

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



In Re: Joint Application of TeleGuam
Holdings, LLC, and GTA Telecom, LLC,
for Approval of the Transfer of Control of
TeleGuam Holdings, LLC and GTA
Telecom LLC to AP TeleGuam Holdings,
INC.

GTA Docket 10-09

ALJ REPORT

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Joint Application of TeleGuam Holdings, LLC, and GTA Telecom, LLC, for approval by the PUC of the transfer of control of TeleGuam Holdings, LLC, and GTA Telecom, LLC, to AP TeleGuam Holdings, Inc. ["APTG"]. Applicants herein will be jointly referred to as "GTA".¹
2. APTG, an investment vehicle formed by certain funds served by Advantage Partners LLP, will acquire GTA from Shamrock Capital Advisors ["Shamrock"].²
3. On January 12, 2011, the proposed purchaser of GTA, APTG (including its investors and shareholders Advantage Partners IV, ILP, AP Cayman Partners II, L.P., and Japan Ireland Investment Partners [the "AP Funds"]) entered an Appearance in this matter and a Joinder in the Joint Application filed by GTA.³
4. In this Report, the Administrative Law Judge ["ALJ"]: (1) reviews the applicable statutory criteria which guide the PUC in determining whether to approve the sale and transfer of control of GTA to AP TeleGuam Holdings Inc. ["APTG"]; (2) addresses the issues raised in this proceeding and makes determinations concerning the appropriateness of the transfer/sale; and (3) makes recommendations to the PUC for an appropriate course of action in a proposed Order.⁴

¹ Joint Application of TeleGuam Holdings, LLC, and GTA Telecom, LLC, GTA Docket 10-09, filed November 19, 2010.

² GTA TeleGuam News Release issued on November 15, 2010, at p. 1.

³ AP TeleGuam Holdings, Inc., Notice of Appearance and Joinder in Joint Application, GTA Docket 10-09, filed January 12, 2011.

⁴ The "record" in this Docket includes all documents filed of record, administrative e-mails and public comments, recordings of the PUC Public Hearing conducted on January 27, 2011 and relevant business meetings, applicable agendas and minutes, and testimonies and briefs presented by the parties. GTA and the AP Funds have also filed

BACKGROUND AND PROCEDURAL HISTORY
OF THESE PROCEEDINGS

5. In the Guam Telecommunications Act of 2004, "New GTA" was defined as the "entity that purchased the assets and business of the Guam Telephone Authority". GTA, which had previously been a governmental entity, was purchased by a private entity.⁵
6. §12103 of the Act provided that the "new GTA" is deemed to have a Certificate of Authority, and that the Commission was ordered to "promptly issue Grandfather Certificates to New GTA and any other such telecommunications company within sixty (60) days of the effective date hereof."⁶ Companies which provide telecommunications services in Guam are required to have certificates of authority, which are issued by the PUC.⁷
7. TeleGuam Holdings, LLC, and GTA Telecom, LLC, were entitled to "Grandfathered Certificates" of Authority pursuant to §12103 of the Guam Telecommunications Act of 2004.
8. On February 28, 2005, the PUC issued a "Grandfather" Certificate of Authority to TeleGuam Holdings, LLC, authorizing it to provide facilities based and resold local exchange telecommunications services in Guam.⁸
9. On July 27, 2005 GTA Telecom LLC, a wholly owned subsidiary of TeleGuam Holdings, LLC, was also issued a Grandfathered Certificate of Authority by the PUC to provide local exchange and interexchange telecommunications services.⁹
10. Since privatization of GTA in 2005, Shamrock has been the owner of GTA.¹⁰
11. On November 19, 2010, Applicants TeleGuam Holdings LLC and GTA Telecom LLC filed their "Joint Application" requesting that PUC approve the sale and transfer of control of GTA from Shamrock to APTG.

responses to three sets of PUC Requests for Information, which are made a part of the record herein. Various documents filed by GTA and the AP Funds have been filed "under seal" and with a claim of confidentiality. All such documents are not publicly discloseable pursuant to the Commission's Rules relating to the Protection of Confidential Information in Regulatory Proceedings.

⁵ 12 GCA §12102(e).

⁶ 12 GCA §12103(a).

⁷ Id.

⁸ TeleGuam Holdings, LLC, Certificate of Authority, Docket 05-02, issued by the PUC on February 28, 2005.

⁹ GTA Telecom LLC, Certificate of Authority, Docket 05-03, issued by the PUC on July 27, 2005.

¹⁰ GTA TeleGuam News Release issued on November 15, 2010.

12. On November 29, 2010, after considering the matter at a meeting and upon the Report of PUC Counsel, the PUC issued an Order Approving the Sale/Transfer of Ownership and Control of TeleGuam Holdings LLC, and GTA Telecom, LLC, subject to conditions.¹¹
13. Thereafter PTI Pacifica Inc. dba IT&E ["IT&E"], Pacific Data System Inc. ["PDS"], and NTT Docomo Pacific ["Docomo"] all filed requests that the PUC rehear this matter and provide an opportunity for public notice, comment, and hearing.¹²
14. In the filings, the above companies indicated that sufficient public notice had not been provided by the PUC that it would hear and consider the Joint Application of TeleGuam Holdings LLC and GTA Telecom LLC for approval of the transfer of control and sale of the companies to APTG. The companies contended that the opportunity to comment and participate in a public hearing was required under 12 GCA §§12103(c) (1), (2), and (g).¹³
15. By Order issued on December 15, 2010, the ALJ granted the applications of IT&E, PDS, and Docomo for rehearing in this matter based upon the finding that there must a public hearing and an opportunity for the public to comment pursuant to 12 GCA §12103(c).¹⁴
16. On December 22, 2010 and January 3, 2011, the PUC caused a notice to be published in the Pacific Daily News attesting to: (1) the filing of the Joint Application; (2) the opportunity for interested persons to file comments of the record regarding the Joint Application; and (3) the holding of a public hearing to receive public comment and testimony on the Joint Application.¹⁵
17. On January 24, 2011, IT&E and PDS filed written comments regarding the Joint Application.¹⁶ The comments requested, *inter alia*, that the PUC conduct a more detailed examination of the sales transaction, the financing arrangements and the debt leveraging;

¹¹ PUC Order Approving Sale/Transfer of Ownership and Control, GTA Docket 10-09, issued November 29, 2010.

