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CHAPTER 12
PUBLIC UTILITIES COMMISSION AND THE
GUAM TELECOMMUNICATIONS ACT OF 2004

2014 NOTE: Pursuant to the authority granted by § 1606, sections were renumbered to reflect the existing GCA codification structure.

P.L. 27-110:8(a) (Nov. 1, 2004) designated §§ 12000 through 12027 as Article 1 of this chapter.

P.L. 23-119:1 (July 31, 1996) established the Guam Waterworks Authority and P.L. 23-119:2 repealed 5 GCA, Ch. 56, Public Utility Agency of Guam. Pursuant to P.L. 23-119:3, all references to the “Public Utility Agency of Guam” shall read “Guam Waterworks Authority.”

- Article 1. Public Utilities Commission.
- Article 2. Guam Telecommunications Act of 2004.
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§ 12101. Definitions.

As used in this Chapter:

(a) Public Utility means the Guam Power Authority, the Jose D. Leon Guerrero Commercial Port, the Guam Waterworks Authority, the Guam Solid Waste Authority or any duly licensed private contractors operating:

(1) a facility or subsystem of the community-wide water production and distribution system, or

(2) a facility or subsystem of the community-wide waste water disposal system, or both, or any private golf course

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management corporation leasing public property providing preferential golf rates and reservations to Guam residents, or

(3) a marine terminal with facilities for loading and unloading commercial cargo or passengers onto and from ocean common carriers.

(b) Commission means the Public Utilities Commission.

(c) General lifeline rate means a lower than average cost per unit charge for a level of utility service necessary to fulfill the essential needs of all residential customers.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984) as § 12000. Amended by P.L. 31-020:11 (Apr. 18, 2011), effective 90 days from date of enactment pursuant to P.L. 31-20:13. Subsection (a) amended by P.L. 19-034:23:B (Dec. 19, 1988), P.L. 23-119:6 (July 31, 1996), P.L. 24-295:2 (Nov. 21, 1998), P.L. 25-005:3 (May 10, 1999), P.L. 26-066:1 (Dec. 22, 2001), repealed and reenacted by P.L. 27-110:8(b) (Nov. 1, 2004), amended by P.L. 30-052:3 (July 14, 2009). Subsection (c) added by P.L. 21-142:2 (Jan. 2, 1993).

§ 12102. Public Utilities Commission: Number, Appointment of Commissioners.

There shall be a public corporation and autonomous instrumentality within the government of Guam, to wit, a Public Utilities Commission composed of seven (7) members to be called Commissioners, who shall be selected as follows:

(a) *I Maga'Lahen Guåhan* [Governor of Guam] shall appoint, with the advice and consent of *I Liheslaturan Guåhan* [Guam Legislature], two (2) members from the business community of Guam; one (1) member who is a certified public accountant; two (2) members, each of whom have training or experience in at least one (1) of the following four (4) areas (power generation, telephone, water/sewer utilities, or marine terminal operations/transportation via ocean common carrier), with the additional requirement that the two (2) members appointed each have training or experience in a different area; and two (2) members who are from the community at large.

Except for the initial term, the terms of such members shall be for six (6) years. No member shall be a director, deputy director, appointed, unclassified employee, any other unclassified employee

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of the government of Guam, or a member of any other board or commission. The appointment of any person to the Commission shall become void if at any time during that person's term of office, that person shall become a director, deputy director, appointed to any unclassified position in the government of Guam, or accept appointment to any other board or commission.

(b) The Commissioners shall serve staggered terms. One (1) of the initially selected members shall serve a term of one (1) year, three (3) of the initially selected members shall serve a term of three (3) years, and three (3) of the initially selected members shall serve a term of five (5) years.

(c) Any vacancies occurring in the membership of the Commission during a term shall be filled by the Governor selecting a person from the same category as that from which the person creating the vacancy was appointed. Every person filling a vacancy shall be confirmed by the Legislature. Any person filling a vacancy shall serve only for the unexpired portion of the term.

(d) When there is a change of administration of the government of Guam after a gubernatorial election, no courtesy resignation shall be requested by the new administration of the government of Guam nor offered by any Commissioner.

(e) The members of the Public Utilities Commission shall elect a chairperson.

(f) At the first meeting of the Public Utilities Commission, the members shall draw lots to determine which members shall serve the one (1) year term, the three (3) year terms, and the five (5) year terms.

(g) The Commission may remove or suspend for cause any member of the Commission after due notice and public hearing.

(h) No person owning any bonds of any public utility regulated by the Commission or deriving any remuneration from any public utility regulated by the Commission shall be eligible to serve as a Commissioner or be employed by the Commission. Further, no person who is an officer or director, or who owns a financial interest in a corporation or partnership doing business with a regulated

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utility shall be eligible to serve as a Commissioner or be employed by the Commission.

(i) No Commissioner shall during the two (2) years immediately following termination of service on the Commission be employed by any public utility which is regulated by the Commission.

(j) No Commissioner may serve on any other board or commission of the government of Guam during his term as Commissioner of the Public Utilities Commission.

(k) Commissioners shall be compensated at the rate of One Thousand Dollars (\$1000.00) per month. Such compensation shall be apportioned by the PUC in a fair and equitable manner among the utilities and entities regulated by the PUC. Commissioners shall not be eligible for government of Guam retirement or insurance benefits, or other benefits associated with government of Guam employment.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984); amended by P.L. 20-066:3 (Sept. 14, 1989). Subsection (a) amended by P.L. 24-047:1 (June 20, 1997), P.L. 24-143:18 (Feb. 27, 1998), P.L. 25-005:4 (May 10, 1999), P.L. 26-066:2 (Dec. 22, 2001), P.L. 30-052:4 (July 14, 2009). Subsection (k) added by P.L. 31-251:2 (Dec. 11, 2012).

§ 12102.1. Ratepayers' Bill of Rights.

(a) *I Liheslaturan Guåhan* finds that the services provided by Public Utilities are basic necessities that the residents of Guam must receive in order to function in modern life. *I Liheslaturan Guåhan* also finds that because residents have very little choice in purchasing these basic necessities, they are held captive to the rates and rate increases of the Public Utilities. Any rate increase therefore diminishes the amount of hard-earned wages residents have to spend on other basic necessities, such as food, shelter and clothing, as well as the amount of hard-earned wages they have to set aside for retirement, college, emergencies or a family business.

(b) While *I Liheslaturan Guåhan* recognizes that over a long period of time, an increase in utility rates is inevitable, such rate increases must be made out of absolute necessity, and only after every cost-cutting effort has been made and every other available option has been exhausted. *I Liheslaturan Guåhan* intends to make it clear that it does not want to

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interfere with the ability of the Public Utilities Commission to regulate and set rates for the Public Utilities, but *I Liheslaturan Guåhan* also intends to make it abundantly clear that no Public Utility shall submit a proposal for a rate increase without first giving the people of Guam more than ample opportunity to exercise their fundamental rights as ratepayers. Those fundamental rights of the ratepayers include:

- (1) the right to receive clear and adequate notice of any proposed rate increase;
- (2) the right to be fully informed about and to fully evaluate any proposed rate increase, as well as the finances of a Public Utility; and
- (3) the right to give input and participate in any proposed rate increase.

It is these basic rights which the Ratepayers' Bill of Rights seeks to uphold.

SOURCE: Added by P.L. 26-023:1 (July 5, 2001).

2014 NOTE: Subsection designations (a) and (b) were added to conform to the Compiler's alpha-numeric scheme in accordance with the authority granted by 1 GCA § 1606.

§ 12102.2. Proposed Public Utility Rate Increases.

(a) Sections 12102.1 through 12102.2, which shall be known as the Ratepayers' Bill of Rights, shall in no way restrict the powers of the Public Utilities Commission (Commission) granted in this Chapter to regulate or set rates for a Public Utility. The Ratepayers' Bill of Rights sets conditions only on the manner in which a Public Utility shall submit a proposed rate increase to the Commission. No Public Utility, as defined in § 12101 of this Chapter, with the exception of the Guam Memorial Hospital, and the Jose D. Leon Guerrero Commercial Port, may submit a proposed rate increase to the Commission before complying with the mandates of this Section. This Section shall not apply to the Guam Memorial Hospital and the Jose D. Leon Guerrero Commercial Port. In the case of the Jose D. Leon Guerrero Commercial Port, notice of any proposed changes in rates shall be made as described in subsection (f) herein.

(b) A Public Utility shall publish notice of any proposed rate increase in a newspaper of general circulation, as defined in § 8104 of

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Chapter 8 of Title 5 of the Guam Code Annotated, Open Government Law, at least three (3) months before submitting it to the Commission. The published notice shall include the Public Utility's intention to submit a proposed change in its rates in three (3) month's time, its current utility rate, the proposed rate, the amount of increase and a justification for the increase.

(c) A Public Utility shall mail a notice to every ratepayer at least one (1) month before submitting a rate change proposal to the Commission. The notice shall state the Public Utility's intention to submit a proposal to increase its rates in one (1) month's time, its current utility rate, the proposed rate, the amount of increase and a justification for the increase.

(d) The Public Utilities Commission ('PUC') shall annually conduct a study comparing the staffing pattern and manpower levels of the Public Utilities under their purview to the staffing patterns and manpower levels of at least four (4) other utilities in the United States Mainland which provides similar services to a comparable number of customers.

The first such study mandated herein shall begin no less than sixty (60) days after the effective date of this Act. The PUC shall publish the results of such studies in a newspaper of general circulation, as defined in § 8104 of Chapter 8 of Title 5 of the Guam Code Annotated, Open Government Law. The studies shall be made available to residents attending the public hearings on the proposed rate increase. The PUC must, in determining approval of any proposed rate increase, take into account the results of such studies and order reductions or other adjustments in the operations of the Public Utility requesting a rate adjustment, as recommended or suggested by such studies, prior to granting approval for a rate increase.

It is the intention of *I Liheslaturan Guåhan* that the PUC mandate reductions in unnecessary levels or areas of expenditure in Public Utilities prior to, or in conjunction with, approval of any rate increase. Any Public Utility that has received an order from the PUC to reduce expenditures in any area of operations shall comply with such order, and failure to do so is a grounds for disapproval of a rate increase proposal.

