsibility of the Guam Fire Department. . .”<sup>20</sup>
36. The Guam Public Utilities Commission established the 911 surcharge in the amount of \$1.00 per month per subscriber line and per line number for commercial mobile radio service.<sup>21</sup>
37. From the inception of the surcharge, the E911 Funds were collected by telecom companies from subscribers for the specific purpose of operating and maintaining the “911” system. The money collected by the E911 surcharge collected, and the interest earned, are to be used by the Guam Fire Department for enhanced 911 equipment and system costs.<sup>22</sup> The Fund recorded such costs that were so expended as expenditures.
38. 12 GCA § 12304(e) provides that: “notwithstanding any other provision of law, no monies in the Fund shall be *expended* without appropriation by *I Liheslatura*.”
39. The Guam Supreme Court has defined the term “expenditure” as meaning a “disbursement” or “a sum paid out.”<sup>23</sup>
40. The Guam Procurement Law expressly contemplates that an “expenditure” involves a sum of money paid out “*irrespective of their source*,” particularly for the purchase of goods or services.<sup>24</sup> The Guam Procurement Law applies to expenditures whose source of funding is the E911 Fund.

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<sup>20</sup> 12 GCA § 12302(d).

<sup>21</sup> 12 GCA § 12302(c).

<sup>22</sup> 12 GCA § 12304(d).

<sup>23</sup> *In re Request of I Mina' Trentai Dos Na Liheslaturan Guahan Relative to the Use of Funds from the Tax Refund Efficient Payment Tr. Fund*, 2014 Guam 15, ¶ 61 (Sup Ct. Guam 2014), citing BLACK'S LAW DICTIONARY 617 (8th ed. 2004).

<sup>24</sup> 5 GCA § 5004(b) (“This Chapter shall apply to *every expenditure of public funds irrespective of their source*, including federal assistance funds except as otherwise specified in § 5501 of this Chapter, by this Territory, acting through a governmental body as defined herein. . . .”)



41. GASB Interpretation No. 6 similarly defines an “expenditure” as a “decrease in net financial resources.”<sup>25</sup>
42. The Department of Administration did not violate 12 GCA § 12304(e) of § 12304(f) which prohibits expenditures from the E911 Fund without appropriation because no monies in the Fund were “expended.” Interfund loans are not “expenditures” where sums of monies are disbursed or otherwise “paid out” as is defined by the Guam Supreme Court, nor do they cause a “decrease in net financial resources” as defined by GASB Interpretation No. 6. In fact, GASB 34 specifically states that an interfund loan should *not* be reported in the financial statements as “uses” of the lending fund, which in this case would be the use of E911 Fund.<sup>26</sup>
43. For the same reasons, the Department of Administration did not violate 12 GCA § 12304(f) which prohibits expenditures from the E911 Fund without the expressed approval of *I Liheslatura*.
44. The Department of Administration did not violate 12 GCA § 12304(f) which exempts the E911 Fund from “any transfer authority.” The term “transfer authority” refers to the authority of the Governor to transfer budgetary appropriations and cost savings.<sup>27</sup> In the absence of a specific appropriation request by the Guam Fire Department,<sup>28</sup> the E911 Fund is primarily funded by telecom surcharge collections and not by budgetary appropriations to which the transfer authority would apply.<sup>29</sup>

### RECOMMENDATIONS

45. The PUC should determine that the Government of Guam, the Department of Administration, and the Department of Administration Directors holding office during the period between FY2014 to FY2017 did not violate the provisions of 12 GCA § 12301 et. seq., Article 3, “911” Surcharge, as set forth in this Report.
46. In order to recover the \$3,880,716.43 in interfund receivables to the E911 Fund that were booked as transfers during the period between FY2014 to FY2017, the

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<sup>25</sup> GASB INTERPRETATION NO. 6 at Appdx. C, ¶ .118 [Expenditure Recognition], *Recognition and Measurement of Certain Liabilities and Expenditures in Governmental Fund Financial Statements*.

<sup>26</sup> GASB STATEMENT NO. 34 at ¶ 112(a)(1) (“[Interfund activity] *should not be reported as* other financing sources or *uses* in the fund financial statements.”)

<sup>27</sup> 5 GCA § 1A104.

<sup>28</sup> 12 GCA § 12302(f).

<sup>29</sup> 5 GCA § 12304(c).

Department of Administration should be ordered to reverse the original interfund transfers in accordance with governmental accounting standards and practices.