¹² See PTI Pacifica Inc. dba IT&E Petition for Re-Hearing, GTA Docket 10-09, filed December 9, 2010; Pacific Data Systems Letter filing dated December 9, 2010, GTA Docket 10-09; and NTT Docomo Pacific Letter Filing dated December 13, 2010, GTA Docket 10-09.

¹³ *Id.*

¹⁴ ALJ Order Granting Request for Rehearing, GTA Docket 10-09, issued December 15, 2010.

¹⁵ PUC Public Notice of Joint Application of TeleGuam Holdings, LLC and GTA Telecom, LLC for PUC Approval of the Transfer of Control of TeleGuam Holdings, LLC and GTA Telecom, LLC to AP TeleGuam Holdings, GTA Docket 10-09, published in the Pacific Daily News on December 22, 2010 and January 3, 2011.

¹⁶ Comments of PTI Pacifica Inc. dba IT&E, GTA Docket 10-09, filed January 24, 2011; PDS Public Comments regarding Joint Application of TeleGuam Holdings, GTA Docket 10-09, filed January 24, 2011.

that PUC retain an outside consultant to examine the transaction; and that issues concerning GTA's past performance in certain areas be scrutinized.¹⁷

18. On January 26, 2011, PDS filed "Supplemental Public Comments" and attached certain news articles (appearing in both local newspapers and national publications such as the Wall Street Journal) concerning the potential default by Advantage Partners LLP with regard to the purchase of the Tokyo Star Bank.¹⁸ PDS was concerned that these "financial difficulties" could have a detrimental impact upon the proposed transaction to purchase GTA, and that the PUC should exercise caution in the execution of its obligations to protect the public interest.
19. On January 27, 2011, the PUC conducted a Public Hearing at which testimony on the Joint Application was taken. Testimony was provided by representatives of GTA, the AP Funds, PDS, and IT&E. The ALJ and the PUC Chairman questioned the respective parties concerning their testimonies.

A DESCRIPTION OF THE TRANSACTION

20. On November 15, 2010, TeleGuam Holdings, LLC dba GTA TeleGuam announced in a news release that it and Advantage Partners, LLP had signed a "Definitive Agreement" whereby APTG, an investment vehicle formed by certain funds served by Advantage Partners, would acquire GTA TeleGuam from Shamrock Capital Advisors.¹⁹
21. The owners of APTG will be, *inter alia*, Advantage Partners IV, ILP, AP Cayman Partners II, L.P., and Japan Ireland Investment Partners (collectively "the AP funds").²⁰
22. The AP Funds have clarified that: "Advantage Partners IV, ILP, AP Cayman Partners II, L.P. and Japan Ireland Investment Partners will own approximately 42.2%, 29.4% and 25.6%, respectively, of the shares of APTG following the transaction. The remaining 2.8% of APTG will be owned by a yet-to-be-formed employee-sponsored investment partnership."²¹
23. The AP Funds will be the "direct" owners of APTG. APTG has filed with the PUC the "Post-Transaction Corporate Structure Chart" (Exhibit A attached to the Joint Application

¹⁷ Id.

¹⁸ Supplemental Public Comments of PDS regarding GTA Docket 10-09, filed January 26, 2011.

¹⁹ Id. at p. 1.

²⁰ Exhibits D & E to Joint Application, GTA Docket 10-09, filed under Seal on November 19, 2010.

²¹ AP Response to PUC Request for Information, GTA Docket 10-09, filed January 26, 2011.

submitted before the Federal Communications Commission).²² There are numerous other "indirect" owners. A true and correct copy thereof is attached hereto as Exhibit "1".

24. Advantage Partners LLP is a private equity firm founded in 1992 in Japan.²³ It is a Japanese limited liability partnership. It provides a variety of services to the AP Funds, including identification and evaluation of prospective investments, management recruiting and consulting to the AP Funds' portfolio companies, and reports on the AP funds for investors.²⁴
25. Advantage Partners LLP ["AP LLP"] does have an "indirect" ownership interest in APTG through its ownership interest in Japan Ireland Investment Partners and a small interest in Advantage Partners IV, ILP.²⁵ AP LLP does not have the ability to control or be involved in the day to day business operations, activities or decisions of Japan Ireland Investment Partners, the Advantage IV ILP or the other AP Funds.²⁶
26. AP LLP does not make investment decisions for the AP Funds.²⁷ Each of the AP Funds has its own board of directors, is independently controlled, and makes its own investment decisions. AP LLP does not enjoy benefits of being an indirect ownership interest holder of the aforementioned AP Funds, as such interest has "nothing to do with (i) the funds or investments or the attribution of economic benefits, or (ii) day-to-day control over, the AP Funds."²⁸
27. For the governance of Purchaser, APTG will have one Director, Stanley Emmett Thomas III. The parent company of GTA will have no Board of Directors. As for GTA Board members, current Directors will likely remain, but the Shamrock Directors will be replaced.²⁹

²² See APTG's Response to Third Set of PUC Requests for Information, GTA Docket 10-09, filed February 9, 2011, at p.1.