(e) A Public Utility, at least one (1) month before submitting a rate increase proposal to the Commission, shall publish on a World Wide

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Web ('Web') page, available through the Internet, all the information provided in its public notices required by this Section. The Web page shall also include a message board, or an electronic mail address, by which the public can submit its opinions, testimony and any reactions to the proposed rate increase or to the information provided on the Web page.

(f) The Jose D. Leon Guerrero Commercial Port (the Port) shall not submit any proposed rate change to the Commission until the following actions have occurred:

(1) The Port shall publish notice of any proposed rate change in a newspaper of general circulation, as defined in § 8104 of Chapter 8 of Title 5 of the Guam Code Annotated, Open Government Law, at least sixty (60) days prior to submitting the proposed rate change to the Commission. The notice required herein shall include the Port's intention to submit its proposed rate change to the Commission, its current rate, the proposed rate, the difference in the current and proposed rates stated in percentage form, a justification for the change, and an electronic mail address and physical location where comments on the proposed rate change may be submitted; and

(2) The Port shall publish notice of any proposed rate change on the Port's official website at least sixty (60) days prior to submitting the proposed rate change to the Commission. The notice required herein shall include the Port's intention to submit its proposed rate change to the Commission, its current rate, the proposed rate, the difference in the current and proposed rates stated in percentage form, a justification for the change, and an electronic mail address and physical location where comments on the proposed rate change may be submitted.

SOURCE: Added by P.L. 26-023:2 (July 5, 2001). Subsection (a) amended by P.L. 30-052:5 (July 14, 2009). Subsection (f) added by P.L. 30-052:6 (July 14, 2009).

§ 12103. Operation of Commission.

(a) The Commission shall retain on an as needed basis those professional services required by the Commission in the performance of its duties. The Commission may employ administrative staff personnel for the conduct of Commission business.

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(b) The Commission may also appoint an attorney, who shall serve at the pleasure of the Commission and whose duties, which may include service as the Commission's administrative law judge, shall be fixed by the Commission. The attorney, who must have been admitted to practice before the Supreme Court of Guam, shall advise the Commission on all legal matters to which the Commission is legally interested, and may represent the Commission in connection with legal matters before *I Liheslaturan Guåhan*, the courts of Guam, and boards and other agencies of Guam. The Commission is authorized to establish by rule or order that each public utility regulated under this Chapter shall be assessed the costs incurred by the Commission for professional services rendered by the attorney.

(c) If the agency's determination is reversed by the Commission, then the Commission shall award reasonable attorney's fees to the customer and costs. The remedies contained in this Title are not exclusive, and the customer may, at the customer's sole option, proceed under this Title, under 7 GCA, Chapter 4, Article 2, or may pursue any other remedies available.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984), repealed and reenacted by P.L. 20-094:28 (Sept. 22, 1989). Subsection (b) amended by P.L. 26-018:2 (May 31, 2001).

NOTE: Pursuant to the authority granted by 1 GCA § 1606, the reference to the Guam Code of Civil Procedure in subsection (c) was altered to reflect the codification of this section in the GCA.

§ 12103.1. Operation of Commission-Additional.

Notwithstanding any other provision of law, the Public Utilities Commission may meet for purposes of gathering information on utilities and requesting, demanding and accepting reports and documents from regulated utilities, and for other purposes. The Commission may continue in limited operation, as funds are available or on a volunteer basis, for purposes of monitoring the regulated utilities and making such orders, rules, and regulations, as may be appropriate to monitor such agencies and insure that orders of the Commission are complied with. Financial documents and reports of publicly owned utilities are hereby declared to be public documents.

SOURCE: Added as uncodified law by P.L. 18-033:29 (May 9, 1986); codified by Compiler.

§ 12104. Annual Report.

The Commission shall prepare and present to the Governor and to the Speaker of the Legislature, in January of each year, a report respecting its actions during the preceding fiscal year, if any, together with its recommendations respecting legislation.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

§ 12105. General Powers and Duties.

(a) The Commission shall have regulatory oversight supervision of rates as set forth in this Chapter over each public utility and shall perform the duties and exercise the powers imposed or conferred upon it by this Chapter.

(b) The Commission in the discharge of any of its duties or the exercise of any of its powers, except a final determination affecting a public utility, may act through one or more of its Commissioners designated by the Commission for this purpose.

(c) The Commission shall investigate and examine any rates and charges charged by any utility, and all records pertinent thereto.

(d) The Commission may seek advice from an independent utility expert, shall approve, disapprove, increase or reduce rates for each utility.

(e) The Commission shall establish and modify from time to time, reasonable rates and charges for services, including General Lifeline Rates, which as far as Guam Telephone Authority, the Guam Waterworks Authority, and Guam Power Authority are concerned, when all rates for respective blocks of usage are considered together, shall be at least adequate to cover the full cost of such service or subject to any contractual agreements of the utilities to the holders of any bonds and shall increase rates or charges from time to time as may be necessary pursuant to any contractual obligations, except that General Lifeline Rates may only be increased when the total actual overall cost of providing service to all classes of customers, increases by no less than twenty percent (20%).

(1) The utilities shall not, however, enter into any contractual agreements or obligations which could increase rates and charges prior to the written approval of the Commission.

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(2) No money in any utility sinking fund may be released except for the purpose for which it is dedicated.

(f) No rate change may be approved by the Commission unless it is affirmatively established, by a preponderance of the evidence, that a rate change is necessary.

(1) The Commission shall conduct such investigation and hearings as to any such rate changes as it deems necessary.

(2) As to the Guam Power Authority, the Commission shall ensure that rates will, at all times, be sufficient to enable the utility to meet its financial obligations, operating expenses, debt service and capital improvement needs.

(3) Any rate change shall be considered by the Commission using standards and financial criteria consistent with generally accepted rate-making practices of public utilities and in full consideration of the requirement to establish and maintain General Lifeline Rates.

(g) The Commission shall have the power to enter into contracts and execute all instruments necessary or convenient in the exercise of its powers, adopt a seal, and sue or to be sued in its own corporate name.

(h) At any public hearing concerning the establishment or modification of any rate, the commission may consider any factual testimony and evidence presented by the general public. In addition, any member of the public may present witnesses at such public hearing, upon a timely application made to the commission.

(1) The commission, in determining whether a member of the public may be allowed to present witnesses, shall take into account an offer of proof to be filed with the application for such privilege and determine whether the proof offered would add anything to the proceedings.

(2) The request to present witnesses may be denied if the commission finds that such action is of a dilatory nature or would otherwise impede the operations of the commission unduly.

(3) The right to present evidence and witnesses shall be liberally granted as long as such activity would not unduly impede

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the activities of the commission or delay the decision making process of the commission.

(4) Nothing herein shall prevent any witness from testifying at a public hearing on his own behalf and presenting any type of documentary or physical evidence at the time of testimony which may be relevant to the matter before the commission.

(5) The Commission shall give such weight to the testimony and evidence presented by the general public as it gives to evidence presented by the participants before the Public Utility Commission in the docket concerned and shall hold the evidence presented by the general public to the same criteria, the same standards of proof, and the same rules of evidence as would be applicable to a participant.

(6) Any participant may make objections to the introduction of evidence by any member of the general public upon any grounds which would be appropriate if such evidence were being presented by a participant to the proceedings.

(7) The commission may allow cross-examination of witnesses by participants to the proceedings and may, if appropriate, allow participants an opportunity to refute evidence presented by the general public if the interests of justice so require.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984), amended by P.L. 18-009:23 (July 23, 1985), P.L. 20-066:4 (Sept. 14, 1989), P.L. 21-142:3 (Jan. 2, 1993), P.L. 23-030:1 (June 27, 1995), P.L. 23-119:4 (July 31, 1996).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

NOTE: Public Law 26-076:21 (Mar. 12, 2002) stated:

Section 21. PUC to Continue to Regulate Rates. The Public Utilities Commission ("PUC") shall continue to have jurisdiction in regulating and setting rates for both the Guam Waterworks Authority ("GWA") and the Guam Power Authority ("GPA"). Nothing in this Act shall be construed as impairing the powers, duties or effectiveness of the PUC in relation to GWA or GPA.

§ 12106. Powers.

(a) The Commission shall have the following powers which it may exercise in carrying out its mandate to regulate rates:

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(1) to examine the financial records of each public utility including all bank records;

(2) the terms and conditions of any contracts with the United States Government;

(3) terms and conditions of any refinancing provisions by the Federal Finance Bank and the Department of the Interior;

(4) its costs of operations and costs charged to it by the United States Government;

(5) schedules of rates and classifications;

(6) the value and condition of the utility's physical property, including that of the United States Government where appropriate;

(7) the issuance on behalf of the utility of bonds and the disposition of the proceeds thereof;

(8) the volume of unit sales;

(9) the amount and disposition of its income;

(10) all its financial transactions; its compliance with contracts, covenants, promissory notes and other terms of indebtedness;

(11) its compliance with all applicable territorial and federal laws and with the provisions of its franchise, articles of incorporation and enabling legislation.

(b) The Commission shall have the power at any time to examine the financial condition of the utility.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

§ 12107. Quorum.

Four (4) Commissioners shall constitute a quorum. An affirmative vote of at least four (4) Commissioners present at a meeting where a quorum is present shall be required for the Commission to act or issue a decision.

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SOURCE: Added by P.L. 17-074 (Oct. 26, 1984), amended by P.L. 25-005:5 (May 10, 1999), and P.L. 26-066:5 (Dec. 22, 2001).

§ 12108. Public Utilities to Furnish Information.

(a) Every public utility shall at all times, upon request, furnish to the Commission all information that it may require respecting any of the matters concerning rates and charges, revenues and expenditures which it is given power to investigate, and shall permit the examination of its books, records, contracts, maps and other documents by the Commission, or any person authorized by it in writing to make such examination, and shall furnish the Commission a complete inventory of its property in such form as the Commission may direct.

(b) Every public utility shall furnish the Commission with annual reports containing information to be specified by the Commission as well as copies of all internal financial statements used by the utility on a monthly, quarterly or regular basis.

(c) The Commission shall require the utilities to follow standard utility accounting procedures, or, in the case of the Guam Power Authority to follow the accounting procedures required by the Federal Energy Regulatory Commission.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

§ 12109. Commission May Compel Attendance of Witnesses, Etc.