47. Copies of the PUC Order herein should be served upon the Government of Guam, the Department of Administration through its present Director, and to former Directors Benita Manglona, Kathryn Kakigi, and Christine Baleto.
48. In accordance with law and Commission past practice, the PUC expenses in conducting the investigation hereunder shall be deducted from the E911 Fund.
49. An Order is submitted herewith for the consideration of the Commissioners.

Dated this \_\_\_\_\_ day of January, 2019.

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Frederick J. Horecky  
Chief Administrative Law Judge  
Guam Public Utilities Commission





BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:

GTA Docket 18-02

ORDER

Request for Investigation of Certain  
Transfers of Money from the Enhanced  
911 Emergency Reporting System Fund.

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Order dated August 30, 2018, approving the request of Senator Telena Nelson, Chairperson of the Utilities Committee, that the PUC investigate certain transfers of funds from the E911 Fund to the General Fund of the Government of Guam.<sup>1</sup>
2. Senator Nelson's Request for Investigation alleged that certain transfers of E911 funds to the General Fund violated Guam law by allowing the use of E911 funds for purposes other than those authorized by law, which include the upgrade and modernization of Guam's Emergency response system.<sup>2</sup>
3. The Request alleged that "\$4 million was taken from the E911 Fund apparently without any notification to the Public Utilities Commission or *I Liheslaturan Guahan*."<sup>3</sup>
4. Under Title 12 GCA, Article 3, "911" Surcharge (hereinafter referred to as "the Act" or the Surcharge Law), the PUC is granted broad regulatory authority to determine whether "any person or entity" has violated any provision of the "Act".<sup>4</sup>
5. The PUC instructed its Administrative Law Judge to conduct an investigation of the relevant facts concerning transfers of E911 funds to the General Fund, to determine whether such transfers violated the Act, and to consider appropriate remedies.<sup>5</sup>
6. The ALJ submitted his Report on the E911 Fund Transfer Investigation, dated January 15, 2019, to address the issues set forth in PUC Order of August 30, 2018.

<sup>1</sup> Letter from Senator Telena Cruz Nelson to PUC Chairman Jeffrey Johnson, dated June 26, 2018, concerning Transfers of Money from the Enhanced 911 Emergency Reporting System.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> 12 GCA §12302(a).

<sup>5</sup> PUC Order, GTA Docket 18-02, dated September 30, 2018; see also 12 GCA §12302(c).

### BACKGROUND - THE FACTS

7. The PUC adopts the BACKGROUND - THE FACTS as set forth in the ALJ Report, and the Analysis/Recommendations contained in the Report.

### DETERMINATIONS

8. The four transfers of funds by the Department of Administration from the E911 fund to the General Fund between FY2014 through FY2017 were in violation of 12 GCA §12301 *et. seq.*, Article 3, "911" Surcharge. The transfers were contrary to both the intent of the law and the specific prohibitions in the law.
  - A. E911 FUNDS ARE NOT MAINTAINED "SEPARATE" AND "APART" FROM THE GENERAL FUND. E911 FUNDS MAY ONLY BE UTILIZED FOR THE EXPRESS STATUTORY PURPOSES. DOA HAS NO AUTHORITY TO TRANSFER E911 FUNDS TO THE GENERAL FUND. NO E911 FUNDS CAN BE EXPENDED WITHOUT AN APPROPRIATION BY THE LEGISLATURE AND ITS EXPRESS APPROVAL.
9. Initially, one must consider the nature and intent of the E911 Fund. The 911 surcharge itself was created by the Guam Legislature through Public Law 25-055 on June 30, 1999, **"to fund the just and reasonable expenses of operating and maintaining the "911" system..."**.<sup>6</sup>
10. The Guam Public Utilities Commission established the 911 surcharge in the amount of \$1.00 per month per subscriber line and per line number for commercial mobile radio service.<sup>7</sup> From the inception of the surcharge, the E911 Funds were collected by telecom companies from subscribers for the specific purpose of operating and maintaining the "911" system. When the E911 Fund was created, neither the Legislature nor the PUC intended that the E911 funds would be used by the Government of Guam for expenditures other than those directly related to the operation and maintenance of the 911 System.
11. There is also no intent in the applicable statutes that officials of the Government of Guam would have the discretion to utilize E911 for purposes other than those specifically set forth. Transfers of E911 funds to the General Fund are directly contrary to the specific legislative intent of 12 GCA § 12302(d).

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<sup>6</sup> 12 GCA § 12302(d).