²³ Testimony of Emmett Thomas, Partner (Advantage Partners, H.K.) at PUC Public Hearing conducted on January 27, 2011.

²⁴ AP Funds Response to PUC Request for Information, GTA Docket 10-09, filed January 26, 2011 at p. 4; Testimony of Emmett Thomas, *supra*; APTG's Response to Third Set of PUC Requests for Information, GTA Docket 10-09, filed February 9, 2011, at p.2.

²⁵ *Id.*

²⁶ AP Funds Response to PUC Request for Information, GTA Docket 10-09, filed January 26, 2011 at p. 2.

²⁷ *Id.*

²⁸ APTG's Response to Third Set of PUC Requests for Information, GTA Docket 10-09, filed February 9, 2011, at p. 2.

²⁹ *Id.* at p. 5; Testimony of Emmett Thomas at PUC Public Hearing on January 27, 2011.

28. The AP Funds, as Purchaser's shareholders, will not be directly involved in any decisions of GTA or APTG. APTG will be involved in the important corporate decisions of the GTA related to financing, reorganization, divestiture, and setting policies for investment decisions. Management of GPA will make all other decisions including approving spending and investment decisions.³⁰
29. Applicants describe the transaction as one which would "merely replace one series of owners with another..."³¹
30. In response to the PUC's First Information Request, GTA filed, under seal, a copy of the Agreement and Plan of Merger, on November 24, 2010.³² The agreement contains a detailed description of the terms and conditions of the sale. It also contains the total purchase price, as well as the equity contribution of the AP Funds.³³
31. With regard to the present transaction, APTG will purchase all of the ownership of Shamrock in TeleGuam Holdings, LLC. AP TeleGuam Holdings will create a "Merger Sub", which will merge with TeleGuam Holdings. TeleGuam Holdings, LLC, the existing holder of the Certificate of Authority, will be the surviving company as a "wholly owned, direct subsidiary of Purchaser [AP TeleGuam Holdings, LLC] and GTA will become a wholly owned, indirect subsidiary of purchaser."³⁴
32. The transaction contains a deadline of 270 days following the execution of the agreement, which means that completion of the transaction must occur on or about August 10, 2011.³⁵
33. The transaction must also be approved by the Federal Communications Commission, which process may take 45 to 60 days or more.³⁶ Purchaser and other parties have filed their Joint Application with the FCC; a copy thereof has been provided to the PUC.³⁷

³⁰ APTG's Response to Third Set of PUC Requests for Information, GTA Docket 10-09, filed February 9, 2011, at p.5.

³¹ Id., Exhibit A, Joint Application to the FCC.

³² GTA Response to Information Request, GTA Docket 10-09, filed November 24, 2010.

³³ Agreement and Plan of Merger, Attachment 1 to GTA's Response to Information Request, GTA Docket 10-09, filed November 24, 2010.

³⁴ Joint Application of TeleGuam Holdings, LLC, and GTA Telecom, LLC, for approval of the Transfer of Control, GTA Docket 10-09, filed November 19, 2010, at p. 4.

³⁵ Agreement and Plan of Merger at p. 2.

³⁶ Id. at p. 3; Testimony of Yoko Sugita, Senior Associate CPA (Advantage Partners, LLP) PUC Public Hearing on January 27, 2011.

³⁷ APTG's Response to Third Set of PUC Requests for Information, GTA Docket 10-09, filed February 9, 2011, Exhibit A.

34. The AP Funds which own Purchaser will provide it with substantial equity financing. Commitment Letters from each of the AP Funds, indicate the specific amounts that each fund will provide as equity financing.³⁸
35. The Purchaser APTG has obtained a commitment from BNP Paribas to provide the debt financing.³⁹ Purchaser will acquire 100% of the equity interest in TeleGuam Holdings LLC.⁴⁰ It is a guarantor of the credit facilities and provides security.⁴¹
36. When the transaction is completed, TeleGuam Holdings LLC will merge with the AP TeleGuam Merger Sub, with TeleGuam as the surviving company of the merger.⁴² Completion of a number of detailed procedures remain to determine the final purchase price and to buy out the interests of the present owner Shamrock and its representatives.
37. Both PDS and IT&E suggest that GTA did not initially reveal its true ownership structure: the initial Joint Application filed included a diagram of the "Post-Transaction Ownership Structure of the Applicants" which indicated that Advantage Partners IV ILP would be the sole owner of AP TeleGuam Holdings LLC. However, the diagram of the post ownership structure submitted to the FCC indicated a "much more complicated ownership structure" in which Advantage Partners IV ILP would have less than a fifty percent ownership interest in the Purchaser.⁴³
38. The ALJ does not find that Applicants or Purchaser have filed misleading or inaccurate ownership information. In its Response to Information Request filed on November 24, 2010, GTA further explained that "the dashed lines connecting purchaser and AP IV [on the Post-Transaction Ownership Structure of the Applicants] "were meant to illustrate that AP IV would not be the sole owner of Purchaser, but rather the largest owner of purchaser." ⁴⁴

³⁸ GTA's Response to Information Request, GTA Docket 10-09, confidential and submitted under seal, filed November 24, 2010, at p. 3.

³⁹ Exhibits D & E to Joint Application, GTA Docket 10-09, Attachment 4 to Exhibit E, filed November 19, 2010.

⁴⁰ GTA Response to Information Requests, GTA Docket 10-09, at p. 5.

⁴¹ Id. at p. 3.

⁴² See Pre and Post Ownership Structure of the Parties/Applicants, Exhibit A to Joint Application.