(a) In all investigations made by the Commission, and in all proceedings before it, the Commission shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses as are possessed by the Superior Court.

(1) In case of contempt or disobedience by any person to any order of the Commission or any subpoena issued by it, or of the refusal of any witness to testify to any matter regarding which he may be questioned lawfully, the Superior Court, on application by the Commission shall compel obedience and punish said person as in the case of disobedience of the requirements of a subpoena issued from the Superior Court or a refusal to testify therein.

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(2) Nothing herein shall be construed as in any manner giving to any public utility immunity of any kind except as may already be conferred by law.

(3) The fees and traveling expenses of witnesses shall be the same as allowed witnesses in the Superior Court and shall be paid out of any appropriation available for the expenses of the Commission.

(b) All meetings and hearings of the Commission shall be public and minutes and records of each meeting shall be kept. Personnel matters of employees of the Commission may be handled in an executive session.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

§ 12110. Rates to be Published.

The rates, all assessment costs, classifications, charges and rules of every public utility shall be published by the public utility in such manner as the Commission may require, and copies furnished to any person on request.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

§ 12111. Notice of Hearings.

Whenever an investigation or proceeding is undertaken by the Commission, reasonable notice in writing of such fact and of the subject or subjects of the investigation or proceeding shall be given to the public utility concerned, and a notice in writing of the date and place fixed by the Commission for beginning the investigation shall be served upon the public utility not less than two (2) weeks before the date designated for the hearing.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

§ 12112. Right to be Represented by Counsel.

At any investigation by or proceeding before the Commission, the public utility concerned shall have the right to be present and represented by counsel, to present any evidence desired, and to cross-examine any witness who may be called.

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SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

§ 12113. Public Utilities Commission Fund.

A Public Utilities Commission Fund shall be established for the use of the Public Utilities Commission for its operations, consisting of amounts as may be placed therein pursuant to the provisions this of Chapter.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

§ 12114. Commission may Make Rules and Establish Fees.

(a) In the hearings before it, the Commission is not bound by the procedures set out in 5 GCA Chapter 5, Article 2, but may establish its own procedures for the conduct of hearings and the admission of evidence. It shall establish its own procedures however, by promulgating rules according to the rule-making procedures set out in 5 GCA Chapter 5, Article 3 (Administrative Adjudication Law).

(b) The Commission shall not be bound by the strict rules of the common law relating to the admission or rejection of evidence, but may exercise its own discretion in these matters with a view to doing substantial justice.

(c) The Commission may establish and amend a schedule of reasonable fees and costs for copies of papers and records requested by interested parties, and for the filing and serving of papers and documents required of public utilities by this Chapter. All such fees and costs charged and collected shall be paid into the Public Utilities Commission Fund.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

§ 12115. May Make Recommendations and Bring Suits.

If the Commission is of the opinion that any public utility is violating or neglecting to comply with the terms of its loans and contracts, or with any territorial or federal law, or any provisions of its franchise, charter, enabling legislation or articles of incorporation, if any, or any rule, or order of the Commission; or that any rates, assessment costs, or, charges are unreasonable or unreasonably discriminatory; it shall in writing inform the public utility of its conclusions and

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recommendations, shall include the same in its annual report, and may also publish the same in such manner as it may deem wise. The Commission may examine into any of the matter referred to in § 12106, notwithstanding that the same may be within the jurisdiction of any court or other body, and when after the examination the Commission is of the opinion that the circumstances warrant, it shall effect the necessary relief or remedy by the institution and prosecution of appropriate proceedings or otherwise before such court or other body, in its own name or in the name or names of any complainant or complainants, as it may deem best.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

2014 NOTE: Pursuant to the authority granted by § 1606, the reference to the statute was altered to reflect the existing codification structure.

§ 12116. Regulation of Rates.

(a) All rates, charges, assessments, and costs made or charged by any public utility shall be just and reasonable and in conformance with public law, and shall be filed with the Commission; and no rate, charge or assessment cost shall be established, abandoned, modified, departed from or changed without a public hearing and the prior approval of the Commission. The Commission, upon notice to the public utility, may suspend the operation of any proposed rate, charge or assessment cost, or any proposed abandonment or modification thereof or departure therefrom, and after a public hearing by order regulate, fix and change all such rates, charges, General Lifeline Rates, or assessment costs so that the same shall be just and reasonable, and may prohibit rebates and discrimination between localities, or between consumers, under substantially similar conditions.

(b) Pursuant to its authority, Commission (hereafter Commission) and Guam Waterworks Authority (hereafter "GWA") shall immediately begin proceedings to establish rates for the Guam Waterworks Authority, to be completed by December 1, 1996 for implementation as hereinafter indicated. As to setting these initial rates, and reviewing interim rates, GWA is authorized to shorten time and the various days required for notices under any law, rule or regulations as long as reasonable notice is given to the public and the concerned party.

(c) (1) Interim rates. Until December 31, 1996, interim rates at GWA shall be set by the Governor, who shall set rates for water, sewer, and auxiliary services at GWA which are fair and reasonable

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and in accordance with the standards for the Commission in 12 GCA § 12116.1, and in accordance with generally accepted rate setting practices for publicly owned Public Utilities.

(2) Such interim rates shall not exceed the amount reasonably necessary for estimated operational costs, maintenance costs, required capital improvements, and other reasonable costs and charges during the period from the date of implementation of the interim rates to December 31, 1996.

(3) The PUC may reduce the interim rates set by the Governor if excessive, with the burden on the Governor and the GWA to establish that the interim rates are fair and reasonable and in accordance with this Chapter.

(4) The Governor, during the period until December 31, 1996, may modify the interim rates after a hearing.

(5) Such interim rates may be billed as to given customers only upon an actual meter reading closing out usage at the old rate and setting a base for beginning the interim rates, with all subsequent billings until April 1, 1997 being based on actual (not estimated) readings.

(6) All interim rates shall be filed with the Commission and the Speaker of the Guam Legislature at least 15 days before becoming effective.

(d) The interim rates at GWA shall expire as of the last billing cycle of December 1996 for each customer and thereafter the new rates approved by the Commission shall apply.

(e) The rate package prepared by the Commission shall include, at a minimum, a management audit, and a rate and cost of services study.

(f) In addition to the appropriation for the operations of the GWA contained in Section 3 of Chapter III of this Act, and in addition to the transfer authority provided in Section 7 of Chapter V of this Act, if rates charged by the GWA are insufficient to cover operations, the Governor is authorized to transfer up to Five Million Dollars (\$5,000,000) from any outstanding appropriations from the General fund to the Guam Waterworks Authority as supplemental funding.

(g) (1) Upon enactment of this Subsection (g), any existing rates

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and other items and charges of the Jose D. Leon Guerrero Commercial Port (the Port) shall continue to remain in effect unless and until modified in accordance with the applicable provisions of this Chapter.

(2) Pursuant to its oversight supervision, the Commission shall begin proceedings with the Jose D. Leon Guerrero Commercial Port (the Port) to review and modify, or establish rates and other items and charges set forth in Title 12 GCA § 10104(j), for the use of Port facilities or appliances.

(3) Until December 31, 2010, the Commission may establish interim rates and charges for the use of Port facilities or appliances as may be necessary for estimated operation or maintenance costs, required capital improvements, or other reasonable costs.

(4) To establish any such interim rates or charges, the Commission may conduct such investigation and hearings as it deems necessary pursuant to its powers under Title 12 GCA § 12105.

(5) No later than December 31, 2010, the Port shall submit to the Commission the results from a study of existing rates, charges and cost of services provided by the Port.

(6) The request for proposals to study existing rates, charges and cost of services shall be subject to the review and approval of the Commission prior to issuance; and any contract entered into by the Port for such services shall be subject to the prior approval of the Commission.

(7) Any modification to or establishment of rates shall thereafter be implemented in accordance with the procedures set out in this Chapter.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984), amended by P.L. 18-009:24 (July 23, 1985), P.L. 21-142:4 (Jan. 2, 1993). Repealed and reenacted by P.L. 23-045:IV:16 (Oct. 18, 1995). Subsection (a) amended by P.L. 25-005:6 (May 10, 1999) and P.L. 26-066:3 (Dec. 22, 2001). Subsection (g) added by P.L. 30-052:7 (July 14, 2009).

2015 NOTE: Subsection designations in (c) and (g) were added in accordance to the authority granted by 1 GCA § 1606.

2014 NOTE: Pursuant to the authority granted by § 1606, references to other statutes were altered to reflect the existing codification structure.

References to the “Public Utility Agency of Guam” changed to “Guam Waterworks Authority” pursuant to P.L. 23-119:3 (July 31, 1996).

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Subsection (f) refers to P.L. 23-045:III:3 as making appropriations for the operation of PUAG, however, said section pertains to appropriation for Sanctuary, Inc.. Subsection (f) further refers to the Governor's transfer authority found in P.L. 23-045:V:7 which reads:

Section 7. (a) Transfer authority for general government operations. The Governor is authorized to transfer from one appropriation of the Executive Branch to another appropriation of the Executive Branch, provided, that not more than Five Percent (5%) of the funds of any territorial agency shall be transferred out of the territorial agency; and provided further, that notice of each transfer and justification therefor, is delivered by the end of the month in which the transfer takes place to the Speaker of the Legislature.

(b) Transfer authority for the Guam Memorial Hospital Authority (GMHA). In addition to the appropriations for the operations of the Guam Memorial Hospital Authority (GMHA) contained in this Act, and in addition to the transfer authority provided in subsection (a), above, the Governor is authorized to transfer up to Five Million Two Hundred Thousand Dollars (\$5,200,000) from any outstanding appropriations from the General Fund to the Guam Memorial Hospital Authority (GMHA) as supplemental funding.

(c) Transfer authority granted to the Governor by this Act shall only extend to FY1996 appropriations from the General Fund to any agency within the Executive Branch.

§ 12116.1. Financial Autonomy of the Public Utility Agency of Guam.

[Repealed.]

SOURCE: Added by P.L. 18-009:25 (July 23, 1985), repealed and reenacted by P.L. 18-011:8 (Aug. 3, 1985), repealed by P.L. 23-119:2(c) (July 31, 1996).

