

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: JOINT APPLICATION OF)
TELEGUAM HOLDINGS, LLC, AND) GTA Docket 17-02
FORAGER HOLDINGS CORP. FOR)
APPROVAL OF THE TRANSFER OF)
CONTROL OF TELEGUAM HOLDINGS,)
LLC, TO FORAGER HOLDINGS CORP.)
_____)

**ORDER APPROVING SALE/TRANSFER OF OWNERSHIP AND CONTROL OF
TELEGUAM HOLDINGS, LLC, (SUBJECT TO CONDITIONS)**

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Joint Application of TeleGuam Holdings, LLC, [“GTA”] and Forager Holdings Corp. [“Forager”] for approval by the PUC of the transfer of control of TeleGuam Holdings, LLC, to Forager Holdings Corp.¹
2. If the sale is approved, Forager Holdings Corp. will purchase all of the ownership interest of the current owners, a group referred to as the “AP Funds”, in AP TeleGuam Holdings LLC. AP TeleGuam Holdings LLC is currently the owner of one hundred percent (100%) of the interest in TeleGuam Holdings, LLC.
3. GTA and the other Applicants request that PUC authorize Forager Holdings Corp. to become the direct, one hundred percent owner of AP TeleGuam Holdings Inc [“APTG”].

BACKGROUND

4. 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.²

¹ Joint Application of TeleGuam Holdings, LLC, and Forager Holdings Corp. for Approval of the Transfer of Control of TeleGuam Holdings, LLC to Forager Holdings Corp. [hereafter “Joint Application”], GTA Docket 17-02, filed March 3, 2017.

² TeleGuam Holdings, LLC, Certificate of Authority, Docket 05-02, issued by the PUC on February 28, 2005.

5. After privatization of GTA in 2005, Shamrock Capital Advisors purchased the company as its first private owner.³
6. On February 21, 2011, the PUC approved the sale and transfer of control of GTA from Shamrock to AP TeleGuam Holdings LLC ["APTG"]. The new owners of APTG were certain funds in Japan known as the "AP Funds."⁴
7. After receipt of the present Application for sale and transfer of control of GTA, the PUC caused a notice to be published in the Pacific Daily News on March 20, 2017, and April 10, 2017, attesting to: (1) the filing of the Application; (2) the opportunity for interested persons to file comments of record regarding the Application; and (3) the holding of a public hearing to receive public comment and testimony on the Application.⁵
8. On April 18, 2017, the PUC conducted a Public Hearing at which testimony on the Application was taken. Testimony was provided in favor of the application by representatives of B88, HFI/Huntsman Foundation, Forager Holdings and GTA. There was testimony from one member of the public, John Day, President of Pacific Data Systems Inc. Although Mr. Day raised post sale rate issues, he did not indicate that he opposed the sale. The ALJ, Chairman Johnson, and Commissioners Andrew Niven, Michael Pangelinan, and Peter Montinola questioned the Applicants and related parties concerning their testimonies.
9. On April 25, 2017, the Administrative Law Judge issued his Report herein.⁶

A DESCRIPTION OF THE TRANSACTION

10. On February 1, 2017, Huntsman Family Investments ["HFI"] announced that it and its affiliates had entered into an Agreement to acquire GTA.⁷

³ GTA TeleGuam News Release issued on November 15, 2010.

⁴ PUC Order Approving Sale/Transfer of Ownership and Control of TeleGuam Holdings, LLC, and GTA Telecom LLC (Subject to Conditions), GTA Docket 10-09, dated February 21, 2011.

⁵ PUC Public Notice of Application of TeleGuam Holdings, LLC for PUC Approval of the Transfer of Control of TeleGuam Holdings, LLC to Forager Holding Corp., GTA Docket 17-02, published in the Pacific Daily News on March 20, 2017, and April 10, 2017.

⁶ ALJ Report, GTA Docket 17-02, dated April 25, 2017.

⁷ Huntsman Family Investments Press Release dated February 1, 2017.