⁴³ PDS Public Comments regarding Joint Application of TeleGuam Holdings, GTA Docket 10-09, filed January 24, 2011, at p. 4.; see also Comments of PTI Pacifica Inc. dba IT&E, GTA Docket 10-09, filed February 24, 2011, p. 2.

⁴⁴ GTA Responses to Information Requests, Confidential and Submitted Under Seal, GTA Docket 10-09, filed November 24, 2010, at p. 6.

39. In the News Release Filing on November 15, 2010, as well as filings with the PUC on November 24, 2010 and January 26, 2011, GTA and the AP Funds have clearly indicated that at least 4 funds would ultimately comprise the Purchaser of GTA. As previously indicated, APTG has filed with the PUC the same "Post-Transaction Corporate Structure Chart" which was provided to the FCC.
40. There has not been a failure by GTA or APTG to provide accurate ownership information or any attempt to mislead the PUC or the parties in that regard. To the contrary, GTA and APTG have been diligent and fully cooperative in providing detailed responses to the three sets of information requests issued by the PUC. GTA and APTG have filed timely and informative responses.

THE ROLE OF THE PUC AND THE APPLICABLE LEGAL STANDARDS

41. The duties of the PUC relative to issuance of Certificates of Authority for Telecommunications companies are set forth in 12 GCA §12103 [the Guam Telecommunications Act of 2004]. Pursuant thereto a person is not authorized to provide or sell telecommunications services in Guam [with the exception of commercial mobile service] without a certificate of authority issued by the PUC.⁴⁵
42. In the instant case, neither the Applicants nor Purchaser APTG are applying for the issuance of a new Certificate of Authority, nor are they required to do so. TeleGuam Holdings LLC and GTA Telecom LLC are presently holders of Certificates of Authority validly issued by the PUC.
43. Even were the proposed sale transaction set forth in the Joint Application to be fully consummated and approved by the PUC, TeleGuam Holdings and GTA Telecom will continue as the named entities holding Certificates of Authority. This proceeding does not impact the right or entitlement of TeleGuam and GTA to continue to hold their existing Certificates of Authority.
44. In this instance, Applicants request PUC approval of the sale of TeleGuam and GTA Telecom from the present owner, Shamrock, to the Purchaser APTG.
45. 12 GCA §12103(g), provides as follows in pertinent part:

⁴⁵ 12 GCA §12103(a)

A telecommunications company shall not sell, assign, or transfer a certificate of authority, or any portion thereof, issued under this Article, or transfer control of a telecommunications company holding a certificate of authority issued under this Article, without the prior approval of the Commission and a determination by the Commission that the proposed sale, assignment or transfer satisfies the requirements for granting a certificate of authority under Subsection (c). Prior approval shall not be required for transfers of control that do not result in a substantial change in ultimate ownership of a telecommunications company holding a certificate of authority. (emphasis added).

46. Under the applicable statutory provisions, the control of a telecommunications company holding a certificate of authority may not be transferred without the prior approval of the Commission and a determination by the Commission that the proposed sale or transfer satisfies the requirements for granting a certificate of authority. Since the present transaction involves the sale of all of the assets of TeleGuam and GTA Telecom, and a complete transfer of control and ownership of such companies from Shamrock to APTG, such transfer of control must be approved by the PUC.
47. Before the sale or transfer of control can be effective, the Commission must make a determination that the proposed sale or transfer satisfies the requirements for granting a certificate of authority as set forth in 12 GCA §12103(c).
48. The two findings required by the Commission in subsection (c) are as follows:
- (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the telecommunications services in Guam for which it seeks a certificate of authority; and (2) the granting of a certificate of authority to the applicant would not be contrary to the public interest.⁴⁶

APPLICANTS WILL CONTINUE TO HAVE SUFFICIENT FINANCIAL RESOURCES TO PROVIDE TELECOMMUNICATION SERVICES IN GUAM UNDER THE EXISTING CERTIFICATES OF AUTHORITY AFTER THE TRANSFER OF CONTROL OF GTA

49. The "Applicants" herein are TeleGuam Holdings LLC and GTA Telecom LLC. In addition, the Purchaser, APTG, has joined in the Application and will also be considered under the statutory criteria set forth.

⁴⁶ See 12 GCA §12103(c)(1) and (2).

50. A review of the record herein regarding the "financial resources" of TeleGuam holdings and GTA Telecom establishes that Applicants will continue to have sufficient financial resources to provide telecommunications services after the transfer of control of GTA:
- a) Applicants have filed herein the "Consolidated Balance Sheets" for TeleGuam Holdings LLC and Subsidiaries as of December 31, 2008 and 2009, and unaudited Consolidated Balance Sheet and Income Statement for 2010.⁴⁷ Such Balance Sheets and Income Statements indicate that Applicants have substantial and significant financial resources which should enable them to continue to provide telecommunications services in Guam after a transfer of control of GTA to Purchaser APTG.
 - b) GTA owns assets, including property, plant and equipment which constitute its telecommunications system and enable it to provide telecommunications services.⁴⁸
 - c) Said Balance sheets and Income Statements indicate that there was a consistent and healthy increase in GTA's revenues for each year from 2008 to 2010 in amounts totaling millions of dollars; on the other hand, long-term debt has been reduced during that same period.
 - d) Long term debt has been reduced in substantial amounts for every year from 2008 through 2010. Payoff of long term debt by GPA is an indication that it is capable of meeting its current debt obligations.
 - e) The Unaudited Financial Statement for 2010 establishes a continuing trend in the reduction of long term debt and increasing total current assets.
 - f) There is every indication that Applicants will continue to have the same strong financial resources available to provide telecommunications services after the sale as they had before the sale. GTA will continue to own the same assets and telecommunications system.
 - g) Because the proposed transaction will occur at the holding company level there is no proposed change in any of the assets or liabilities of the

⁴⁷ Exhibit D to Joint Application, GTA Docket 10-09, filed under seal on November 19, 2010.