§ 12116.2. Water and Sewer Rate Exception.

[Repealed.]

SOURCE: Added by P.L. 18-033:26 (May 9, 1986). Codified by Compiler. Repealed by P.L. 23-119:2(c) (July 31, 1996).

§ 12116.3. Monetary Charges for the Beneficial Use of Water Obtained by Private Water Well Operators.

Rates shall be established for water obtained by private water well operators as follows:

(a) The Guam Waterworks Authority (GWA) shall establish separate classes of monetary charges for water, potable and non-

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potable water (brackish water for irrigation use), drawn by private water well operators.

(b) Said rates shall reflect the cost of activities required to be performed by GWA and the Guam Environmental Protection Agency with respect to such private water well operators as required by law, plus a monetary charge to compensate the people of Guam for the extraction of water, a public resource.

(c) In arriving at an appropriate rate for water withdrawn by private water well operators, GWA shall take into account the average capital investment and recurring operational costs to the operators of such private water wells.

(d) GWA shall, within sixty (60) days of enactment of this section, submit to the Legislature the schedule of monetary charges made pursuant thereto.

(1) The Legislature shall, within seven (7) legislative days of receipt, act upon such proposed schedule of monetary charges.

(2) In the event no action is taken within such seven (7) legislative days, the schedule of monetary charges as proposed by GWA shall go into effect.

(3) In the event rate setting authority for service rates of GWA is placed under the Public Utilities Commission (the "Commission"), GWA shall submit the proposed schedule of monetary charges to the Commission for review and disposition, and such schedule of monetary charges shall become effective upon its approval by the Commission.

SOURCE: Added by P.L. 22-047:2 (Dec. 2, 1993).

2015 NOTE: Subsection designations in (d) were added in accordance to the authority granted by 1 GCA § 1606.

NOTE: References to the "Public Utility Agency of Guam" changed to "Guam Waterworks Authority" pursuant to P.L. 23-119:3 (July 31, 1996).

§ 12116.4. Establishment of Targeted Lifeline Rates for Local Exchange Telephone Service.

Notwithstanding any other provision of law, the Commission shall establish and modify from time to time, Targeted Lifeline Rates for local

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exchange telephone service that are consistent with policies and procedures established by the Federal Communications Commission ('FCC').

(a) Eligibility Criteria. Subscribers are eligible for the Targeted Lifeline Rate for a single residential telephone line if they meet the low income eligibility criteria established by the FCC.

(b) Definition. In the case of local exchange telephone service a Targeted Lifeline Rate is defined as, the basic residential subscriber line rate less any Federal lifeline program support.

SOURCE: Added by P.L. 24-076:2 (Sept. 30, 1997).

§ 12116.5 Water and Sewer System Development Charge.

(a) The Guam Waterworks Authority ("GWA") shall establish and implement, subject to the prior approval of the Commission in subsection (b), a water and sewer system development charge schedule, which charges shall be assessed on each user who is for the first time connecting property into the Guam's water or wastewater system, or to each builder if the density of development on existing connection is increased. Such charge schedule shall seek to recover the additional costs associated with constructing, expanding, upgrading and repairing water and wastewater facilities for such new users and development, and shall take into account existing infrastructure on the property, present and future user demands, requirements for water and/or sewer services, and installation of infrastructure to be done by the user or builder.

(b) Pursuant to its authority, the Commission shall immediately begin proceedings to promptly establish and approve the water and sewer system development charge schedule for GWA.

(1) The Commission has the authority to adopt and approve a charge schedule for GWA which complies with Subsection (a) of this Section, including, a schedule which shall be known as the Amortized System Development Charge (ASDC) for residents who are constructing or purchasing a single family dwelling intended for their personal residence and/or for immediate family members.

(A) Such charge shall be assessed at an initial amount of no less than ten percent (10%) of the total SDC charge due, and the remainder of the charge shall be amortized over a period

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not to exceed fifteen (15) years, in which the charge plus interest, at a rate established by the Guam Public Utilities Commission, is added to the monthly GWA billing for the dwelling at a rate in which the total annually assessed charge shall not exceed the initial charge; and provided, that nothing herein shall limit the Commission's authority and jurisdiction to establish and approve General Lifeline Rates for GWA, which may apply to the water and sewer development charge schedule.

(B) The charge schedule shall be applied to users and developers by GWA upon its adoption and approval by the Commission, and no charges shall be assessed prior to adoption and approval by the Commission.

(2) ASDC Applicability. The ASDC shall not apply to any commercial development involving the construction of multiple residential units.

(3) ASDC Not Transferable. Should a homeowner paying an ASDC decide to sell or transfer the property, on which the ASDC applies, to a person who is not an immediate family member or who qualifies for the ASDC under this Chapter, then full payment of any balances owed for the ASDC shall be paid prior to registration of the sale and transfer of the property at the Department of Land Management, and prior to the transfer of the original owner's water/wastewater account to the new owner and/or occupant of the residence.

(c) Notwithstanding any other provision of law, all revenues generated by the water and sewer system development charge schedule will be deposited into the Island Water and Sewer Infrastructure Development Fund. Such funds shall be administered by GWA. However, GWA shall file annually for Commission review and approval a full accounting of the receipts and expenditures into and from the Fund with appropriate details of the sources and expenditures into and from the Fund.

(d) The Island Water and Sewer Infrastructure Development Fund shall only be expended for costs associated with the construction, expansion, upgrade, and repair of water and wastewater facilities for users who are for the first time connecting property into the Guam's

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water or wastewater system, or for builders if the density of development on existing connection is increased.

(e) Fees due under the water and sewer development charge schedule adopted by the Commission shall be paid to GWA prior to the issuance of a building construction permit. Subsequent to the adoption and approval of the charge schedule by the Commission, no building construction permit shall be issued without a certificate issued by GWA that all fees due under the charge schedule have been paid, except that the Commission shall develop and adopt a schedule for GWA customers qualified for the ASDC that shall allow for the building construction permit to be issued subsequent to payment of the initial charge.

(f) Any person may contest any proposed assessment for the water and sewer development charge schedule made or determined by GWA by filing with GWA a written protest at any time prior to the issuance of a building construction permit.

(1) All protests shall be prepared in the form and contain such information as GWA shall reasonably require, and shall include a summary statement of the grounds upon which the person relies and that person's reasons for disputing the assessment of GWA.

(2) GWA shall make a determination with respect to the protest and, if required, make an adjustment to the assessment within thirty (30) days of receipt of such protest.

(3) Persons dissatisfied with GWA's determination may file a petition with the Commission to review such determination within thirty (30) days of GWA's determination.

(g) Except as provided hereafter, each person who made a voluntary contribution under Section 56119 of Title 5 of the Guam Code Annotated shall be compensated to the extent the amount contributed is greater than the charges that would apply under the charge schedule approved by the Commission.

(1) Such persons shall be compensated the difference through an abatement of business privilege taxes equal to the differential.

(2) Persons seeking credits under this Subsection (g) shall make an application to GWA within one (1) year of the date of

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enactment of this Act, and GWA shall determine the amount of any credit within ninety (90) days of its receipt of the application.

(3) Persons dissatisfied with GWA's determination may file a petition with the Commission to review such determination.

This Subsection shall not apply to persons who previously received credits under Section 56119 of Title 5 of the Guam Code Annotated.

(h) Except for voluntary contributions previously made, no further assessments shall be collected or imposed by GWA or the Commission under Section 56119 of Title 5 of the Guam Code Annotated.

(i) Affordable Housing System Development Charge (AHSDC).

(1) AHSDC For Persons Who Construct Their Own Primary Residences. Any person who constructs, or causes to construct, a home where said structure will be the primary residence for themselves or an immediate family member as defined by 4 GCA § 4108 (2) shall be charged 1.01% for water connections and 1.65% for sewer connections of the actual cost to construct the home and purchase the land in the event the actual total cost is Two Hundred Ten Thousand Dollars (\$210,000) or less.

(A) GWA shall require reasonable proof to be provided showing that the home will in fact be a primary residence.

(B) The actual cost of a home includes the purchase price of the land, if any, and all materials, labor, and other amounts necessary for the single-family dwelling that is constructed to fully comply with the Guam Building Code.

(C) The AHSDC shall not apply to those persons who construct, or cause to be constructed, homes that do not meet the requirements of the Guam Building Code, nor shall the charge apply to persons renovating existing structures.

(D) GWA shall not provide water services to any structure that does not fully comply with the Guam Building Code.

(2) AHSDC For Persons Who Construct Affordable Homes With Intent To Sell. Any person who constructs a home which is to be sold, or is in fact sold, prior to initial occupancy where the home

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costs Two Hundred Ten Thousand Dollars (\$210,000) or less, shall be charged 1.01% for water connections and 1.65% for sewer connections of the value of the sale price of the home.

(A) The valuation shall include the purchase price for the entire lot where the home is located.

(B) The valuation shall also include the actual cost of a home, inclusive of all the materials, labor, and other amounts necessary for a building to fully comply with the Guam Building Code.

The AHSDC is not applicable to those persons or developers who construct, or cause to be constructed, homes that do not meet the requirements of the Guam Building Code, or where the total cost, pursuant to Subsection (3) below, of the home and lot exceed \$210,000.

(3) Proof of Cost/Valuation. In order to determine the correct value of a home, the Guam Waterworks Authority shall have the authority to require reasonable proof of such value of the home, which includes, but is not limited to:

(A) a schedule of costs signed by an engineer, contractor or architect licensed on Guam;

(B) purchase price of the land; and

(C) a complete breakdown of all costs involved in the construction of the home to support the valuation claimed, or proof of the purchase price of the home if purchased.

An appraisal of the land is not required in the event the land was not purchased. GWA may reject any claim not reasonably founded or proven, or for failure to provide any document requested by GWA in support of such claim of valuation.

(4) Reevaluation. At least once every five years, the Guam Waterworks Authority shall review the Median Household Income for Guam, as published by the HUD Median Income Statistic, and shall then adjust the total cost threshold requirement of the AHSDC, set at \$210,000, accordingly.

2015 NOTE: Subsection designations in (b), (f), (g) and (i) were added in accordance to the authority granted by 1 GCA § 1606.

