

***I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN***  
**2021 (FIRST) Regular Session**

**Bill No. 36-36 (COR)**

As Substituted by the Committee on Health, Land, Justice and Culture

Introduced by:

Joe S. San Agustin

**AN ACT TO AUTHORIZE A COMMERCIAL  
SUBMERGED LAND LICENSE AGREEMENT  
BETWEEN THE GOVERNMENT OF GUAM,  
SPECIFICALLY, THE CHAMORRO LAND TRUST  
COMMISSION, AND TELEGUAM HOLDINGS LLC,  
DOING BUSINESS AS GTA, FOR THE PURPOSE OF  
LANDING SUBMARINE CABLES AT *ALUPANG,*  
*TAMUNING, GUAM.***

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

**Section 1. Legislative Findings and Intent.** *I Liheslaturan Guåhan* finds that TELEGUAM HOLDINGS LLC, doing business as GTA, hereinafter “GTA,” had been negotiating with the Chamorro Land Trust Commission (CLTC) for a submerged land license agreement in order to land certain submarine cables in the village of *Tamuning*, Guam. The submerged parcel in *Tamuning* is more particularly described as a section of the *Alupang* reef flat and channel where submarine cables would be buried to render needed and additional connectivity for the island and its residents.

*I Liheslaturan Guåhan* further finds that GTA’s proposal to bring in and provide additional submarine cable capacity for global voice and data transmission and global access to planned and existing land-based communication networks in the Guam area will result in improved telecommunications efficiency for the island

1 and its residents and businesses, and additional redundancy critical to ensure that  
2 telecommunications remain viable during natural catastrophes and other emergency  
3 conditions. Furthermore, there are a number of existing submarine cables traversing  
4 Guam which are either coming to its end-of-life or will be decommissioned in the  
5 coming years, and there is a necessity for new private investment of state-of-the-art  
6 submarine cables for the island to ensure continued economic and social growth.

7       Organic Act of Guam § 1705(a) regarding Tidelands, etc. Conveyed to Guam  
8 states that “subject to valid existing rights, all right, title, and interest of the United  
9 States in lands permanently or periodically covered by tidal waters up to but not  
10 above the line of mean high tide and seaward to a line three geographical miles  
11 distant from the coastlines of the territories of Guam, the Virgin Islands, and  
12 American Samoa, as heretofore or hereafter modified by accretion, erosion, and  
13 reliction, and in artificially made, filled in, or reclaimed lands which were formerly  
14 permanently or periodically covered by tidal waters, are hereby conveyed to the  
15 governments of Guam, the Virgin Islands, and American Samoa, as the case may be,  
16 to be administered in trust for the benefit of the people thereof.”

17       CLTC has jurisdiction of submerged lands owned by the government of  
18 Guam. An informational memo from the Attorney General of Guam to the Director  
19 of the Department of Land Management dated November 21, 1996, reaffirmed that  
20 submerged land owned by the government of Guam or transferred by the United  
21 States to the government of Guam pursuant to the Territorial Submerged Lands Act,  
22 48 USC 1700 et seq. are now under the jurisdiction of the Chamorro Land Trust  
23 Commission unless they were specifically reserved pursuant to Sections 2(b) or 2(c)  
24 of PL 22-18.

25       The proposed license agreement would exceed current statutory time limit,  
26 and therefore requires legislative approval. 21 GCA §75107(c) authorizes the CLTC  
27 to grant licenses to public utility companies for terms not to exceed 21 years.

1 Additionally, pursuant to 21 GCA §75122, properties under jurisdiction of the Trust  
2 may be designated for commercial lease up to 5 years. Submerged cables have an  
3 expected lifespan of approximately 25 years.