⁴⁸ Id.

Applicants; the Applicants will continue to possess the same strong financial qualifications they do at present after the sale.⁴⁹

- h) No changes are required to the existing Certificates of Authority. Those Certificates are not being transferred to a new or separate company; they remain with the same companies that are presently providing telecommunications services.
- i) The PUC, by previously granting Certificates of Authority to TeleGuam Holdings LLC and GTA Telecom, determined that those Applicants do possess sufficient financial resources to provide the telecommunications services covered by the Certificates of Authority.

**PURCHASER APPEARS TO HAVE SUFFICIENT FINANCIAL
RESOURCES TO FUND THE SALE TRANSACTION AND TO ASSIST GTA IN
CONTINUING TO PROVIDE TELECOMMUNICATION SERVICES IN GUAM
UNDER THE EXISTING CERTIFICATES OF AUTHORITY**

51. Purchaser APTG (including shareholders AP Cayman Partner II, L.P., Advantage Partners IV, ILP, and Japan Ireland Investment Partners) has demonstrated, in discovery provided to the PUC, a strong financial commitment to continue to provide for the expansion of telecommunications services in Guam and to adhere to the Five Year Build Out Plan previously filed by GTA in connection with the USAC Certification.⁵⁰
- a) The Purchaser has committed to continue to build the infrastructure improvements set forth in the Five Year Build Out Plan.
 - b) The 2011 "Capex Plan" submitted by the APTG (Purchaser) indicates that GTA intends to spend millions of dollars annually in the build out of its telecommunications system.⁵¹
 - c) The Financial Statements of AP Cayman Partners II, L.P. and Advantage Partners IV, ILP indicate that both companies have substantial financial assets.⁵²

⁴⁹ Joint Application of TeleGuam Holdings, LLC and GTA Telecom, LLC for Approval of the Transfer, GTA Docket 10-09, at p. 5.

⁵⁰ Exhibit A to PUC Request for Information, GTA Docket 10-09, filed January 26, 2011.

⁵¹ Id.

- d) Advantage Partners IV, ILP is an investment limited partnership under Japanese law established in January 2007 with a total capital commitment of approximately \$0.9 Billion.
- e) In aggregate, AP IV, AP Cayman, and JIIP have capital commitments from their investors of billions of dollars for investment into multiple corporations including Purchaser and Applicants. Advantage Partners LLP, over the last 13 years, made more than 30 investments and had \$5.0 Billion of total capital commitments under its management from both Japanese and international investors, with over \$700M of un-invested capital in existing funds. Such un-invested funds will be available for capital injection to GTA if required, pending review on a case by case basis.⁵³
- f) At the Public Hearing, PDS raised an issue as to whether there was sufficient information in the public record to conclude that Purchaser meets the statutory requirements.
- g) As previously indicated the “record” in this proceeding includes all documents that have been filed. However, pursuant to PUC Rules relating to the Protection of Confidential Information and Regulatory Proceedings under the Guam Telecommunications Act of 2004, the PUC is obligated to treat as confidential all documents, data, information, studies and other matter filed with the PUC that are claimed to be confidential in nature.⁵⁴
- h) There is a procedure provided under such Rules for challenging a claim of confidentiality or obtaining information which is claimed to be confidential. However, absent a successful challenge to a claim of confidentiality under the Rules, the PUC may not disclose documents which include confidential business information.

⁵² See Attachments 1 & 2, Exhibits D & E to Joint Application, GTA Docket 10-09, filed under seal on November 19, 2010.

⁵³ Testimony of Emmett Thomas at PUC Public Hearing conducted on January 27, 2011; email from AP Funds Attorney Joyce Tang to PUC Counsel, dated February 18, 2011.

⁵⁴ Rules relating to the Protection of Confidential Information and Regulatory Proceedings under the Guam Telecommunications Act of 2004, Docket 05-01, filed July 27, 2005.

- i) In Commitment Letters from each of the AP Fund shareholders of the Purchaser, they each agree to provide significant amounts of capital towards the equity in the purchase.⁵⁵
- j) The Commitment Letter from financial institution BNP Paribas commits to financing the principal loan amount of the sales transaction.⁵⁶ BNP Paribas, according to its website, is a European leader in global banking and financial services and one of the six strongest banks in the world. It has one of the largest international networks with operations in 84 countries and over 200,000 employees.⁵⁷
- k) BNP Paribas was previously involved in the financing of TeleGuam in 2007. Its familiarity with GTA over a number of years make it uniquely situated to give an opinion on the financial condition of GTA.
- l) Paribas indicates that it is satisfied with the terms of the present sale transaction and is willing to loan the amounts indicated based upon its belief in the credit worthiness of the borrowers.⁵⁸
- m) According to BNP Paribas, the level of leverage for the transaction is reasonable and manageable. In its opinion, GTA, due to its greater size and diversification at present as compared with in 2007, make it a better credit versus 2007 at the same leverage level.⁵⁹
- n) The leverage of the present transaction is substantially lower now than it was in 2007. In 2007 the financing transaction was leveraged at 5.7x debt to "ebitda" (earnings before interest, tax, depreciation, and amortization). However, the contemplated acquisition leverages the Company at only 4.7x debt to ebitda.
- o) The leverage level for the GTA sale transaction is consistent with that of other middle market leverage deals. BNP Paribas has confidence in the

⁵⁵ Exhibit E to Joint Application, GTA Docket 10-09, filed under seal on November 19, 2010.

⁵⁶ Confidential Letter from BNP Paribas dated February 7, 2011, to the Guam Public Utilities Commission

⁵⁷ See website at www.bnpparibas.com.