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(j) Timing of Payments Regarding System Development Charges for Single Family Dwellings.

(1) Notwithstanding any other requirement of law, the system development charge for all single family dwellings may be paid at any time prior to initial occupancy.

(2) Developers of property who sell single family dwellings are required to notify subsequent purchasers of the need to pay system development charges prior to occupying the home, in the event an occupancy permit has not issued or been applied for.

(3) GWA shall withhold water and sewer services until the payment of any system development charge is paid in full, aside from those persons who qualify for the Amortized System Development Charge as described in § 12116.5(b).

SOURCE: Added as § 12015.4 by P.L. 26-164:2 (Jan. 5, 2003). Codified to this section by the Compiler. Subsection (b) amended by P.L. 29-133:2 (Jan. 8, 2009) and P.L. 32-075:2 (Nov. 27, 2013). Subsection (e) amended by P.L. 29-133:5 (Jan. 8, 2009). Subsections (i) and (j) added by P.L. 32-075:3 (Nov. 27, 2013).

NOTE: References to the Gross Receipts Tax changed to Business Privilege Tax pursuant to P.L. 29-002:VI:28 (May 18, 2007).

§ 12116.6. Charges Authorized for Private Contractors If Their Systems are Integrated with GWA's.

The Guam Waterworks Authority ('GWA') may permit private contractors to operate community-wide water production and distribution systems, or wastewater disposal system(s), or both, and shall refer recommended rates to the PUC to establish rates for such water and wastewater systems if such systems are fully integrated within GWA's Island-wide water and wastewater systems. Such integration, including, but not limited to, rates, charges, assessments and costs, shall be set out in written joint operating agreements, approved by the PUC, between GWA and such private contractors.

SOURCE: Added by P.L. 24-295:5 (Oct. 21, 1998) as § 12015.3. Codified to this section by the Compiler.

§ 12117. Public Hearings.

(a) The Commission shall hold at least three (3) public hearings on any change in proposed rates or charges. One (1) of the public hearings shall be held in a location in Northern Guam, one (1) of the public

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hearings shall be held in a location in Central Guam, and one (1) of the public hearings shall be held in a location in Southern Guam. The notice of public hearing herein provided for shall plainly state the rates, charges or assessment costs proposed to be established, abandoned, modified or departed from, and the proposed effective date thereof.

(b) No hearings shall be held unless notice of the hearing, with the purpose stated thereof and the date, time and place at which it will be held has been advertised not less than once in each of three (3) weeks in a newspaper of general circulation on Guam, the first publication being not more than twenty-one (21) days before the scheduled hearing, and the last publication being not less than two (2) days before the scheduled hearing.

(c) The Public Utility shall notify its consumers of the proposed change in rates in the normal billing process not less than three (3) weeks before the date set for the public hearing. The Commission may use additional media, such as radio or television, to advise the public if it finds it necessary to do so. The Commission shall also accept written testimony on the proposed rate increase from the public after the public hearings have been conducted.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984). Amended by P.L. 26-023:3 (July 5, 2001).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

§ 12117.1. Exemption From Certain Provisions.

In the conducting of any hearing pertaining to the implementation of the provisions of the act authorizing the emergency procurement of generating equipment (P.L. 21-117) the Commission shall be exempt from the provisions of § 12117 of this Chapter. The Commission is requested to act upon any request of the Guam Power Authority ("GPA") having to do with the implementation of such act expeditiously in order to enable GPA to timely accept such bids as it has received as may be approved by the Commission; provided, however, that the Commission's authority under § 12105 of this Chapter to determine the need, prudence and timing of contracts and obligations contemplated by such act is recognized and confirmed.

SOURCE: Added by P.L. 21-117:9 (July 15, 1992).

§ 12118. Just and Reasonable Defined.

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

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984). Repealed and reenacted by P.L. 27-110:9 (Nov. 1, 2004).

§ 12119. Appeals.

From every order made by the Commission under provisions of this Chapter which is final, or, if preliminary, is of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief, an appeal shall lie to the Superior Court of Guam within thirty (30) calendar days from the date of the order. Failure of the Commission to act upon a rate request change within one hundred twenty (120) days of final filing by a public utility shall be deemed a final order denying said rate request change for the purposes of this Section.

A ‘final filing’ by a public utility occurs when a utility has filed all documentation necessary to support the request for a rate change. The appeal shall be deemed a review of an administrative proceeding and shall not be a trial de novo. The appeal shall not of itself stay the operation of the order appealed from, but the Superior Court of Guam may stay the order after a hearing upon a motion therefor, and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise in order to secure a restitution of the excess charges, if any, made during the pendency of the appeal in case the order appealed from should be sustained, reversed or modified in whole or in part.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984). Amended by P.L. 26-027:1 (July 5, 2001).

2014 NOTE: Pursuant to P.L. 26-027:2, the first paragraph was to “have immediate effect and shall be applied nunc pro tunc to any final filing of any agency that pends before the Public Utility Commission at the time this Act becomes law.”

§ 12120. Valuations.

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The Commission may cause a valuation to be made to ascertain for any purpose specified in this Chapter the value of the property of any public utility and every fact and element of value which in its judgment may have any bearing on such value. The Commission may make reevaluations and ascertain the value of all additions, extensions and acquisitions of property of any public utility.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

§ 12121. Penalty.

(a) Any public utility violating or neglecting or failing in any particular way to conform to or comply with this Chapter or any lawful order of the Commission shall forfeit to the Public Utilities Commission not more than Five Hundred Dollars (\$500.00) for every violation, neglect or failure per day.

(b) Any private contractor producing and distributing water or disposing of wastewater, as is regulated under § 12116.3 of this Chapter, which does not have a written joint operating agreement with GWA, or otherwise violates, neglects or fails in any particular way to conform to or comply with the provisions of this Chapter, or any lawful order of the PUC, shall forfeit to the PUC Five Thousand Dollars (\$5,000.00) for every violation, neglect or failure per day until such time as its permit and license, if any, are cancelled, or it otherwise ceases operations. All fines collected are to be deposited to the GWA.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984). Amended by P.L. 24-295:6 (Nov. 21, 1998).

§ 12122. Perjury.

Any person who willfully and knowingly makes under oath any false statement in connection with any investigation by or proceeding before the Commission shall be guilty of perjury, and upon conviction, shall be subject to the penalty prescribed by law for the offense.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

§ 12123. Partial Invalidity; Severability.

If any provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the Chapter, or the application of such provision to other persons or circumstances, shall not be affected thereby.

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SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

§ 12124. Application to Interstate or Foreign Commerce.

This Chapter and every provision thereof shall apply to commerce with foreign nations or to interstate commerce except insofar as such application is not permitted under the Constitution and laws and treaties of the United States or the Organic Act of Guam and the laws of Guam.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

§ 12125. Review of Rates.

Operating Cost of Commission.

(a) In addition to every other responsibility imposed upon the Commission by this Chapter, it shall within three hundred sixty five (365) days after the Commission first meets conduct review of the rates of every public utility to determine whether they are just and reasonable and shall take such action thereon to increase or decrease rates as it may deem appropriate.

(b) It is the intention of the legislature that the Commission shall operate on a self-sustaining basis; the Commission is authorized to establish by rule and order that each public utility regulated under this Chapter shall be assessed and the Commission shall collect in advance on a pro rata basis not to exceed in the aggregate the sum of One Hundred Thousand Dollars (\$100,000) for the payment of the necessary operating expenses of the commission in subsection (a) above. Additional payments may be ordered by the Commission against any special public utility regulated hereunder in rate cases or other such complex matter and proceedings which required the Commission to secure the review of technical or professional individuals or firms for preparation and hearing of such matters and proceedings.

SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

§ 12126. Compliance.

Notwithstanding any other provision of law, no rate or charge for any public utility shall become effective without the approval of the Commission. In this respect a public utility shall comply with this Chapter in addition to complying with any other condition, contractual obligation or obligation imposed upon it by law.

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SOURCE: Added by P.L. 17-074 (Oct. 26, 1984).

§ 12127. Estimated Billings.

Except as provided in § 12128 of this title neither the Guam Waterworks Authority nor the Guam Power Authority may bill consumers for consumption based upon estimated usage.

(a) All bills shall be rendered only upon actual readings taken within no more than seventy (70) days of the billing, provided, that regular bills are sent at approximately thirty (30) day intervals, and further provided that effective July 1, 1994, all meters shall be read at least every forty (40) days unless the Public Utilities Commission (PUC) has approved a billing plan to read the meters approximately every two (2) months and estimate every other bill.

(b) All estimated bills shall clearly reflect that they are based on estimated readings. After July 1, 1994, all estimated billings permitted pursuant to this section and § 12128, Title 12, Guam Code Annotated, shall be allowed only if the PUC has approved a comprehensive billing plan permitting estimated readings as permitted by said sections, and has established a formula for determining the estimated bills and has established a formula to ensure that all under- and over-estimated bills be fully adjusted for actual usage at the next subsequent billing based on actual usage.

(c) If a utility fails to read a meter for more than seventy (70) days, it can only charge the customer for actual usage based upon consumption between the dates of a new actual reading of the customer's meter and a subsequent timely reading to determine actual usage, and subsequent timely readings thereafter.

(d) In the event of a natural disaster such as a typhoon, earthquake, tidal wave or other natural disaster or unusual circumstances, the Governor may by executive order, extend this seventy-(70) day period for readings of the utility in question, up to a period of one hundred twenty (120) days, in increments of fifteen (15) days at a time, with any subsequent orders signed at least three (3) days after the previous order, which orders may not cumulatively extend the time for billing beyond a total of one hundred twenty (120) days from the date of the last billing.

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This section shall not apply in any case where the utility proves that there was fraud or tampering with the meter in question on the part of the consumer or by an agent or employee of the consumer, or where there is proof of fraud, collusion or conspiracy by the consumer to pay less than the proper charges to the utility concerned.

If the meter in question is inaccessible to the utility's meter readers as a result of the fault of the consumer, and the consumer has been notified in writing of such inaccessibility, then this section shall not apply and the utility can make estimated billings until the meter is accessible.

SOURCE: Added by P.L. 22-053:2 (Dec. 2, 1993).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

NOTE: References to the "Public Utility Agency of Guam" changed to "Guam Waterworks Authority" pursuant to P.L. 23-119:3 (July 31, 1996).