11. Under the proposed arrangement, the direct owner of AP TeleGuam Holdings LLC will be Forager Holdings Corporation.⁸
12. After the sale, AP TeleGuam Holdings Inc. will be “renamed” as TeleGuam Holdings Inc. Forager Holdings Corp. will become the direct, one hundred percent owner, of TeleGuam Holdings, Inc.⁹ Forager will indirectly own one hundred percent of TeleGuam Holdings, LLC.¹⁰
13. Forager will be owned by B88 Financial Group LLC [“B88”] and Mariana Holdings, LLC [“Mariana Holdings”].¹¹
14. Mariana Holdings will be owned by Huntsman Family Investment LLC [“HFI”] and the Huntsman Foundation, a Utah non-profit corporation. HFI will own 20 percent of Mariana Holdings, and the Huntsman Foundation will own 80 percent.¹²
15. HFI is the investment platform for the Jon M. Huntsman, Sr. family focusing on long-term investments in a diverse range of business sectors, and is owned and controlled by Jon M. Huntsman Sr. and Paul Huntsman. The Huntsman Foundation is a private family foundation supporting humanitarian and educational initiatives, and is controlled by Jon M. Huntsman Sr.¹³
16. Huntsman Corporation is a multinational manufacturer and marketer of chemical products for consumers and industrial customers.¹⁴
17. Both Paul Huntsman and Benjamin Wu (the principal of B88) will be on the governing Board of Forager Holdings Corp.¹⁵
18. On March 9, 2017 Applicants filed, under seal, a copy of the Agreement and Plan of Merger.¹⁶ The agreement contains a detailed description of the terms and

⁸ Joint Application, at Exhibit A-3.

⁹ Id. at Exhibit A-3 [Diagram of Post-Transaction Corporate Structure of Forager, AP TeleGuam, and TeleGuam].

¹⁰ Id.

¹¹ Id. at p. 3 and f.n. 1.

¹² Id.

¹³ Id. at p. 3.

¹⁴ The Huntsman Corporation, Wikipedia encyclopedia.

¹⁵ Representation by the Applicants at the Public Hearing on April 18, 2017.

¹⁶ Id. at Exhibit F.

conditions of the sale.¹⁷ The parties have agreed that the Agreement must be fully consummated by January 31, 2018.¹⁸

19. With regard to the present transaction, Purchaser Forager will purchase all of the ownership interest of the AP Funds in APTG, including indirect ownership of TeleGuam Holdings LLC [GTA]. A “Merger Sub” [Forager Acquisition Corp.] will merge into APTG. APTG will become a direct wholly-owned subsidiary of Purchaser Forager; and TeleGuam [GTA] will become an indirect wholly-owned subsidiary of Purchaser. The proposed transaction will not involve a change in GTA’s operating authorities in Guam.¹⁹
20. Subject to certain conditions, APTG will file a merger certificate confirming the merger of APTG and the merger sub.²⁰ Closing of the transaction will occur on the tenth day following the satisfaction or waiver of the conditions set forth in Article 7 of the Agreement.²¹
21. The transaction must also be approved by the Federal Communications Commission.²²
22. When the transaction is completed, APTG will be the surviving entity. APTG will be renamed as TeleGuam Holdings Inc.²³

DETERMINATIONS

23. 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 §12203(c).

¹⁷ Id.

¹⁸ Letter from Applicant Forager’s Counsel, Jehan Martinez, to ALJ Frederick J. Horecky, dated April 18, 2017.

¹⁹ Joint Application at p. 5.

²⁰ Agreement and Plan of Merger, GTA Docket 17-02, filed [pursuant to GPUC Rules relating to the Protection of Confidential Information] March 9, 2017, at §1.02.

²¹ Id. at §3.01.

²² See Joint Domestic and International Application, In the Matter of the Joint Application of TeleGuam Holdings, LLC., Licensee, AP TeleGuam Holdings, Inc., Transferor, and Forager Holdings Corp., Transferee, for Grant of Authority to Complete a Transfer of Control of the Licensee Pursuant to Section 214 of the Communications Act of 1934, as Amended, and Sections 63.04 and 63.24 of the Commission’s Rules, filed with the Federal Communications Commission, on February 10, 2017.

²³ Joint Application, at Exhibit A-3.

24. The two findings required by the Commission in subsection (c), before a sale or transfer of control can be approved, are as follows:

(1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the telecommunications services in Guam; and (2) the sale is not contrary to the public interest.²⁴

25. A review of the record herein regarding the “financial resources” of TeleGuam Holdings LLC [GTA] establishes that Applicants will continue to have sufficient financial resources to provide telecommunications services after the transfer of control of GTA:

- a. The holding company for GTA is APTG (AP TeleGuam Holdings LLC). Applicants have filed herein the “Consolidated Balance Sheets” for APTG as of December 31, 2013, 2014 and 2015.²⁵ 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/APTG to Purchaser.
- b. GTA owns assets, including property, plant and equipment which constitute its telecommunications system and enable it to provide telecommunications services.²⁶
- c. The Balance sheets and Income Statements indicate that there was a consistent and healthy increase in GTA’s revenues for each year from 2013 to 2015 in amounts totaling millions of dollars.
- d. Long term debt was substantially reduced between 2013 and 2014. Payoff of long term debt by GTA is an indication that it is capable of meeting its current debt obligations.
- e. There is every indication that Applicants will continue to have the same strong financial resources available to provide telecommunications

²⁴ See 12 GCA §12203(c) (1) and (2).