⁵⁸ Confidential Letter from BNP Paribas dated February 7, 2011, to the Guam Public Utilities Commission

⁵⁹ Id.

ability of TeleGuam to handle the contemplated leverage level.⁶⁰ GTA appears to have sufficient cash available to service its debt.

- p) For all of the reasons set forth herein, the ALJ concludes that Applicants, including the Purchaser and the AP Funds, have established that they do have sufficient financial resources to continue to provide the telecommunications services in Guam after the sales transaction is consummated.

**THERE IS NO EVIDENCE IN THE RECORD THAT THE TRANSACTION
INVOLVING ADVANTAGE PARTNERS LLP AND TOKYO STAR BANK HAS
ANY IMPACT UPON THE GTA SALE**

52. PDS filed Supplemental Public Comments on January 26, 2011.⁶¹ Therein PDS attached various newspaper articles indicating the possibility that Advantage Partners LLP could default on a loan of \$2.1 Billion involving the Tokyo Star Bank. According to the Wall Street Journal of January 25, 2011, lenders to Advantage Partners (Lone Star Funds) had set a deadline for a special purpose vehicle, created by Advantage Partners LLP to acquire Tokyo Star Bank, to make interest payments that were due.
53. PDS raised the concern that the financial difficulties faced by Advantage Partners LLP concerning the Tokyo Star situation could "foretell future issues that GTA could face" and that the PUC should consider this new information.
54. During the Public Hearing held by PUC on January 27, 2011, Mr. Emmett Thomas testified that the Tokyo Star Bank situation had no bearing on the GTA sales transaction and did not present any risk for GTA. He indicated that the investment of Advantage Partners LLP in the Tokyo Star Bank was through a "special purpose vehicle" and that there is absolutely no recourse by the creditors on the Tokyo Star Bank Loan to the AP Funds or Advantage Partners LLP.⁶²
55. Neither Advantage Partners LLP nor the AP Funds had made any guarantees concerning the Tokyo Star Bank Loan, nor were they liable for any interest or principal payments

⁶⁰ Id.

⁶¹ Supplemental Public Comments of PDS regarding GTA Docket 10-09, filed January 26, 2011.

⁶² Testimony of Emmett Thomas at PUC Public Hearing on January 27, 2011.

involving the Tokyo Star Bank. Each deal is structured individually, and the Tokyo Star Bank situation has no reference to or bearing upon, the GTA sales transaction.⁶³

56. Neither AP LLP nor the AP Funds could “default” on the loans related to the Tokyo Star Bank because they have no liability to the individual investments. They have no liability to the creditors of the Tokyo Star Bank Investment.⁶⁴
57. The “special purpose vehicles” created for the sole purpose of making the investment in Tokyo Star Bank are solely liable for the investment in Tokyo Star Bank and the obligations to the creditors.⁶⁵
58. PDS testified through its attorney Mr. Bill Mann, and did not dispute the statement of Mr. Thomas that the Tokyo Star Bank situation wouldn’t directly affect the GTA sale.⁶⁶
59. The ALJ finds that there is no evidence that the Tokyo Star Bank loan transaction in any manner impacts the GTA sale transaction. There is no showing that the Purchaser of GTA is liable for the loans involving the Tokyo Star Bank. The transaction does not appear to be relevant to the present GTA sales transaction.

**APPLICANTS HAVE SUFFICIENT TECHNICAL AND MANAGERIAL
RESOURCES TO PROVIDE TELECOMMUNICATIONS SERVICES IN GUAM**

60. The Applicants indicate that “the proposed transaction will not involve a change in Applicants’ operating authorities in Guam...Purchaser intends to maintain the Applicants’ existing management team and Guam-based employees following completion of the transaction, so that the applicants will continue to possess the same technical and managerial qualifications as they do at present; and these will be supplemented by the management team of purchaser.”⁶⁷
61. Applicants also indicate that the same management team which has guided GTA forward since privatization will continue to manage GTA after the transfer of control of TeleGuam Holdings, LLC to APTG. That management team has demonstrated its ability to

⁶³ Id.

⁶⁴ APTG’s Response to Third Set of PUC Requests for Information, GTA Docket 10-09, filed February 9, 2011, at p. 3.

⁶⁵ Id. at p. 4.

⁶⁶ Testimony of William B. Mann at PUC Public Hearing on January 27, 2011.

⁶⁷ Joint Application of TeleGuam Holdings, LLC and GTA Telecom, LLC for Approval of the Transfer, GTA Docket 10-09, at p. 4-5.

successfully provide telecommunications services to the people of Guam under the Certificate of Authority.

62. The current experienced Management Team, whose biographies are set forth in Exhibit B to the Joint Application, will continue to provide the telecommunications services authorized under the Certificates of Authority.
63. In addition, the Purchasers (the AP Funds) have indicated that currently, they have no plans to become directly involved in the management of TeleGuam Holdings LLC. They intend to maintain the existing management team of the TeleGuam licensees in place after the transaction.⁶⁸
64. APTG, or ultimately the AP Funds, does retain the right, as it is entitled to do, to exercise membership rights to ensure the financial and operational soundness and integrity of the company, including the election of managers.⁶⁹
65. At the Public Hearing, Mr. Thomas testified that the current Directors of GTA would remain on the Board, and only the Shamrock Directors would be replaced.⁷⁰ However, APTG may retain AP LLP as a consultant to GTA to support the management team of GTA.⁷¹
66. The ALJ is satisfied that GTA has made a sufficient showing that GTA will continue to possess sufficient technical and managerial resources and abilities to provide the telecommunications services to the people of Guam under the Certificates of Authority after the transfer of control of TeleGuam Holdings LLC to APTG.