<sup>7</sup> 12 GCA § 12302(c).



12. The evidence in this matter demonstrates that nearly \$4 Million transferred by the Department of Administration to the General Fund was never used for the purpose mandated by the statute, the operation and maintenance of a 911 system. E911 funds can never be used for a purpose contrary to that expressly authorized in the law.
13. 12 GCA § 12304(b) states that the Enhanced 911 Emergency Reporting System Fund is a fund **“created, separate and apart from all other funds of the government...”**. The “E911 Fund” is not fully maintained “separate and apart” from the General Fund of the Government of Guam. The E911 funds are actually deposited into the General Fund, so that the funds of these accounts, as well as others, are commingled together:

DOA reminds that this fund does not have its own bank account, nor is it required to have one. Therefore, all transactions go through the General Fund Account.<sup>8</sup>

Although DOA contends that it is not required to have a separate account for E911 Funds, there is a legitimate issue as to whether the E911 Fund is truly separate and apart if its funds are all within the General Fund Account.

14. The inclusion of E911 funds in the General Fund Account could exacerbate the possibility that such funds will be used for purposes other than E911. E911 funds should be maintained in a separate bank account. The E911 Fund, as currently managed and operated, may not be consistent with 12 GCA § 12304(b).
15. Other provisions of law also prohibit the transfer of E911 funds for expenses other than those related to E911. Under the law, the fund was only created to provide a source of funding **“for costs associated with an Enhanced 911 Emergency Reporting System.”**<sup>9</sup> The transfers of E911 funds in this case allowed for such funds to be used for funding of costs other than those associated with an Enhanced 911 Emergency Reporting System, in violation of 12 GCA § 12304(b).
16. Further in this regard, 12 GCA § 12304(c) requires that all 911 surcharges collected by each LEC, VOIP, and CMRS provider **shall be deposited in the fund.**<sup>10</sup> At present E911 funds are deposited in the General Fund, which may not be consistent

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<sup>8</sup> Email from the Governor of Guam’s Chief Legal Counsel Sandra C. Miller to PUC ALJ Frederick Horecky, dated October 29, 2018.

<sup>9</sup> 12 GCA § 12304(b).

<sup>10</sup> 12 GCA § 12304(c).

with this provision. The provision implies the existence of a separate fund for E911 deposits.

17. The law is very specific as to the use of E911 funds: “the money collected and the interest earned *shall* be used by the Department *solely* for enhanced 911 equipment and system costs as described in this Act and for the following:
  - (1) operations of the 911 call/dispatch center,
  - (2) the purchase/lease/maintenance of E911 hardware/software, to include video security cameras and related equipment, supplies, installation and maintenance services; and
  - (3) system/engineering services related to the installation, maintenance and upgrade of E911 hardware/software.<sup>11</sup>
18. The transfers of E911 funds by the Department of Administration violated 12 GCA § 12304(d) by allowing E911 funds to be used for purposes other than those E911 purposes expressly set forth in 12 GCA § 12304(d).
19. 12 GCA § 12304(e) also provides that: “notwithstanding any other provision of law, **no monies in the Fund shall be expended without appropriation by I Liheslatura.**”<sup>12</sup> The Department of Administration violated this provision by allowing the transfer and expenditure of funds from the E911 Fund for purposes other than E911 without appropriation by the Legislature.
20. Finally, “notwithstanding any other provision of law, **no monies in the Fund shall be expended for purposes other than provided for in this Section, without the expressed approval of I Liheslatura.** The fund is *exempt from any transfer authority.*”<sup>13</sup> Unless the Legislature approves an expenditure, the Department of Administration and Government of Guam are prohibited from expending E911 funds for any other purpose. The Legislature never approved the expenditures made by the Department of Administration for non-E911 purposes.
21. The facts indicate herein that nearly \$4 million was transferred from the E911 fund and expended for purposes other than those expressly provided for in 12 GCA § 12304. There is no indication that the Guam Legislature approved these transfers of approximately \$4 million, as referenced in the testimony of Acting Fire Chief San Nicolas and the letters of Senator Nelson, FCC Commissioner O’Rielly, and Speaker Cruz.

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<sup>11</sup> 12 GCA § 12304(d).

<sup>12</sup> 12 GCA § 12304(e).

<sup>13</sup> 12 GCA § 12304(f).