4 Therefore, it is the intent of *I Liheslaturan Guåhan* to authorize CLTC to enter  
5 into a commercial submerged land license agreement with GTA, in accordance with  
6 the terms and conditions articulated in this legislation, for the purpose of bringing  
7 additional telecommunications infrastructure for a period exceeding the twenty-one  
8 (21) year limit in existing law, subject to approvals and permits as required by U.S.  
9 federal and local laws including permitting application review and approval from  
10 the U.S. Army Corps of Engineers for work in U.S. waters, the Guam Coastal  
11 Management Program Consistency Certification in accordance with the Coastal  
12 Zone Management Act of 1972, and the Guam Territorial Seashore Protection  
13 Commission pursuant to the Guam Territorial Seashore Protection Act of 1974 for  
14 work within the seashore reserve, Guam Environmental Protection Agency and the  
15 National Oceanic and Atmospheric Administration.

16 **Section 2. Authorization to Enter into a Commercial Submerged Land**  
17 **License Agreement with GTA.** Notwithstanding any other provision of law, or rule  
18 or regulation, *I Liheslaturan Guåhan* authorizes Chamorro Land Trust Commission  
19 (CLTC) to enter into a commercial submerged land license agreement with  
20 TeleGuam Holdings LLC, doing business as GTA, as articulated within and in  
21 conformance with the provisions of this legislation, for the purpose of the  
22 construction, installation, operation, maintenance, and use of no more than six (6)  
23 fiber optic cable systems at *Alupang* Reef Flat and Channel.

24 (a) The submerged land to be licensed to GTA (Licensed Property) shall  
25 extend from the line of mean high tide and seaward to a line three (3) geographical  
26 miles distant from the coastline and shall include an approximate ten (10+/-) feet  
27 wide section of the *Alupang* Reef Flat and Channel starting from the mean high tide

1 watermark to the exit offshore at approximately three thousand six hundred  
2 (3,600+/-) feet and under sixty five (65) to one hundred thirty one (131) feet of  
3 water in the Philippine Sea for underground conduit infrastructure that would consist  
4 of such number of submerged cable ducts and landing pipes as necessary for GTA  
5 to operate its cable landing station; provided that GTA shall not locate more than six  
6 (6) submarine cables and landing pipes within the Licensed Property.

7           The landing pipes *may* be installed using the Horizontal Directional  
8 Drilling construction method, if required permits and approvals allow. It is  
9 contemplated that the conduit infrastructure will extend from the terrestrial  
10 Landing Manhole (LMH) owned or leased by GTA, under the *Alupang Beach* and  
11 Bay, exiting approximately four thousand six hundred (4,600+/-) feet offshore and  
12 under approximately sixty-five (65) to one hundred thirty-one (131) feet of water.  
13 The fiber optic cables may be pulled through these landing pipes and brought into  
14 the LMH to connect with the cables coming from the cable landing station.

15           GTA *shall* provide to CLTC and Department of Land Management  
16 the Global Positioning System [GPS] Survey Depiction of the final permitted  
17 underground conduit infrastructure.

18           (b) Term. The license agreement *shall* be for a term of twenty-five (25)  
19 years; GTA *shall* be afforded two (2) five-year options to renew such license  
20 agreement at its election upon written notification to CLTC at least one hundred  
21 eighty (180) days prior to the end of the twenty-fourth (24th) year of the original  
22 term and 180 days prior to the end of the first (1st) five-year option period. The  
23 license agreement *shall* be subject to termination by GTA in the event that GTA is  
24 unable to procure the necessary permits and approvals for the construction and  
25 operation of the submarine and terrestrial facilities to support the proposed  
26 submarine cable landing activity of GTA within three (3) years of enactment of  
27 this Act.

1 (c) Such license agreement, subject to the terms stated herein, *shall* be  
2 binding and enforceable in all respects on the CLTC upon execution and shall  
3 require no further approvals on the part of *I Liheslaturan Guåhan*.