⁶⁸ Response of AP Teleguam Holdings LLC and the AP Funds to PUC Request for Information, GTA Docket 10-09, filed January 26, 2010 at p. 3.

⁶⁹ Id. at p. 3.

⁷⁰ Testimony of Emmett Thomas at PUC Public Hearing conducted on January 27, 2011.

⁷¹ APTG's Response to Third Set of PUC Requests for Information, GTA Docket 10-09, filed February 9, 2011, at p. 5.

**APPROVAL BY THE PUC OF THE SALE/TRANSFER OF CONTROL OF
TELEGUAM HOLDINGS LLC IS NOT CONTRARY TO THE PUBLIC INTEREST**

67. Under the applicable statutory standards, the PUC must determine whether the sale/transfer of control of TeleGuam Holdings to the ownership of APTG is "not contrary to the Public Interest."
68. In written comments submitted on January 24, 2011, PDS has raised numerous concerns regarding the present operations of GTA. The concerns involve: (1) alleged violations of existing tariff rules; (2) alleged anti-competitive rates and charges in the form of discounts and other credits; (3) the failure of GTA to conduct a rate/TELRIC study concerning the "justness" and "reasonableness" of GTA's current rates.
69. PDS also claims that GTA has failed in its commitment, made at the time of its privatization, to provide wireless Wi-Fi broadband to Guam schools.
70. PDS raised these "concerns" as comments questioning, or in opposition to, the Joint Application. However, there is no proper evidentiary record before the PUC at the present time proving or establishing the substance or validity of any of these concerns.
71. It is not appropriate for the PUC to undertake a detailed examination of the legitimacy of the concerns raised by PDS in the context of this proceeding involving certificates of authority and transfer of control of GTA. Such concerns should be brought in the appropriate manner and in a separate docket.
72. The formal matter now pending before the PUC is the Application for Approval of the transfer of control of GTA. The concerns raised by PDS are not directly relevant to the issue of **whether the sale of GTA is contrary to the public interest**. In this proceeding, the review and scope of issues before the PUC is constrained by the statutory framework under 12 GCA §12103.
73. Such concerns must also be formally raised, if at all, and not solely through public comments. Should PDS desire to bring any of the forgoing matters before the PUC, there are adequate statutory means of doing so. 12 GCA §12107(a) provides: "Any interested person complaining of anything done or omitted to be done by any telecommunications company in violation of this Article or the rules, regulations and orders of the Commission may file a petition or complaint with the Commission."

74. If PDS claims that GTA's rates and charges are anti-competitive or discriminatory, it can invoke the PUC's jurisdiction pursuant to 12 GCA §12105 to specifically determine whether GTA's rates meet the "just and reasonable" standard.
75. If PDS claims that GTA is violating existing tariff rules, it can invoke PUC's jurisdiction under 12 GCA §12106.
76. Thus, should PDS have claims concerning GTA's violation of rules and regulations regarding tariffs, the imposition of discriminatory or anti-competitive rates, or the failure to provide required services, it has an appropriate remedy of filing a formal complaint pursuant to 12 GCA §12107.
77. If PDS seeks to raise such claims, it should file a specific complaint about the concerns which is raises in a separate and specifically directed proceeding. In such case, the Applicants and all parties, as well as the PUC, would have a full and adequate opportunity to address the concerns raised by PDS.⁷²
78. GTA has presented information establishing that it has implemented nearly all of the matters it agreed to in Section 6.10(e) of the privatization Asset Purchase Agreement between Guam Telephone Authority and TeleGuam Holdings LLC. The Company states that it is capable of deploying Wi-Fi technology in the schools and the libraries, but at present MCV and PDS are currently contracted by the government to provide telecom and broadband services to the public schools and libraries.⁷³
79. The Guam Telecommunications Act of 2004 provides that it is in the public interest to provide the people of Guam with modern, innovative, accessible and affordable telecommunications services and products.⁷⁴

⁷² A full evidentiary proceeding would have to be undertaken by the PUC before any of the concerns of PDS could be substantiated. GTA's existing General Exchange Tariff and certain discounts proposed by GTA have previously been reviewed and approved by the PUC. The current rate schedule of GTA was found to be just and reasonable by virtue of Section 7 of Public Law 27-109, Section 7, enacted on November 8, 2004. Pursuant thereto, GTA was prohibited from raising rates for five years following the closing of the privatization of GTA. To date, GTA has not sought any rate increase before the PUC. As to concerns about the alleged failure of GTA to conduct a TELRIC study, such concern was raised during a hearing by the PDS in PDS Docket 10-02, an arbitration proceeding between PDS and GTA. However, issues involving TELRIC and pricing were essentially dropped: they were not arbitrated or presented to the Administrative Law Judge. PUC Amended Order, PDS Docket 10-02, issued June 16, 2010, at p. 3.

⁷³ Id. at p. 6.

⁷⁴ 12 GCA §12101(a)(2).