22. The transfer of any E911 funds is clearly inconsistent with, and in violation of, numerous provisions of 12 GCA § 12304. Not only is the transfer of E911 funds from the E911 Fund violative of the purpose for which the E911 fund was established, and in derogation of legislative authority, the enhanced E911 system, which GFD so urgently needs, could have been purchased with E911 funds accumulated in prior years had such funds not been transferred out of the E911 Fund.
23. There are clearly needs for which transferred funds could have been spent to improve the E911 system, such as for an adequate and functional recording system to record E911 calls, which has not existed for many years. In addition, to date, there has been no progress in obtaining the equipment for a new E911 System. On December 17, 2018, the Guam Fire Department cancelled its RFP for the Design, Installation, and Maintenance of a Next Generation 911 System.<sup>14</sup> The RFP was recently reissued, thus starting the process over again from the beginning.
24. As pointed by FCC Commissioner O’Rielly in his June 20, 2018 Letter to the Governor:

“beyond the transition to NextGen 911, budgetary shortfalls can lead to longer wait times, delayed emergency responses, greater public safety risk to Guam’s citizen’s, and lower morale among emergency personnel.”

B. TRANSFERS OF FUNDS FROM THE E911 FUND TO THE GENERAL FUND WERE NOT AUTHORIZED AS “UNAPPROPRIATED OR LAPSED” FUNDS. THE DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, AND PRIOR DIRECTORS OF ADMINISTRATION BENITA MANGLONA AND CHRISTINE BALETO, VIOLATED 12 GCA, ARTICLE 3, “911” SURCHARGE, BY TRANSFERRING E911 FUNDS TO THE GENERAL FUND.
25. Section 22 of Public Law 34-42, Chapter XIII, does not authorize the transfers of E911 funds that occurred between FY2014 and FY2017. It has been argued that transfers from the special fund known as the E911 Fund was authorized on the grounds that appropriations for the E911 Funds were “not in conformance with the statutory uses of said funds”, and were therefore “authorized for use in FY2018.” The theory is that “unappropriated” or “lapsed” E911 funds were available for use

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<sup>14</sup> NOTICE OF CANCELLATION, dated December 17, 2018, from Deputy Fire Chief Joey C. San Nicolas to All Registered Potential Offerors, cancelling RFP No. GFD-001-2018: “Procurement of Professional Services for the Design, Installation, and Maintenance of a Next Generation 9-1-1 System.

in FY2018. However, nothing suggests that the E911 funds appropriated for FY2018 were “not in conformance with the statutory uses of said funds.”

26. As Speaker Benjamin J.F. Cruz pointed out in his letter of June 22, 2018, Section 13 of Public Law 34-42, Chapter XIII, provided that the Guam Fire Department was authorized to expend **all revenues** collected by its designated Special Fund for “the purposes authorized by statute for those funds...”. Thus, all funds appropriated for the E911 Fund were authorized for use in FY2018 in conformance with the statutory uses of such funds.
27. Allowance of transfers of E911 funds for purposes other than the operation and maintenance of the E911 system would seriously undermine the intent and goals of 12 GCA § 12301 *et. seq.*, “911” Surcharge. In any event, the specific restrictions on the expenditure of E911 funds only for operation and maintenance of the E911 system is controlling over, and paramount to, the general language of Public Law 34-42, Chapter XIII, regarding authorization to expend special funds for FY 2018,
28. There is a four- step process by which the PUC performs its regulatory duties in determining violations of 12 GCA §12301 *et. seq.*, Article 3, “911” Surcharge, and determining what corrective action should be taken:
  - (1) The PUC determinates whether any person or entity” has violated any provision of the Act;
  - (2) If the PUC determines that there has been a violation of the “911” Surcharge law, it is required to give “proper notice” and a “reasonable opportunity to cure” to “any person or entity” which it determines has violated the law.<sup>15</sup> “Cure” means to remove or remedy a condition or defect that exists. <sup>16</sup> In this case, a “cure” would be a remedy for the unlawful transfers of E911 Funds that occurred;
  - (3) If any persons or entities who have violated the Act fail to “cure” such violations, after a “reasonable opportunity” to do so, then the Commission determines whether a violation should be referred to the Attorney General’s Office (referral is discretionary with the PUC);<sup>17</sup> and
  - (4) Any person or entity who has the responsibility of complying with the Act and fails to cure such violation “shall be fined a civil penalty *not* to exceed Ten Thousand Dollars (\$10,000.00) per infraction.

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<sup>15</sup> 12 GCA §12311(a).