§ 12128. Back Billing.

Neither the Guam Waterworks Authority nor the Guam Power Authority ("GPA") may back bill customers for additional consumption of water, sewer, or electric power due to faulty meters or previous billing errors, except as provided in this section.

(a) In cases of non-functioning or defective meters, GPA and Guam Waterworks Authority are prohibited from back billing customers for additional consumption of water and power based upon estimated usage except for back billing not exceeding the four billing cycles of approximately thirty (30) days each immediately preceding the discovery by such utility of the error, and not to exceed four (4) months, for the reasonably estimated usage for such cycles, using reasonable estimates based upon subsequent actual average daily consumption by the consumer over a two (2) month period, or other formula, with any such other formula to approved by the Public Utilities Commission.

(b) In cases of other billing errors or omissions GPA and Guam Waterworks Authority are prohibited from back billing customers for additional consumption of water, sewer and power except for back billing not exceeding the four billing cycles of approximately thirty (30) days each immediately preceding the

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discovery by such utility of the error, and not to exceed four (4) months.

(c) The time limitations of this section shall not apply in any case where a meter is shown by the utility to have been damaged or to be unavailable to be read as a result of actions or negligence of the consumer, where there is active fraud or tampering with the meters in question on the part of the consumer or by an agent or employee of the consumer, or where there is proof of fraud, collusion or conspiracy by the consumer to pay less than the proper charges for water, sewer or power.

For purposes of this Section, the burden of proof shall be on the utility by clear and convincing evidence that the meters were actually read.

SOURCE: Added by P.L. 22-053:3 (Dec. 2, 1993). Amended by P.L. 23-119:5 (July 31, 1996).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

§ 12129. Rate Structure Implementation; Renewable Portfolio Standard Incentives; Report.

The Guam Public Utilities Commission and the Consolidated Commission on Utilities are the governing bodies for electric utility rate and policy. The Guam Power Authority shall file with the Guam Public Utilities Commission as part of its cost of service study:

(a) recommendations for the implementation of a utility rate structure designed to reward and encourage consumers to use renewable energy sources found on Guam;

(b) the extent that this proposed utility rate structure would impact Guam Power Authority coverage ratios, and to ensure that these coverage ratios do not decrease for a period of five (5) years following the implementation of this rate structure;

(c) findings and recommendations concerning the types of incentives offered through the Guam Power Authority that the Public Utilities Commission could authorize for GPA customers in meeting the renewable portfolio standards established in Title 12 GCA § 8311; and

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(d) report findings and recommendations, including proposed legislation, to *I Liheslatura* no later than one (1) year after enactment.

SOURCE: Added by P.L. 29-062:5 (Apr. 4, 2008).

ARTICLE 2
GUAM TELECOMMUNICATIONS ACT OF 2004

- § 12201. Legislative Findings and Intent.
- § 12202. Definitions.
- § 12203. Certificates of Authority for Telecommunications Companies.
- § 12204. Jurisdiction and Authority of the Commission.
- § 12205. Services and Charges.
- § 12206. Tariffs of Rates and Charges.
- § 12207. Petitions, Complaints, and Investigations.
- § 12208. Penalties Recoverable by the Commission.
- § 12209. Commission Expenses.
- § 12210. Technical Standards.
- § 12211. Competition and Regulatory Flexibility.

§ 12201. Legislative Findings and Intent.

(a) This Article shall be known and may be cited as the 'Guam Telecommunications Act of 2004.'

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

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

(3) A new regulatory environment conducive to competition will promote the development of modern, innovative, accessible, and affordable telecommunications services and products for the people of Guam.

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

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

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

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

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

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

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

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

SOURCE: Added by P.L. 27-110:10 (Nov. 1, 2004).

§ 12202. Definitions.

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

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

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

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

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

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

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

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

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

SOURCE: Added by P.L. 27-110:10 (Nov. 1, 2004).

§ 12203. Certificates of Authority for Telecommunications Companies.

(a) No person shall provide or resell telecommunications services in Guam without a certificate of authority issued by the Commission, except that a certificate of authority shall not be required for any person to provide commercial mobile service.

The provisions of Section 12208 of this Title shall apply in circumstances where a telecommunications company is providing or reselling telecommunications services without a certificate of authority issued by the Commission.

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On the effective date hereof, New GTA and any other telecommunication company then providing telecommunications service in Guam shall be deemed to have a certificate of authority under this Article with respect to the telecommunications services then provided by such telecommunications company or, with respect to New GTA, such telecommunications services provided immediately prior thereto by GTA (each a 'Grandfathered Certificate').

The Commission shall promptly issue Grandfathered Certificates to New GTA and any other such telecommunications company within sixty (60) days of the effective date hereof.

To obtain a Grandfathered Certificate, each telecommunications company other than New GTA shall represent to the Commission that such company and the intra-Guam telecommunications services it provides are subject to jurisdiction of the Commission in accordance with this Act and that the provision of such telecommunications services and the possession of a Grandfathered Certificate do not entitle such telecommunications company to any of the rights afforded to local exchange carriers under the Communications Act of 1934, as amended.

Any other person that seeks to offer telecommunications services or any certificated telecommunications company that seeks to provide new or additional telecommunications services shall first obtain a certificate or other authority as required by this Section 12203 and the rules and regulations adopted by the Commission pursuant hereto.

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

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

- (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

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

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

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

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

(g) 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. The Commission shall issue a decision on a request to sell, assign, or transfer a certificate of authority or to transfer control within ninety (90) days of the request, which period may be extended by an additional thirty (30) days for good cause shown and upon prior notice by the Commission to the applicant(s).

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

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

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

The Commission may by rule or orders in specific cases provide for further notice to affected customers and disposition of deposits and final bills. Notwithstanding the foregoing, any carrier of last resort, may not cancel a certificate of authority or discontinue or abandon telecommunications service thereunder unless and until it shall demonstrate, and the Commission finds, that such cancellation, discontinuance or abandonment will not deprive customers of any necessary or essential telecommunications service or access thereto.

SOURCE: Added by P.L. 27-110:10 (Nov. 1, 2004).

§ 12204. Jurisdiction and Authority of the Commission.

(a) The Commission may exercise, with respect to telecommunications companies, those general powers and duties prescribed by Article 1 of Title 12, Chapter 12 of the Guam Code Annotated, including, without limitation, those powers prescribed by Sections 12102, 12103 and 12115. In the case of a conflict between the provisions of Article 1 and Article 2, Article 2 shall apply with respect to telecommunications companies.

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

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

(1) Adopt reasonable rules governing certification of persons providing or reselling telecommunications services and to grant,

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deny, modify, impose conditions upon, suspend, or revoke a certificate of authority;

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

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

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

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

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

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

(8) Establish reasonable accounting, discrimination, structural separation, affiliate transaction and other safeguards consistent with the legislative findings and intent set forth in Section 12201 of this Title; and

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

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

(e) Subject to subsections (c) (5) and (d) of this Section, the Commission shall have access to the books and records of each telecommunications company as may be necessary to examine the financial condition of the company, to ensure compliance with the

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provisions of this Article and with the Commission's rules, regulations, and orders and to carry out the Commission's responsibilities under this Article.

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

SOURCE: Added by P.L. 27-110:10 (Nov. 1, 2004).

§ 12205. Services and Charges.

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

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

(c) All rates, charges, classifications, terms and conditions for and in connection with telecommunications services provided by a telecommunications company shall be just and reasonable and shall not unreasonably discriminate between similarly situated customers.

(1) Except as provided in Section 12211 of this Title, the Commission shall have the power to determine what are just and reasonable rates, charges, classifications, terms and conditions for and in connection with telecommunications services provided by telecommunications companies.

(2) In making such determination, the Commission may consider such alternatives to traditional rate of return regulation as flexible pricing, banded pricing, incentive regulation, tariffing of maximum and current rates, modified tariff requirements, detariffing, and other such manner and methods of regulation that are deemed consistent with the legislative findings and intent set forth in Section 12201 of this Title.

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It is the intent of this section to provide the Commission authority to establish appropriate frameworks governing the rates, charges, classifications, terms and conditions of telecommunications services offered by dominant and non-dominant telecommunications companies.

(d) A telecommunications company shall not give unreasonable preference or advantage to any person or class of persons when providing telecommunications services or engage in any anti-competitive act or practice.

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

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

SOURCE: Added by P.L. 27-110:10 (Nov. 1, 2004).

2015 NOTE: Subsection designations in (c) were added in accordance to the authority granted by 1 GCA § 1606.

§ 12206. Tariffs of Rates and Charges.

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

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

(c) Unless otherwise ordered by the Commission or provided by or under authority of this Article, no telecommunications company shall provide or resell any telecommunications service unless tariffs relating to that telecommunications service have been filed and the notice period has expired. Unless otherwise ordered by the Commission or provided by or under authority of this Article, no telecommunications company shall

(1) charge, demand, collect or receive a greater or less or different compensation for such service than the charges specified in its tariffs,

(2) refund or remit by any means or device any portion of the charges so specified, or

(3) extend to any person any privileges or facilities or employ or enforce any classifications, terms and conditions, except as specified in such tariffs.

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

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

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

SOURCE: Added by P.L. 27-110:10 (Nov. 1, 2004).

§ 12207. Petitions, Complaints, and Investigations.

(a) 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.

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

(c) Unless otherwise ordered by the Commission, for

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(1) all petitions or complaints involving a dispute of One Thousand Dollars (\$1,000.00) or less and

(2) at the option of the complainant or the telecommunications company against whom the petition or complaint was filed,

for a period of sixty (60) days after the petition or complaint is received by the telecommunications company against whom the petition or complaint was filed, the parties shall attempt in good faith to resolve the dispute through alternative means.

(d) If the petition or complaint is not dismissed or suspended under subsection (b) or resolved pursuant to subsection (c), the Commission shall provide the telecommunications company against whom the petition or complaint was filed the opportunity to respond in writing.

(1) Following the submission of the telecommunications company's response, the Commission shall conduct a hearing at which the complainant and the telecommunications company shall have the opportunity to be heard.

(2) Sections 12109, 12111, 12112, and 12114 of this Title shall apply to any investigation and hearing by the Commission under this Section.