4 (d) Non-Exclusivity and Non-Interference. GTA acknowledges that the  
5 Cable Easement is non-exclusive. However, CLTC may not unreasonably interfere  
6 with the continued operation, maintenance of the GTA landing pipes and manholes  
7 and will notify GTA of any proposed crossing or parallel installation at least sixty  
8 (60) calendar days (“Notice Period”) prior to any proposed installation unless  
9 installation is required due to an emergency. GTA *shall* notify CLTC within the  
10 Notice Period if they object to CLTC’s intention to place conduit, utility lines or  
11 any other structure or line within the subject easement and *shall* support with plans  
12 and specifications to the satisfaction of CLTC the basis for any contention there is  
13 an unreasonable interference with GTA’s conduit. CLTC *shall* at its sole discretion  
14 determine whether there is an unreasonable interference with GTA’s landing pipes.  
15 CLTC shall be authorized to install any parallel or crossing installation if it  
16 reasonably determines there is no interference with GTA’s landing pipes.

17 **Section 3. Compensation for Submerged Lands License Agreement.** In  
18 exchange for those rights granted under this Submerged Land License Agreement  
19 for the six (6) Cables, GTA *shall* pay CLTC annual license fees according to the  
20 following schedule:

21 (a) For the first cable system: A landing fee of \$100,000 *shall* be paid  
22 within 30 days of approval from the Bureau of Statistics & Plans Guam Coastal  
23 Management Program’s Federal Consistency permit. In addition, an initial annual  
24 license payment in the amount of \$100,000 *shall* be paid within 30 days of the  
25 System Operational Date (as defined below) of the first cable system, (the "First  
26 System Operational Date), and thereafter an annual license payment adjusted in  
27 accordance with Section 3(h) *shall* be paid beginning on the first anniversary of the

1 First System Operational Date and continuing annually for the Term of the License  
2 Agreement.

3 (b) For the second cable system: A landing fee of \$100,000 *shall* be paid  
4 within 30 days of approval from the Bureau of Statistics & Plans Guam Coastal  
5 Management Program's Federal Consistency permit. In addition, an initial annual  
6 license payment in the amount of \$100,000 *shall* be paid within 30 days of the  
7 Systems Operational Date of the second cable system, (the "Second System  
8 Operational Date), and thereafter an annual license payment adjusted in accordance  
9 with Section 3(h) *shall* be paid beginning on the first anniversary of the Second  
10 System Operational Date and continuing annually for the Term of the License  
11 agreement.

12 (c) For the third cable system: A landing fee of \$100,000 *shall* be paid  
13 within 30 days of approval from the Bureau of Statistics & Plans Guam Coastal  
14 Management Program's Federal Consistency permit. In addition, an initial annual  
15 license payment in the amount of \$100,000 *shall* be paid within 30 days of the  
16 System Operational Date of the third cable system, (the "Third System Operational  
17 Date), and thereafter an annual license payment adjusted in accordance with  
18 Section 3(h) *shall* be paid in beginning on the first anniversary of the Third System  
19 Operational Date and continuing annually for the Term of the License agreement.

20 (d) For the fourth cable system: A landing fee of \$100,000 *shall* be paid  
21 within 30 days of approval from the Bureau of Statistics & Plans Guam Coastal  
22 Management Program's Federal Consistency permit. In addition, an initial annual  
23 license payment in the amount of \$100,000 *shall* be paid within 30 days of the  
24 System Operational Date of the fourth cable system, (the "Fourth System  
25 Operational Date), and thereafter an annual license payment adjusted in accordance  
26 with Section 3(h) *shall* be paid beginning on the First anniversary of the Fourth

1 System Operational Date and continuing annually for the Term of the License  
2 agreement.

3 (e) For the fifth cable system: A landing fee of \$100,000 *shall* be paid  
4 within 30 days of approval from the Bureau of Statistics & Plans Guam Coastal  
5 Management Program's Federal Consistency permit. In addition, an initial annual  
6 license payment in the amount of \$100,000 *shall* be paid within 30 days of the  
7 System Operational Date of the fifth cable system, (the "Fifth System Operational  
8 Date), and thereafter an annual license payment adjusted in accordance with  
9 Section 3(h) *shall* be paid beginning on the First anniversary of the Fifth System  
10 Operational Date and continuing annually for the Term of the License agreement.