<sup>16</sup> Def. of “cure” in Black’s Law Dictionary, 2<sup>nd</sup> ed.

<sup>17</sup> 12 GCA §12311(b).



29. There have been violations of numerous provisions of 12 GCA §12301 *et. seq.*, as previously set forth in the Determinations Section of this Order. The issue arises in this matter as to which “person” or “entity” should be determined to have violated the law by improperly or illegally transferring E911 Funds, and to give each such person or entity an opportunity to “cure” the violation or violations.
30. Each of the transfers of E911 funds to the General Fund were authorized by past Directors of the Department of Administration. Benita Manglona was the Director of Administration when the FY2014 Fund transfers was made. Tony Blaz was the Director of Administration when the FY 2015 Fund transfer was made. Christine Baleto was the Director of Administration when the FY 2016 and 2017 E911 Fund transfers were made.<sup>18</sup>
31. For FY 2014 through 2016, there are memoranda from the Fire Chief to the Director of Administration acknowledging that E911 funds were permanently transferred to the General Fund. See Exhibits 1-3 attached to the ALJ Report. Each Director was clearly aware that the transfers had been made. On January 9, 2018, Director of Administration Christine Baleto signed a memorandum giving notice that a permanent transfer had been initiated for E911 funds to the General Fund in the amount of \$839,583.00. See Exhibit 4 attached to the ALJ Report.
32. The Department of Administration Journal Voucher included within Exhibit 1 indicates that \$1,839,854.00 was transferred from the E911 Fund to the General Fund effective September 30, 2014. Benita Manglona was Director of Administration when this transfer occurred.
33. The Department of Administration Journal Voucher included within Exhibit 2 indicates that \$712,500.62 was transferred from the E911 Fund to the General Fund effective September 30, 2015. Tony Blas was Director of Administration when the transfer occurred.
34. The Department of Administration Journal Voucher included within Exhibit 3 indicates that \$488,779.00 was transferred from the E911 Fund to the General Fund effective September 30, 2016. Christine Baleto was Director of Administration when the transfer occurred.

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<sup>18</sup> An email from Governor’s Chief Legal Counsel Sandra Miller to PUC ALJ Horecky dated December 31, 2018, indicates the following dates for Employment of prior Directors of Administration:  
“You also asked DOA to confirm the dates of employment of its previous directors. Here are the dates:  
Benita Manglona: June 20, 2011 to February 1, 2015;  
Tony Blaz: February 9, 2015 to January 30, 2016;  
Kathy Kagigi (Acting): February 1, 2016 to February 23, 2016;  
Christine Baleto: February 23, 2016 to February 2, 2018.”

35. The Department of Administration Journal Voucher included within Exhibit 4 indicates that \$839,582.81 was transferred from the E911 Fund to the General Fund effective September 30, 2017. Christine Baleto was Director of Administration when the transfer occurred.
36. Exhibit "5" attached to the ALJ Report is a "Enhanced 911 Emergency Report System FY2013 to FY 2017 Details". The Report was provided to the ALJ by the Governor's Chief Legal Counsel on October 26, 2018. It further indicates that some E911 revenues were permanently transferred from the E911 Fund and were not used for E911 purposes.<sup>19</sup>
37. Director of Administration Edward Birn became Director in 2018; there is no indication that E911 funds were transferred to the General Fund during his Directorship.
38. The laws governing the Department of Administration and its Directors establish that it is appropriate to hold such Directors responsible for transfers of E911 Funds that occurred during their terms. The Director of Administration "is the head of the Department of Administration."<sup>20</sup> Each division and organizational unit within the Department "shall be subject to the supervision and direction of the Director..."<sup>21</sup>
39. Furthermore, the Director administers the Department<sup>22</sup>; he "shall exercise and discharge the powers and duties of the Department through such divisions or other organizational units as he may establish pursuant to this Division or as otherwise provided by law..."<sup>23</sup>. The Director "shall enforce the provisions of this Division and of any other laws imposing any power, duty or other function upon the Department..."<sup>24</sup>
40. Directors Manglona, Blaz and Baleto violated 12 GCA §12301 *et. seq.*, Article 3, "911" Surcharge by transferring E911 Funds to the General Fund. However, Director Blaz passed away in 2016.

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<sup>19</sup> Email from Sandra C. Miller, Chief Legal Counsel to the Governor, to PUC ALJ Frederick Horecky, dated October 29, 2018.

<sup>20</sup> 5 GCA §3101.

<sup>21</sup> 5 GCA §20105.