²⁵ Exhibit D to Application, GTA Docket 17-02, filed under seal on March 9, 2017.

²⁶ Id.

services after the sale as they had before the sale. GTA will continue to own the same assets and telecommunications system.

- f. Because the proposed transaction will occur at the holding company level, there is no proposed change in any of the assets or liabilities of TeleGuam; the Applicants will continue to possess the same strong financial qualifications that they do at present after the sale.²⁷
- g. 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 company that is presently providing telecommunications services [GTA].
- h. The PUC, by previously granting Certificates of Authority to TeleGuam Holdings LLC, determined that GTA possesses sufficient financial resources to provide the telecommunications services covered by the Certificates of Authority.

26. Purchaser Forager Holdings Corp., its immediate parent companies B88 Financial Group LLC. and Mariana Holdings LLC., and its indirect parent companies, Huntsman Family Investments LLC. and the Huntsman Foundation, have the necessary financial resources to provide the telecommunications services in Guam after the transfer of control of GTA:

- a. Purchaser has adopted the Five Year Build- Out Plan previously filed by GTA, under which an additional approximate amount of \$17M per year will be spent on telecom capital investment on Guam.
- b. The Purchaser has committed to continue to build the infrastructure improvements set forth in the Five Year Build-Out Plan. The Purchaser has also agreed to continue with GTA's 2017 "Capex Plan", which will expand 3G and LTE wireless capabilities, extend fiber to the Neighborhood (VDSL2), build infrastructure to provide high speed internet and digital television capabilities to more island neighborhoods, and extend fiber deeper into the network.²⁸

²⁷ Joint Application at p.6.

²⁸ Id.

- c. HFI commits to assist GTA in growing its wholesale and international business in the region.²⁹
 - d. The Financial Statements of the parent companies of Forager indicate that they have substantial financial assets.³⁰ Financial records of the Huntsman Foundation indicate that company assets are in excess of \$500,000,000.³¹
 - e. Applicants represent that, as a result of its new ownership, TeleGuam will enjoy access to the financial and management resources of Huntsman Family Investments and the Huntsman Foundation.³² HFI is owned by Jon Huntsman Sr.; the Foundation is controlled by him. The assets are pooled collectively between Mr. Huntsman and the entities.
27. The Applicants have sufficient technical and managerial resources to provide telecommunications services in Guam and will continue to have such resources after the sale.
- a. The Applicants indicate that “the proposed transaction will not involve a change in TeleGuam’s operating authorities in Guam.”³³
 - b. The same management team which has guided GTA forward will continue to manage GTA after the transfer of control of TeleGuam Holdings, LLC to Forager. That management team has demonstrated its ability to successfully provide telecommunications services to the people of Guam under the Certificates of Authority.
 - c. The current experienced Management Team, whose biographies are set forth in Exhibit B to the Application, will continue to provide the telecommunications services authorized under the Certificates of Authority.³⁴

²⁹ Presentation of Applicants to the PUC on April 18, 2017, at p. 8.

³⁰ See Exhibit E to the Joint Application, GTA Docket 17-02, Financial Results for 2016 for the Huntsman Corporation.

³¹ Financial Records of the Huntsman Foundation, filed under seal.

³² Joint Application at p. 7.; see also Huntsman Family Investments Presentation at 7(HFI will provide greater training opportunities for GTA’s local workforce and working opportunities beyond Guam).

³³ Joint Application at pgs. 5-6.

³⁴ Exhibit B to Joint Application.

- d. In addition, the Purchaser indicated to the PUC during its presentation that it currently does not plan to become directly involved in the day to day management of TeleGuam Holdings LLC.³⁵
 - e. It has committed to supporting GTA's local work force and plans to provide greater training opportunities and working opportunities beyond Guam.³⁶
 - f. As a result of its proposed new ownership, GTA will enjoy access to the resources of Purchaser and its parent companies. GTA and Forager will be positioned to provide competitive service offerings and provide customers on Guam with better service, more service choices and competitive pricing, including investment in the SEA-US submarine cable, and the recent roll out of "Fiber to the Neighborhood."³⁷
28. Approval by the PUC of the sale/transfer of control of TeleGuam Holdings to Forager Holdings Corp. and its parent companies is not "contrary to the Public Interest."
- a. There is no evidence in the record in this proceeding that the transfer of control of GTA to Forager would be "contrary to the Public Interest".
 - b. No written or public testimony has been submitted to the PUC claiming that such transfer would be contrary to the Public Interest.
 - c. Applicants' Petition presents a number of reasons why the granting of the Petition is in the Public Interest: (1) following the consummation of the proposed transaction, GTA will continue to offer services with no change in the rates or terms and conditions of service; (2) the customers of Guam will benefit from new services and expanded global network facilities and capabilities offered by the collaboration between GTA and Forager/its parent companies; (3) telecommunications customers in Guam have benefited from the continuing capital investments by GTA, and such

³⁵ Presentation of Applicants to the PUC on April 18, 2017.