11 (f) For the sixth cable system: A landing fee of \$100,000 *shall* be paid  
12 within 30 days of approval from the Bureau of Statistics & Plans Guam Coastal  
13 Management Program's Federal Consistency permit. In addition, an initial annual  
14 license payment in the amount of \$100,000 *shall* be paid within 30 days of the  
15 System Operational Date of the sixth cable system, (the "Sixth System Operational  
16 Date), and thereafter an annual license payment adjusted in accordance with  
17 Section 3(h) *shall* be paid beginning on the First anniversary of the Sixth System  
18 Operational Date and continuing annually for the Term of the License agreement.

19 (g) The "System Operational Date" of each Cable shall be that date at  
20 which the Cable is fully installed, the associated system-wide testing is completed,  
21 and the Cable is approved to carry commercial traffic. GTA *shall* notify CLTC  
22 within thirty (30) days after the establishment of the System Operational Date of  
23 each cable landing within its submerged license agreement.

24 (h) The annual fees for each cable system set forth in this Section *shall* be  
25 adjusted annually on the anniversary of the System Operational Date of each  
26 Cable, and for the remainder of the Term. All recurring fees *shall* be adjusted and  
27 increased annually for inflation at a fixed rate of 2% per annum.

1           **Section 4. License Agreement Requirements.** From and after the effective  
2 date of this legislation the following requirements *shall* apply to and be incorporated  
3 in any Submarine Cable License Agreements entered into with the CLTC:

4           **(a) Interest for Late Payment.** All license fees in arrears *shall* bear interest  
5 at a rate of four percent (4%) per annum in excess of the prime rate, calculated daily  
6 and compounded monthly, without demand, from the date it should have been paid  
7 to CLTC, until actual payment to CLTC.

8           **(b) Taxes.** Any and all taxes, fees and assessments, to include taxes on  
9 gross receipts and, improvements to the Licensed Property, levied upon the Licensed  
10 Property *shall* be borne and paid by GTA upon execution of the license agreement.

11           **(c) Insurance.** The license agreement *shall* require GTA to have business  
12 liability insurance that indemnifies and holds CLTC and the government of Guam  
13 harmless, and *shall* require GTA to respond to CLTC requests for information on a  
14 timely basis. GTA *shall* procure, at its own cost and expense, and keep in force  
15 during the term of the license agreement for the mutual benefit of CLTC and GTA,  
16 a policy of comprehensive liability insurance in such amounts, form, and with such  
17 insurance company as CLTC shall approve. A copy of such policies *shall* be  
18 provided to CLTC at CLTC's request. CLTC *may* review the foregoing limits of  
19 coverage and require increases therein but *shall* not require increases more  
20 frequently than annually. The policy or policies shall contain a clause stating that the  
21 insurer will not cancel or change insurance coverage without first giving CLTC and  
22 GTA thirty (30) days prior written notice of such change or cancellation.

23           **(d)** The general public *shall* have the continuing right to use the reef flat  
24 and the waters above to enter on or cross any portion of the Licensed Property for  
25 fishing and other recreational purposes and CLTC reserves the right to itself and to  
26 the agents and representatives of the Government of Guam, to enter on and cross any  
27 portion of the Licensed Property for the purpose of performing any public or official



1 duties; provided, however, that in the exercise of such rights, CLTC and the general  
2 public *shall* not unreasonably interfere with GTA’s use and enjoyment of the rights  
3 granted by the license agreement.