<sup>22</sup> 5 GCA §20106(a).

<sup>23</sup> 5 GCA §20106(b).

<sup>24</sup> 5 GCA §20106(c).



41. The Department of Administration is an entity “within the Executive Branch of the government of Guam.”<sup>25</sup> The Governor of Guam is responsible for appointing the Head of an executive agency such as the Department of Administration.<sup>26</sup> The ALJ concludes that the Government of Guam has violated 12 GCA §12301 *et. seq.*, Article 3, “911” Surcharge, through the acts of its agency, the Department of Administration, and its agent, the Director of Administration, in permanently transferring E911 Funds to the General Fund.
42. On the other hand, Fire Chief San Nicolas is not responsible for the transfers of E911 funds to the General Fund, as he only acknowledges that such funds were transferred and has no personal responsibility for actually transferring such funds.

C. THE PUC REJECTS THE JUSTIFICATIONS OFFERED BY THE  
DEPARTMENT OF ADMINISTRATION FOR THE TRANSFERS OF E911  
FUNDS; SAID TRANSFERS WERE ILLEGAL.

43. On December 31, 2018, the Governor’s Chief Legal Counsel submitted a “revised” draft ALJ Report on behalf of the Department of Administration.<sup>27</sup> A true and correct copy thereof is attached to the ALJ Report as Exhibit “6”. The revised ALJ Report, as proposed by DOA, altered the draft ALJ Report to conclude that there was no violation by DOA resulting from the “transfer” of funds from the E911 Fund to the General Fund and expenditure of E911 funds for purposes with no relation to E911.
44. The revised ALJ Report would find that the Department of Administration did not violate 12 GCA § 12301 *et. seq.* by virtue of the four transfers of funds from the E911 Fund to the General Fund between FY2014 through FY2018.<sup>28</sup>
45. DOA claims legal authority to transfer funds from the E911 Fund to the General Fund as “interfund receivables” under GASB Statement No. 34. “GASB” refers to the Government Accounting Standards Board. The Board established generally accepted accounting principles for state and local government entities to “guide the preparation of external financial reports of those entities.”<sup>29</sup>
46. DOA points out that Guam law requires the Government of Guam to comply with the GASB standards. 5 GCA §22204 provides: “Unless otherwise found to be

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<sup>25</sup> 5 GCA §3101.

<sup>26</sup> 48 U.S.C. §1422c

<sup>27</sup> Email from Governor’s Chief Legal Counsel Sandra Miller to PUC ALJ Frederick Horecky re: Response to draft ALJ Report, dated December 31, 2018.

<sup>28</sup> *Id.*

<sup>29</sup> <https://searcherp.techtarget.com/definition/GASB>

impracticable, such rules and regulations shall provide that the principles of the governmental accounting and reporting, classification of funds and accounts, and accounting terminology shall conform to those recommended by the National Committee on Governmental Accounting.”

47. 5 GCA §22204 refers to accounting and reporting standards for the Government. GASB 34 is an accounting standard as to how a local government reports revenues, receipts and other transactions. GASB does not, nor does it purport to, create independent legal authority for transfers or expenditures of E911 funds that violate Guam law and 12 GCA § 12301 *et. seq.*
48. DOA further claims that, under GASB 34, “an *interfund receivable* is a legally permissible short-term loan made between individual funds where monies are transferred between the funds, usually for working cash purposes.” However, interfund receivables of E911 funds are not authorized under Guam law and violate the express provisions of the E911 Surcharge Law, 12 GCA § 12301 *at et. seq.* Transfer authority for E911 Funds is expressly prohibited under the Surcharge Law.
49. The transfers by DOA of E911 Funds out of the E911 Fund to the General Fund violate numerous provisions of the E911 Surcharge Law. The law requires that all 911 surcharges “*shall* be deposited in the Fund.”<sup>30</sup> Nothing in the surcharge law allows “interfund” transfers of E911 funds from the E911 fund to the General Fund.
50. In addition, DOA is only authorized to use money collected from the surcharges *solely* for enhanced 911 equipment and system costs.<sup>31</sup> There is no authorization or authority for DOA to *loan* money from the E911 fund to the General Fund. In DOA’s view, GASB 34 authorizes it to “pay an interfund loan withdrawn from a special fund.” No provision of the Surcharge Law or other law of Guam authorizes DOA to use E911 funds for “loans.” Numerous provisions of the Surcharge Law expressly provide that E911 funds may only be used for purposes related to the operation and maintenance of E911 system.
51. DOA maintains inconsistent positions on the “transfer authority” of the Governor. Initially it claims that the Governor is authorized to transfer funds from a special fund to the General Fund, citing 4 GCA § 4103.1. Subsequently, however, DOA’s position claims that the Governor’s transfer authority is not applicable to E911 funds as “the E911 Fund is primarily funded by telecom surcharge collections and not by budgetary appropriations to which the transfer authority would apply.”