(3) If, after notice and opportunity for hearing and a finding of a violation on the part of the telecommunications company, the Commission determines that the complainant is entitled to an award of damages sustained in consequence of such violation, it may order the telecommunications company to pay to the complainant the sum to which the complainant is entitled.

(4) The Commission may also impose attorneys' fees against a party and impose penalties under this Article if the Commission determines, after notice and opportunity for hearing, that a party has failed to act in good faith.

(e) Except as otherwise provided in subsection (b), the Commission shall issue a final order resolving the petition or complaint within one hundred eighty (180) days after the filing of the petition or complaint; provided, however, the Commission may extend the time for issuing a final order resolving the petition or complaint if the principal parties of record agree to such extension.

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(f) A final order of the Commission shall be subject to review as provided by Section 12119 of this Title.

SOURCE: Added by P.L. 27-110:10 (Nov. 1, 2004).

2015 NOTE: Subsection designations in (d) were added in accordance to the authority granted by 1 GCA § 1606.

2013 NOTE: Subsection designations in subsection (c) were altered to adhere to the Compiler's alpha-numeric scheme pursuant to the authority granted by 1 GCA § 1606.

§ 12208. Penalties Recoverable by the Commission.

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

(b) Any party aggrieved by a decision of the Commission under this Section may seek review as provided in Section 12119 of this Title.

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

SOURCE: Added by P.L. 27-110:10 (Nov. 1, 2004).

§ 12209. Commission Expenses.

(a) Notwithstanding Section 12125(b) of this Title, it is the intention of *I Liheslatura* (the Legislature) that the costs of regulating telecommunications companies and administering this Article be apportioned among all telecommunications companies operating in Guam.

(b) The Commission is authorized to establish by rule or order that each telecommunications company operating in Guam shall be assessed,

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on a reasonable basis determined by the Commission, for the payment of necessary operating expenses of the Commission in administering this Article.

(c) The Commission is further authorized to establish by rule or order application and regulatory fees to recover the cost of providing services to individual telecommunications companies pursuant to this Act including, but not limited to, the review of applications for certificates of authority, review of applications to sell, assign, or transfer a certificate of authority or transfer control of a telecommunications company, provision of services by the Commission, and review of tariffs and revisions thereto.

(d) The fees assessed pursuant to this provision may be modified from time to time in accordance with the requirements of this Act and Guam law.

(e) It is the intent of *I Liheslatura* (the Legislature) that the basis of assessment of expenses be consistent with the legislative findings and intent set forth in Section 12201 of this Title.

(f) With regard to any assessment made under this Section, the Commission may require a telecommunications company to make an advanced deposit against estimated expenses, subject to true up and may condition the effectiveness of any regulatory action on the timely payment of an assessment.

SOURCE: Added by P.L. 27-110:10 (Nov. 1, 2004).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

§ 12210. Technical Standards.

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

- (1) construction and maintenance of plant and equipment;
- (2) construction and maintenance practices;
- (3) adequacy of service;
- (4) basic telephone service standards;

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- (5) standard performance characteristics for customer lines;
- (6) interexchange trunking connections;
- (7) PBX and multichannel lines;
- (8) trouble report response; and
- (9) adequacy of facilities.

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

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

SOURCE: Added by P.L. 27-110:10 (Nov. 1, 2004).

§ 12211. Competition and Regulatory Flexibility.

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

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

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

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

(c) A telecommunications company shall give notice to its customers if a telecommunications service is to be deregulated or detariffed. The notice shall be included in or on the bill of each affected customer of the telecommunications company before the effective date of such deregulation or detariffing.

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

SOURCE: Added by P.L. 27-110:10 (Nov. 1, 2004).

ARTICLE 3
“911” SURCHARGE

NOTE: P.L. 25-055:1-12 (June 30, 1999) added uncodified laws relating to the “911” Emergency Telephone System. Codified pursuant to P.L. 32-096:4 (Nov. 27, 2014):

Section 4. The Compiler of Laws *shall* codify the provisions of Public Law 25-55, inclusive of the amendments made by Sections 1, 2 and 3 of this Act.

- § 12301. Legislative Findings.
- § 12302. Authorization to Establish Surcharge.
- § 12303. Collection of “911 Surcharge.”
- § 12304. Creation of Special Fund.
- § 12305. Exemptions from Surcharge.
- § 12306. Uncollectible Surcharges.

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- § 12307. Definition of “911” Equipment and Systems.
- § 12308. Yearly Reports.
- § 12309. Confidentiality of Records.
- § 12310. False “911” Calls.
- § 12311. Violations of this Act.
- § 12312. Service Providers Shall Not Charge for “911” Calls.
- § 12313. Public Education.
- § 12314. [Video Security Cameras in Public Areas.]

§ 12301. Legislative Findings.

I Liheslaturan Guåhan finds that the existing “911” system is antiquated and insufficient for the Island’s emergency reporting needs, and that there is a need to establish a new, enhanced “911” system to better protect the health and safety of Island residents. *I Liheslaturan Guåhan* further finds that in order to fund the new, enhanced “911” system, a surcharge on Local Exchange Telephone Service and Commercial Mobile Radio Service should be established.

SOURCE: P.L. 25-055:1 (June 30, 1999). Codified by the Compiler as 12 GCA § 12301, Legislative Findings, pursuant to P.L. 32-096:4 (Nov. 27, 2014).

§ 12302. Authorization to Establish Surcharge.

(a) The Public Utilities Commission (“Commission”) shall establish and amend, as required, a monthly surcharge to be known as the “*911 Surcharge*” to be paid by Local Exchange Telephone and Commercial Mobile Radio Service subscribers.

(b) The Commission may establish different rates for residential, government and business subscribers.

(c) The 911 Surcharge *shall* be established by the Commission at a rate *not to exceed* One Dollar (\$1.00) per month per subscriber line telephone service, and at a rate *not to exceed* One Dollar (\$1.00) per month per line number for commercial mobile radio service.

(d) The purpose of the “911 Surcharge” is to fund the just and reasonable expenses of operating and maintaining the “911” system, which shall be the responsibility of the Guam Fire Department (“Department”). The Department shall petition the Commission, in accordance with Commission rules, for the establishment of a “911 Surcharge,” and for its amendment from time to time; *however*, the

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Commission may on its own initiative examine the adequacy of the surcharge at any time.

(e) It is the intent of *I Liheslaturan Guåhan* that the “911 Surcharge” authorized by this Chapter *not* necessarily provide the total funding required for establishing or providing the “911” service.

(f) In the event the surcharge is insufficient to cover the annual “911” system operating costs, as determined by the Commission, then the Commission shall immediately notify *I Liheslaturan Guåhan* of the shortfall, and the Department shall request an appropriation in its annual budget to cover any such shortfall.

(g) In exercising its responsibilities under this Act, the Commission shall have the powers and duties prescribed in its enabling legislation, Chapter 12 of Title 12 of the Guam Code Annotated.

(h) Surcharge revenues shall *not* be expended by the Department for the procurement of supplies, equipment or services in excess of Five Hundred Thousand Dollars (\$500,000.00), without the *prior* approval of the Commission as to the prudence and reasonableness of the procurement.

SOURCE: P.L. 25-055:2 (June 30, 1999). Codified by the Compiler as 12 GCA § 12302, Authorization to Establish Surcharge, pursuant to P.L. 32-096:4 (Nov. 27, 2014).

§ 12303. Collection of “911 Surcharge.”

(a) Each Local Exchange Carrier (LEC), Voice Over Internet Protocol (VOIP) provider and Commercial Mobile Radio Service (CMRS) provider *shall* collect the surcharge as established by the Commission, and identify such as a separate line item on its invoice.

(b) Each LEC, VOIP or CMRS provider *shall* remit the amounts collected to the Department of Administration *no later* than forty-five (45) days *after* the end of the month in which the amount is collected.

(c) Each LEC, VOIP or CMRS provider *shall* be authorized to deduct from such remittances its actual expenses incurred for collection services, maintaining the PSAP database, and for reports and audits as *may* be required by the Commission; *provided*, such deductions are consistent with a Commission-approved budget for such expenses.

(d) The surcharges collected pursuant to this Section are *not*

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subject to any tax, fee or assessment, *nor* are they considered revenue of the LEC, VOIP or CMRS provider

(e) Each LEC, VOIP or CMRS provider is authorized to deduct from its "911" receipts, amounts necessary to cover the Commission's expenses in conducting the regulatory activities required in this Act, to be billed by the Commission on a *pro-rata* basis.

(f) For purposes of this Act, a *CMRS provider* means a provider of wireless cellular, telephone service, or wireless personal communications service.

(g) *Subscriber lines* are the lines that Incumbent Local Exchange Carriers (I-LEC) use to connect to, and that Competitive Local Exchange Carriers (C-LEC) and Voice Over Internet Protocol (VOIP) carriers use to interconnect to, the local (Guam) telephone exchange.

(h) For purposes of this Act, a *VOIP provider* means a provider of telephone service over the internet, and within the 671 area code.

SOURCE: P.L. 25-055:3 (June 30, 1999). Subsections (g) and (h) added by P.L. 28-044:2 and :3 (June 6, 2005). Amended by P.L. 32-096:2 (Nov. 27, 2014). Codified by the Compiler as 12 GCA § 12303, Collection of "911 Surcharge," pursuant to P.L. 32-096:4 (Nov. 27, 2014).

§ 12304. Creation of Special Fund.

(a) There is hereby created, separate and apart from all other funds of the government, the *Enhanced 911 Emergency Reporting System Fund* (Fund) to be administered by the Department of Administration.

(b) The Fund is created to provide a source of funding for costs associated with an Enhanced 911 Emergency Reporting System.

(c) All the 911 surcharges collected by each LEC, VOIP and CMRS provider *shall* be deposited in the Fund.

(d) The money collected and the interest earned *shall* be used by the Department *solely* for enhanced 911 equipment and system costs as described in this Act; and for the

- (1) operations of the 911 call/dispatch center,
- (2) the purchase/lease/maintenance of E911 hardware/software, to include video security cameras and related equipment, supplies, installation and maintenance services; and

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(3) system/engineering services related to the installation, maintenance and upgrade of E911 hardware/software.