80. The transfer of control of Teleguam Holdings, LLC is not contrary to the public interest; Teleguam Holdings, LLC, and GTA Telecom, LLC will continue to offer service to the customers of Guam with no change in rates or terms and conditions.⁷⁵ The sale will facilitate GTA's ability to provide telecommunications services and products to the people of Guam. All of the Applicants' current tariffs will remain in effect.
81. Also in the interest of consumers of telecommunications services is that the expansion of facilities and technology continue on Guam. APTG is committed to investing in Guam to offer state of the art service to all customer segments. It indicates that, with its financial backing, APTG will be able to maintain its state of the art infrastructure, offer quadruple-play, and be poised to expand to serve new customers that are expected to result from the military buildup in Guam.⁷⁶
82. The Purchaser's plans to accelerate GTA's competitive service offerings and to provide customers with better service choices, and improved pricing, should further and promote the public interest.⁷⁷

**THERE IS NO NECESSITY FOR THE PUC TO HIRE ADDITIONAL
INDEPENDENT CONSULTANTS IN THIS MATTER**

83. Both IT&E and PDS, in their written comments and testimony before the PUC, indicate their belief that the PUC should obtain "an independent consultant" or an auditor to review "the financial strength of the proposed purchaser and resulting business enterprise."
84. The ALJ previously determined that it is unnecessary in this matter for the PUC to retain another third party consultant.⁷⁸

⁷⁵ Joint Application of Teleguam Holdings, LLC and GTA Telecom, LLC for Approval of the Transfer of Control, GTA Docket 10-09, p. 6.

⁷⁶ Response of APTG and AP Funds to PUC Request for Information, GTA Docket 10-09, filed January 26, 2011 at p. 3.

⁷⁷ Joint Application of TeleGuam Holdings, LLC and GTA Telecom, LLC for Approval of the Transfer of Control, GTA Docket 10-09, p. 6.

⁷⁸ ALJ Preliminary Order, GTA Docket 10-09, issued January 5, 2011, at p. 2.

85. Whether the Commission retains a consultant in this particular matter is discretionary with the Commission. The Commission is empowered to retain "on an as needed basis" professional services required by it the performance of its duties. 12 GCA §12002.
86. With regard to telecommunications matters in general, and certificates of authority in particular, the PUC has not retained consultants other than its Administrative Law Judge and Legal Counsel to handle such matters [with the exception of E911] during the past two years.
87. In GT Docket 09-01, the Commission determined that Guam Telecom LLC should be granted a Certificate of Authority to provide certain interstate telecom services in Guam, including facilities based local exchange services and resold local exchange telecom services.
88. There, the Commission, with the assistance of Counsel, fully considered such application and the standards set forth in 12 GCA §12103(c), made the required statutory determinations, and issued a Certificate of Authority to Guam Telecom LLC. The Commission did utilize any consultant in such matter, other than its Legal Counsel, to address issues concerning the financial resources of the applicant.⁷⁹
89. In that proceeding, as well as in the instant proceeding, the PUC is capable of determining whether the Applicants possess sufficient financial resources to continue to provide telecommunications services without the assistance of another consultant.
90. Under the statutory framework in 12 GCA §12103, the duty to determine and find whether an applicant possesses sufficient financial resources to provide the telecommunications services in Guam is squarely placed upon **the Commission**.⁸⁰
91. In this instance, the Commission has been supplied with sufficient information to make the necessary statutory determinations and finding without the need for other consultants: an opinion of the bank financing the transaction and detailed and extensive financial information provided by Applicants concerning the resources and financial condition of both GTA and the Purchaser.

⁷⁹ Application for Certificate of Authority, GT Docket 09-01, filed on or about May 12, 2009, and Certificate of Authority, GT Docket 09-01, issued on May 28, 2009.

⁸⁰ 12 GCA §12103(c)(1)

92. Hiring such a consultant could unnecessarily increase the cost of this proceeding to Applicants.
93. Whether the Application is in the "public interest", based on prevailing conditions in the Guam Community, is a factor better evaluated and judged by the PUC as opposed to outside third party consultants or experts.

RECOMMENDATIONS

94. The ALJ recommends that the PUC authorize Applicants TeleGuam Holdings, LLC, and GTA Telecom, LLC, to proceed with, and complete a transaction whereby Purchaser APTG will acquire direct control of TeleGuam and indirect control of GTA Telecom from Shamrock TeleGuam Holdings LLC.
95. PUC should determine that Applicants satisfy the requirements of 12 GCA §§12103(c) and (g): Applicants will continue to have sufficient financial resources to provide telecommunication services in Guam under the existing Certificates of Authority after the transfer of control of GTA.
96. Applicants and Purchaser also will possess sufficient technical and managerial resources and abilities to provide the telecommunications services authorized by the present Certificates of Authority after the sale of GTA.
97. Purchaser appears to have sufficient financial resources to fund the sale transaction and to assist GTA in continuing to provide telecommunication services in Guam under the existing Certificates of Authority.
98. The sale or transfer of control of TeleGuam Holdings LLC to APTG is not contrary to the public interest.
99. The sale and/or transfer of control of Teleguam Holdings, LLC and GTA Telecom, LLC from Shamrock to APTG will not affect the abilities of TeleGuam and GTA Telecom to continue to provide telecommunications services under their respective Certificates of Authority.
100. Authorization for Applicants to complete the sale or transfer of control must be subject to certain conditions (approval is conditioned upon satisfaction of certain additional requirements): (1) Applicants must satisfy all requirements of the Federal Communications Commission with regard to this transaction, complete all necessary proceedings required by the FCC, and obtain all necessary FCC approvals; (2) all terms

and conditions of the Purchase and Merger Agreement must be materially complied with, and the transaction completed in all material respects; (3) Once the proposed transaction is completed in all respects, Applicants shall continue to be subject to the terms, conditions and requirements of 12 GCA §12103, and all PUC rules, regulations and orders; (4) Purchaser APTG must comply with its representation, made of record, in the CERTIFICATION STATEMENT filed on January 12, 2011, that it will comply with all terms and conditions of the Certificates of Authority presently held by TeleGuam Holdings LLC and GTA Telecom LLC.

101. The ALJ has prepared an Order for the Commissioners' consideration which would approve the Joint Application of Applicants, and the proposed transaction, and the sale/transfer of control of said companies, subject to the conditions set forth herein.

Dated this 18th day of February, 2011.

Frederick J. Horecky
Administrative Law Judge