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<sup>30</sup> 12 GCA § 12304(c).

<sup>31</sup> 12 GCA § 12304(d).



52. 5 GCA § 4103.1 does not authorize the Governor to transfer funds from the E911 Fund to the General Fund. 12 GCA § 12304 expressly *exempts* the E911 Fund from any transfer authority of the Governor. Where a specific statute appears to conflict with a general statute, the more specific statute prevails. *In re I Mina' Trentai Dos Na Liheslaturan Guahan*, 2014 Guam 24 ¶12. By prescribing the uses for E911 Funds, the Legislature never contemplated that E911 funds would be transferred to the General Fund for non-E911 uses.
53. Under the DOA “loan” theory, DOA would be entitled to transfer funds from the E911 Fund to the General Fund for any purpose and at any time it felt that the General Fund needed a “loan.” Administrative power to loan E911 Fund would frustrate the statutory purpose that E911 funds only be used to maintain and operate the E911 system; the E911 Fund would become an unrestricted fund for **any and all** General Fund purposes.
54. The Department of Administration not only made a series of “loans” of E911 Funds to the General Fund; when it became evident to the Department that the General Fund would not be able to repay the “loans” from the E911 Fund, it determined that the “loans” would be converted into “permanent transfers” from the E911 Fund to the General Fund. See Exhibits 1 through 4 attached to the ALJ Report. Thus, nearly \$4 Million was “permanently transferred” from the E911 Fund to the General Fund.
55. The funds permanently transferred from the E911 Fund to the General Fund were not used for the purposes intended under Guam or Federal law, that is the operation and maintenance of an E911 system. The nearly \$4 Million transferred to the General Fund was expended for non-E911 purposes. Expenditure of funds by the Department of Administration which were clearly E911 Funds, intended for the operation and maintenance of the E911 system, violates the requirement of law that the Department of Administration use all surcharge monies collected *solely* for enhanced 911 equipment and system costs.<sup>32</sup>
56. The very nature of the E911 fund establishes that DOA has no authority to transfer E911 Funds to the General Fund. E911 Funds are “separate and apart from all other funds of the government...”. All E911 surcharges are required to be deposited in the E911 Fund; there is no statutory authority for the transfer of any E911 Funds to the General Fund.<sup>33</sup>

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<sup>32</sup> 12 GCA § 12304(d).

<sup>33</sup> 12 GCA § 12304(a) and § 12304(c).

57. The Department of Administration further claims that it did not violate 12 GCA § 12304(e) and § 12304(f) “because no monies in the Fund were “expended”, claiming that “Interfund loans are not expenditures”. As previously established “Interfund loans” are not authorized at all under the 911 Surcharge Law, whether they are “expenditures” or not. E911 funds that are transferred to the General Fund retain their character as E911 funds and continue to be “E911” Funds.
58. As Speaker Cruz indicated during the FY2019 Budget Hearing for the Guam Fire Department, the E911 Funds which DOA transferred to the General Fund could have been used to purchase a new E911 system. Chief San Nicolas stated that the Fire Department was prevented from purchasing equipment or using those E911 funds as a result of non-availability of funds. DOA also violated the prohibition on expenditure of E911 Funds without the express approval of *I Liheslatura*.
59. In the meeting between the ALJ and officials of the Government on December 13, 2018, the Director of Administration indicated that E911 Funds had been used for other purposes, and stated that such E911 Funds could be used by the General Fund for purposes other than E911.
60. The holding of the Supreme Court of Guam *In Re Request of I Mina’ Trentai Dos Na Liheslaturan Guahan*, relative to the Use of Funds from the Tax Refund Efficient Payment Trust Fund, 2014 Guam 15, is directly contrary to the position that the Department of Administration argues in this case. There the Supreme Court held that the Government could not use monies in a Trust Fund designed to pay Income Tax Refunds for any other obligations, including those of the General Fund.<sup>34</sup>
61. Similarly, in this case, a plain reading of 12 GCA § 12301 *et. seq.* makes it clear that no E911 Funds may be committed to pay other obligations of the General Fund. Contrary to DOA’s assertion that no “expenditures” were made from the E911 Fund, the Supreme Court held even if there are fund advances or withdrawals of restricted funds, any disbursement would still constitute an “expenditure.”<sup>35</sup>
62. Here, as in the above Supreme Court case, the maintenance of the E911 Fund “separate and apart from all the other funds of the Government”, and the prohibitions on uses of such funds except for the operation and maintenance of the E911 system, indicate the Legislative intent to restrict the use of such E911 Funds.<sup>36</sup>

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<sup>34</sup> Id. at [61].