4 (e) The Licensed Property *may* be occupied and used by GTA solely for  
5 the activities proposed by GTA and for incidental purposes related to the landing of  
6 submarine\_cables. In no event *shall* GTA conduct any activity on the Licensed  
7 Property without obtaining all requisite authorizations and permits from the  
8 appropriate Guam and federal government agencies or authorities.

9 (f) Compliance with Environmental Laws. All activities on Licensed  
10 Property *shall* be in compliance and maintained in accordance with existing federal  
11 and local environmental laws, including permitting application review and approval  
12 from the U.S. Army Corps of Engineers for work in U.S. waters, the Guam Coastal  
13 Management Program Consistency Certification in accordance with the Coastal  
14 Zone Management Act of 1972, and the Guam Territorial Seashore Protection  
15 Commission pursuant to the Guam Territorial Seashore Protection Act of 1974 for  
16 work within the seashore reserve, Guam Environmental Protection Agency and the  
17 National Oceanic and Atmospheric Administration. Failure to comply with  
18 environmental laws *shall* be a material default by GTA.

19 (g) GTA *shall* comply with all requirements imposed under all such  
20 authorizations and permits and, more generally, *shall* comply with all applicable  
21 Guam and federal government laws, rules and regulations relating to its activities on  
22 the Licensed Property. GTA *shall* comply with applicable federal laws, including  
23 the Submarine Cable Act of 1921 and the Communications Acts of 1934 (as  
24 amended) and rules and regulations of the Federal Communications Commission  
25 applicable to its interstate and international submarine cable landing authorizations  
26 and licensure, including annual reporting obligations. The rights of GTA under the  
27 license agreement are personal to GTA and *may* not be transferred or assigned to

1 any other person, firm, corporation or other entity without the prior written consent  
2 of CLTC, which consent shall not be unreasonably withheld; provided, however,  
3 that GTA may, without CLTC's consent, lease or transfer conduit or duct space to  
4 third parties landing submarine cables, and provided, further, that GTA may, without  
5 CLTC's consent, assign its rights to any person acquiring all of GTA's assets in  
6 Guam on condition that the assignee assumes all of GTA's obligations under the  
7 license agreement.

8 **(h) Improvements to CLTC Property.** The license agreement shall  
9 require that any improvements made to or upon Licensed Property shall belong in  
10 title to the CLTC upon termination or expiration of the license agreement, and that  
11 any removal required by the CLTC of improvements or items remaining on the  
12 property shall be the responsibility of GTA at no cost to the CLTC.

13 **Section 5. Default and Termination.** From and after the effective date of  
14 this legislation, the following provisions shall apply to and be incorporated into any  
15 submarine cable license agreement entered into with the CLTC:

16 (a) Any failure to comply with this Act, the license agreement, or a material  
17 term of the conditions of any government approval or permit shall be considered a  
18 material breach of the license agreement. The party aggrieved by such breach may  
19 deliver a Notice of Default to the party in breach specifying such noncompliance and  
20 the appropriate cure. Except as otherwise provided in this Act, if the breach has not  
21 been corrected within a period of ninety (90) days after receipt of the Notice of  
22 Default, then the aggrieved party may terminate the license agreement.  
23 Notwithstanding the foregoing, if the breach cannot reasonably be corrected during  
24 its applicable cure period, then the aggrieved party may not terminate the license  
25 agreement if the breaching party begins to correct such noncompliance during the  
26 cure period and diligently pursues corrective measures to completion.

1 (b) Upon termination or expiration of the license agreement, unless  
2 extended pursuant to the terms of the license agreement, the license agreement *shall*  
3 become null and void, except that CLTC *may* enforce any and all obligations of GTA  
4 arising out of acts or omissions occurring prior to such termination or expiration.