(e) Notwithstanding any other provision of law, no monies in the Fund shall be expended without appropriation by *I Liheslatura*.

(f) Notwithstanding any other provision of law, no monies in the Fund shall be expended for purposes other than provided for in this Section, without the expressed approval of *I Liheslatura*. The Fund is *exempt* from any transfer authority.

SOURCE: P.L. 25-055:4 (June 30, 1999). Amended by P.L. 26-055:2 (Nov. 7, 2001) and P.L. 32-096:3 (Nov. 27, 2014). Codified as 12 GCA § 12304, Creation of Special Fund, pursuant to P.L. 32-096:4 (Nov. 27, 2014). Amended by P.L. 33-041:1 (June 10, 2015).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

§ 12305. Exemptions from Surcharge.

Recipients of life-line rates for local exchange telephone service, and telecommunication services that are incapable of “911” access, including, but not limited to, interstate and international interconnections, internet service providers data access trunks, paging trunks, inbound trunks for PBX service and leased circuits are exempted from the “911 Surcharge.”

SOURCE: P.L. 25-055:5 (June 30, 1999). Codified as 12 GCA § 12305, Exemptions from Surcharge, pursuant to P.L. 32-096:4 (Nov. 27, 2014).

§ 12306. Uncollectible Surcharges.

(a) Each LEC or CMRS provider collecting the surcharges shall *not* be responsible for uncollectible surcharges, and shall have no obligation to take any legal action to enforce collection of the surcharge.

(b) The LEC or CMRS provider shall provide quarterly to the Commission a list of the names, addresses and telephone numbers of any and all subscribers who have identified to the LEC or CMRS provider their refusal to pay the “911” fee.

(c) Nothing in this Chapter shall be construed to prevent the government from taking appropriate actions to collect such surcharges designated by the LEC or CMRS provider as uncollectible.

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SOURCE: P.L. 25-055:6 (June 30, 1999). Codified as 12 GCA § 12306, Uncollectible Surcharges, pursuant to P.L. 32-096:4 (Nov. 27, 2014).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

§ 12307. Definition of “911” Equipment and System.

(a) For purposes of this Act, *enhanced 911 equipment* means the equipment dedicated to the operation of, or use in, the establishment, operation or maintenance of an enhanced “911” system, including customer premises equipment, automatic number identification, or automatic location identification controllers and display units, printers, recorders, software and other essential communication equipment required by the system.

(b) *Enhanced 911 system* means a telephone system consisting of network, database and enhanced “911” equipment that uses the single three (3) digit number “911” for reporting a fire, police, medical or other emergency situation, and that enables the users of a public telephone system to reach a public safety answering point (“PSAP”) to report emergencies by dialing “911.”

(c) *Enhanced 911 database for wireline service* means the subscriber name, address and number; and for wireless service means the subscriber name and number, and location consistent with the Federal Communications Commission Order Number 94-102.

(d) An enhanced 911 system includes the personnel required to acquire, install, operate and maintain the system.

(e) Each LEC and CMRS provider shall be responsible for establishing and maintaining an appropriate network to deliver “911” calls to the PSAP, and in maintaining the database for use in the PSAP.

SOURCE: P.L. 25-055:7 (June 30, 1999). Codified as 12 GCA § 12307, Definition of “911” Equipment and System, pursuant to P.L. 32-096:4 (Nov. 27, 2014).

§ 12308. Yearly Reports.

The Department shall prepare and submit to *I Maga’lahen Guåhan* and to the Speaker of *I Liheslaturan Guåhan* a yearly assessment report on the enhanced “911” system, to include

(a) the number and types of calls received;

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(b) the number and types of emergencies in which emergency personnel were dispatched;

(c) deficiencies, *if any*, in the system compared to other operations in the United States mainland;

(d) new system or equipment changes that will be made or required in the future; and

(e) any other information that is useful in evaluating the effectiveness of the "911" system.

SOURCE: P.L. 25-055:8 (June 30, 1999). Codified as 12 GCA § 12308, Yearly Reports, pursuant to P.L. 32-096:4 (Nov. 27, 2014).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

§ 12309. Confidentiality of Records.

Any record, recording or information, or portions thereof, obtained by a public agency, or a public safety agency, for the purpose of providing services in an emergency, and which reveals the name, address, telephone number or personal information about, or information which may identify any person requesting emergency service by accessing an emergency telephone number "911" system, is confidential, *except* that such record or information may be disclosed to a public safety agency. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.

A LEC or CMRS provider shall *not* be liable for damages to any person resulting from or in connection with such LEC's or CMRS provider's provision of lawful assistance to any law enforcement officer in connection with any lawful investigation or other law enforcement activity by such law enforcement officer, *unless* the LEC or CMRS provider acted in a wanton or willful manner.

SOURCE: P.L. 25-055:9 (June 30, 1999). Codified as 12 GCA § 12309, Confidentiality of Records, pursuant to P.L. 32-096:4 (Nov. 27, 2014).

§ 12310. False "911" Calls.

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Whoever accesses the number “911” for the purpose of making a false alarm, threat, complaint or reporting false information which could result in the emergency response of any public safety agency is guilty of a misdemeanor of the first degree.

SOURCE: P.L. 25-055:10 (June 30, 1999). Codified as 12 GCA § 12310, False “911” Calls, pursuant to P.L. 32-096:4 (Nov. 27, 2014)..

§ 12311. Violations of This Act.

(a) Any person or entity which the Commission determines has violated any provision of this Act, or any Commission order, shall be given proper notice and be allowed a reasonable opportunity to cure the violation.

(b) Thereafter, in the event of failure to cure, the Commission may refer the violation to the Attorney General’s Office for prosecution.

(c) Any person or entity that, having the responsibility of complying with this Act or a Commission order, fails to cure such violation shall be fined a civil penalty *not* to exceed Ten Thousand Dollars (\$10,000.00) per infraction. Any such penalty shall be deposited into the Fund.

SOURCE: P.L. 25-055:11 (June 30, 1999). Amended by P.L. 28-044:4 (June 6, 2005). Codified as 12 GCA § 12311, Violations of this Act, pursuant to P.L. 32-096:4 (Nov. 27, 2014).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

§ 12312. Service Providers Shall *Not* Charge for “911” Calls.

Any telecommunications service that has the capability of reaching the PSAP by voice communication, including, but not limited to, public and private pay phones, shall *not* charge for any calls placed to the PSAP by dialing “911.”

SOURCE: P.L. 25-055:12 (June 30, 1999). Codified as 12 GCA § 12312, Service Providers Shall Not Charge for “911” Calls, pursuant to P.L. 32-096:4 (Nov. 27, 2014)..

§ 12313. Public Education.

(a) The Department may use monies from its budget to educate the public on the “911” system.

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(b) Education may include, but is not limited to, confirming with all residents their actual street addresses.

(c) The Department may reimburse the monies used to educate the public on the “911” system from the Fund.

SOURCE: P.L. 25-055:13 (June 30, 1999). Codified as 12 GCA § 12313, Public Education, pursuant to P.L. 32-096:4 (Nov. 27, 2014).

2015 NOTE: Subsection designations were added in accordance to the authority granted by 1 GCA § 1606.

§ 12314. [Video Security Cameras in Public Areas.]

(a) Development of an Implementation Plan. The Guam Fire Department (GFD) and the Guam Police Department (GPD) shall, with the assistance of other government entities and pertinent organizations, develop an Implementation Plan relative to the use of video security cameras in public areas. Entities shall include, but not be limited to, the Office of the Attorney General, the Mayors Council of Guam, Guam Homeland Security - Office of Civil Defense, the Department of Public Works, the Department of Parks and Recreation, the Guam Power Authority, the Office of Technology, and the Guam Visitors Bureau.

(b)(1) Rules and Regulations. No later than one hundred eighty (180) days following the enactment of this Act, GFD, GPD, and the Office of the Attorney General shall develop the rules and regulations, which shall be adopted pursuant to the Administrative Adjudication Law, governing the use of video security cameras in public areas.

(2) Such rules and regulations shall guide the government of Guam’s implementation and use of video security cameras within its emergency reporting system, and shall further address basic elements involved with the integration of video security cameras in public areas, including, but not limited to, access to recorded video security camera footage by other government of Guam entities, including any video security footage recorded and maintained by the Guam Department of Education as a result of electronic security systems implemented pursuant to P.L. 32-009;

(3) training requirements for operators with access to public video security cameras; and

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(4) the issuance of public notices for the benefit of residents and business owners within the general vicinity where video security cameras are posted that state, in clear language, that such location is subject to observation and, if applicable, recording, by a video security camera.

(5) Posted signs shall be installed no less than seven (7) days following the activation of video security cameras, and shall be in clear language, large type, and in a conspicuous location plainly visible to persons present in the areas where the video security cameras are installed. Notices need not, however, disclose the precise location of the cameras.

(c) Video Security Cameras: Compatibility; Registration. All government agencies and other entities, prior to procuring video security cameras and associated equipment, materials, etc. that are to be used to deter and report criminal activity in public areas, shall verify if such devices are compatible with the technical requirements of Guam's emergency reporting system, which shall be determined by GFD and GPD. Both agencies shall maintain a registry of all video security cameras used to deter and report criminal activity in public areas in accordance with the rules and regulations required pursuant to Subsection (b) of this Section.

(d) Protection of Personal Privacy Rights; and Against Misuse and/or Ineffective Use of Video Security Cameras, Footage. To the extent possible, the rules and regulations required pursuant to Subsection (b) of this Section shall further ensure that video security cameras in public areas protect personal privacy rights. Moreover, such regulations shall protect against the misuse and/or ineffective use of video security cameras and any footage recorded by such devices.

(e) Resource Sharing. In facilitating the integration of video security cameras in public areas, as part of Guam's emergency reporting system, GFD and GPD shall consider the availability of resources that may be made available by other government of Guam entities, the U.S. Military, the federal government, and/or Guam's private-sector community, including funding support, education and training opportunities, and sharing of public safety and law enforcement equipment and similar resources, consistent with the rules and regulations as required pursuant to Subsection (b) of this Section, GFD

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and GPD shall develop the necessary agreements to embrace external support.

SOURCE: Added as an untitled provision by P.L. 33-041:2 (June 10, 2015).