<sup>35</sup> Id. at [63].

<sup>36</sup> Id. at [64].



63. The PUC must take strong remedial action to ensure the sanctity of the E911 Fund and to ensure that such funds are only used for the upgrade and operation of the enhanced E911 emergency system, and for other permitted statutory purposes. E911 revenues are not funds generated for expenditure by the Government of Guam, the Department of Administration, or its Directors for any purposes desired. Both the Guam Legislature and the PUC, in establishing the E911 surcharge, intended that the funds would only be used for the express purposes set forth in the statute.

### **ORDERING PROVISIONS**

Upon consideration of the record herein, the ALJ E911 Investigation Report, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby **ORDERS** that:

1. The Department of Administration must establish a separate bank account for the E911 Fund. Checks issued shall be signed by the authorized signatories for the Department of Administration and the Fire Chief of the Guam Fire Department.
2. Pursuant to 12 GCA § 12311, the PUC hereby determines that the Government of Guam, the Department of Administration, and Department of Administration Directors Benita Manglona and Christine Baleto, have violated the provisions of 12 GCA §12301 *et seq.*, Article 3, "911" Surcharge, as set forth in this Report, by unlawfully transferring nearly \$4 Million from the E911 fund to the General Fund in fiscal years 2014 through 2017.
3. The Government of Guam, Department of Administration, through its current Director Edward Birn, and Directors of Administration Benita Manglona and Christine Baleto shall be given proper notice and allowed a reasonable opportunity, within a period of one hundred and twenty (120) days from the date of the PUC Order herein, to cure the violations of 12 GCA §12301 *et. seq.*, Article 3, "911" Surcharge, as set forth in this Report, by transferring, reimbursing, and redepositing the amount of \$3,880,714.62 back into the E911 Fund. Any "cure" remedy must make the E911 Fund "whole" for the illegal transfer of funds to the General Fund.
4. Copies of the PUC Order herein should be served upon the Government of Guam, Department of Administration through its present Director, and to former Directors Benita Manglona and Christine Baleto.

5. If the Government of Guam, the Department of Administration, and former Directors of Administration Benita Manglona and Baleto do not cure such violations, and transfer the amount of \$3,880,714.62 back to the E911 Fund within one hundred and twenty (120) days from the date of the PUC Order herein, the Commission shall then, at its next meeting: (1) determine whether the violations of 12 GCA §12301 *et. seq.*, Article 3, "911" Surcharge, upon the failure to cure such violations, should be referred to the Attorney General's Office for Prosecution; and (2) further consider the imposition of civil penalties, not to exceed Ten Thousand Dollars (\$10,000.00) per infraction, upon the Government of Guam, the Department of Administration, and former Directors of Administration Manglona and Baleto.
6. If the violations are not cured, the ALJ shall prepare further recommendations for the Commissioners, in subsequent proceedings before the PUC, for determination of whether to refer the violations to the Attorney General's Office for prosecution, upon which persons or entities civil penalties should be imposed, and the recommended amount(s) of such civil penalties.
7. In accordance with law and Commission past practice, the PUC expenses in conducting the investigation hereunder shall be deducted from the E911 Fund.

[SIGNATURES TO FOLLOW ON NEXT PAGE]




**SO ORDERED** this 17<sup>th</sup> day of January, 2019.



**JEFFREY C. JOHNSON**  
Chairman



**ROWENA E. PEREZ**  
Commissioner



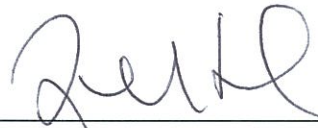
ITEM #1 ONLY

**JOSEPH M. MCDONALD**  
Commissioner

**FILOMENA M. CANTORIA**  
Commissioner



**MICHAEL A. PANGELINAN**  
Commissioner



**PETER MONTINOLA**  
Commissioner

**MARK MILLER**  
Commissioner