³⁶ Presentation of Applicants to the PUC on April 18, 2017.

³⁷ Joint Application at pgs. 8-9; Presentation of Applicants to the PUC on April 18, 2017(Chief Operating Officer Andrew M Gayle Jr. indicated that the SEA-US submarine cable would benefit the people of Guam by providing more bandwidth).

investments will continue after the sale; (4) customers on Guam have benefited from improved service offerings and better pricing from GTA and will continue to do so after the sale; (5) GTA has had a strong focus on hiring and developing employees on Guam and paying at or above market wage rates, and will continue to do so after the sale; (6) important working relationships with the Government of Guam and Emergency Entities will continue with Purchaser's Ownership; (7) GTA is a generous community service and charitable contributor on Guam and will continue to be so.³⁸

- d. 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.³⁹
- e. The sale will facilitate GTA's ability to provide telecommunications services and products to the people of Guam.
- f. It is also in the interest of consumers of telecommunications services on Guam that the expansion of facilities and technology continue. Forager and its parent companies are committed to investing in Guam to offer state of the art service to all customer segments.

ORDERING PROVISIONS

After review of the Application, and the supporting materials and comments submitted by the Applicants, the Administrative Law Judge Report, and the record in this Docket, and for good cause shown, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. All rulings and orders of the ALJ in this proceeding are confirmed and ratified. All motions not heretofore granted or denied are denied. No other matters currently require discussion.
2. The Report issued by the ALJ on April 25, 2017, is hereby adopted and approved. The PUC concurs with the findings and recommendations therein.

³⁸ Joint Application at pgs. 6-12.

³⁹ 12 GCA §12101(a)(2).

3. Applicants TeleGuam Holdings, LLC, ["GTA"], Forager Holdings Corp. ["Forager"], B88 Financial Group LLC ["B88"], and Mariana Holdings LLC, are authorized to proceed with, and complete, a transaction whereby Purchaser Forager Holdings Corp. will acquire direct control of the holding company of GTA, AP TeleGuam Holdings LLC.
4. Applicants satisfy the requirements of 12 GCA §§12203(c) and (g): Applicants and Purchaser 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.
5. Applicants 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.
6. Applicants 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.
7. The sale or transfer of control of TeleGuam Holdings LLC to Purchaser Forager Holdings Corp. is not contrary to the public interest.
8. The sale and/or transfer of control of TeleGuam Holdings, LLC from the AP Funds to Forager will not adversely affect the ability of TeleGuam to continue to provide telecommunications services under its Certificates of Authority.
9. Authorization for Applicants to complete the sale or transfer of ownership and control, as granted herein, is subject to satisfaction by Applicants of certain conditions: (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) there must be material compliance with the terms and conditions of the Purchase and Merger Agreement, and the transaction completed in all material respects; (3) Purchaser must receive Section 214 Authorization from the FCC consenting to this transaction (Joint Domestic and International Application filed by TeleGuam Holdings and Forager with the FCC on February 10, 2017); (4) Once the proposed transaction is completed in all respects, Applicants shall continue to be subject to the terms, conditions and requirements of 12 GCA §12203, and all PUC rules, regulations and orders; (5) Applicants, including Huntsman Family Investments LLC, must comply with their representations, made of record at the

public hearing and in information submitted to the PUC, that they will comply with all terms and conditions of the Certificates of Authority presently held by TeleGuam Holdings LLC [GTA].

10. PUC approval of the sale and transfer of ownership and control, as granted herein, shall be final upon satisfaction by Applicants of all conditions in paragraph 9 above, and submission to the PUC of proof satisfactory to it that all such conditions have been satisfied.
11. TeleGuam Holdings, LLC, is ordered and directed to pay the PUC's regulatory expenses and fees in this docket.

Dated this 27th day of April, 2017.

Jeffrey C. Johnson
Chairman

Rowena E. Perez
Commissioner

Joseph M. McDonald
Commissioner

Michael A. Pangelinan
Commissioner

Peter Montinola
Commissioner

Filomena M. Cantoria
Commissioner

Andrew L. Niven
Commissioner