5 (c) Without limiting any other remedies the CLTC *may* have arising out of  
6 the license agreement or at law in respect of any default in the performance of GTA's  
7 obligations under the license agreement, the CLTC *shall* have the right, in the case  
8 of any default and without any re-entry or termination of the license agreement, to  
9 enter upon the Licensed Property and cure or attempt to cure such default (but this  
10 *shall* not obligate the CLTC to cure or attempt to cure any such default or, after  
11 having commenced to cure or attempt to cure such default, prevent the CLTC from  
12 ceasing to do so) and GTA *shall* promptly reimburse to the CLTC any expense  
13 incurred by the CLTC in so doing and the same *shall* be recoverable.

14 (d) The license agreement *may* be terminated in any of the following events  
15 (each an "Event of Default"):

16 (1) if license fees or any part thereof shall not be paid on any day when  
17 such payment is due, CLTC *may*, at any time thereafter, give notice of such  
18 failure to GTA, and if the failure is not remedied by GTA within five (5) days  
19 after the giving of such notice; or

20 (2) if GTA *shall* fail or neglect to perform or comply with any of the  
21 terms, covenants or conditions contained in the license agreement (other than  
22 the covenants to pay license fees) on the part of GTA to be performed or  
23 observed, CLTC *may*, at any time thereafter, give notice of such failure or  
24 neglect to GTA and GTA:

25 (A) if the matter complained of in such notice is capable of being  
26 remedied by the payment of money, has not corrected the matter

1 complained of within a period of five (5) days after the giving of such  
2 notice; or

3 (B) if the matter complained of in such notice is not capable of  
4 being remedied by the payment of money has not corrected the matter  
5 complained of within a period of twenty (20) days after the giving of  
6 such notice, or if a period of more than such twenty (20) days is  
7 reasonably required to remedy, with reasonable diligence, the matters  
8 complained of in such notice, has not forthwith commenced to remedy  
9 the same and diligently prosecute the remedying of the same to  
10 completion; or

11 (C) if an event of insolvency shall have occurred with respect to  
12 GTA, or

13 (D) a breach of an obligation by GTA which has resulted in  
14 cancellation of insurance coverage where GTA has not prior to or  
15 concurrent with such cancellation replaced such coverage with  
16 comparable coverage or breach of an obligation where there has been a  
17 notice of cancellation of insurance coverage which has not been cured  
18 and where GTA has not, within the period of time set out in such notice,  
19 or within ten (10) days where no period is set out therein, replaced such  
20 coverage with comparable coverage or which is otherwise a breach of  
21 the obligations respecting insurance; or

22 (E) abandonment of the project by GTA; the CLTC, at its option,  
23 *may* terminate the license agreement by notice to GTA, in which event  
24 such termination *shall* be effective immediately upon the delivery of  
25 such notice and *may* enter upon the Licensed Property with or without  
26 process of law and take possession thereof.

1           **Section 6. Deposit of Revenues and Fees.** Revenues from fees and interest  
2 generated from the commercial submerged land license agreement authorized in this  
3 Act *shall* be deposited into the Chamorro Land Trust Survey and Infrastructure  
4 Fund, to be used for all authorized purposes of that Fund, including to survey and  
5 subdivide CLTC property, to ensure access to water and access to sewer  
6 infrastructure for properties over the aquifer, and to improve telecommunications  
7 infrastructure and technology resources for the CLTC communities and other  
8 disadvantaged communities as determined by the CLTC.

9           **Section 7. Exemption from Appraisals.** § 2107(b) of Chapter 2, Title 2,  
10 Guam Code Annotated, and Section 6.04(c)(1) of the Standing Rules of *I*  
11 *Mina'trentai Sais Na Liheslaturan Guåhan* relative to land appraisals, shall not apply  
12 to this Act.

13           **Section 8. Effective Date.** This Act shall be effective upon enactment.

14           **Section 9. Severability.** If any provision of this Act or its application to any  
15 person or circumstance is found to be invalid or contrary to law, such invalidity *shall*  
16 not affect other provisions or applications of this Act that can be given effect without  
17 the invalid provision or application, and to this end the provisions of this Act are  
18 severable.