

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Joint Application of)	
)	
Shamrock TeleGuam Holdings, LLC,)	WC Docket No. 10-260
Transferor,)	
)	
GTA Telecom, LLC)	IBFS File Nos.
GTA Services, LLC)	ISP-PDR-20101216-00021,
Pulse Mobile, LLC)	ITC-T/C-20101216-00486, and
Licensees,)	ITC-T/C-20101216-00478,
)	
and)	ULS File No. 0004531711
)	
AP TeleGuam Holdings, Inc.)	
Transferee,)	
)	
For Grant of Authority Pursuant to)	
Section 214 of the Communications Act of 1934,)	
as amended, and Sections 63.04 and 63.24 of the)	
Commission's Rules to Complete a Transfer of)	
Indirect Majority Ownership of the Licensees to)	
AP TeleGuam Holdings, Inc.)	

**JOINT REPLY COMMENTS OF
SHAMROCK TELEGUAM HOLDINGS, LLC,
GTA TELECOM, LLC, GTA SERVICES, LLC, PULSE MOBILE, LLC AND
AP TELEGUAM HOLDINGS, INC.**

Dated: February 24, 2011

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AP TeleGuam Holdings, Inc.)	DA 11-40
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I. INTRODUCTION

GTA Telecom, LLC (“GTA Telecom”), GTA Services, LLC (“GTA Services”), and Pulse Mobile, LLC (“Pulse Mobile”) (collectively, the “TeleGuam Licensees”), Shamrock TeleGuam Holdings, LLC (“Shamrock” or “Transferor”) (Shamrock and TeleGuam Licensees collectively, the “TeleGuam Entities”), and AP TeleGuam Holdings, Inc. (“AP TG” or “Transferee”) (AP TG and

the TeleGuam Entities collectively, the “Applicants”),¹ pursuant to the Public Notice issued in this matter,² hereby jointly reply to the comments filed by Pacific Data Systems (“PDS”) and PTI Pacifica Inc., dba IT&E (“IT&E”) (collectively, “Commenters”) in the above-captioned proceedings.

The filings made by the Commenters are nothing more than transparent attempts to hold the Applications hostage as a means of gaining advantages in unrelated disputes that have grown out of the competitive marketplace on Guam, and to gain access to the Transferee’s confidential financial information for anti-competitive purposes. The Commenters do not dispute any of the public interest benefits of the proposed transfer. Rather, they invite this Commission to intervene on topics properly addressed by another forum, the Guam Public Utilities Commission (“Guam PUC”). In substance, the Commenters have offered nothing more than empty allegations, speculation, and conjecture.

The FCC has been careful in the past not to permit parties to subvert its transfer process by converting it into a private “forum to address or influence various disputes with one or the other of

¹ The Applicants have filed a number of applications with the Commission in connection with a proposed transfer of control of the TeleGuam Licensees from Shamrock to AP TG. *See Joint Application of Shamrock TeleGuam Holdings, LLC, Transferor, GTA Telecom, LLC, GTA Services, LLC, Pulse Mobile, LLC, Licensees, and AP TeleGuam Holdings, Inc., Transferee, For Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, and Sections 63.04 and 63.24 of the Commission’s Rules to Complete a Transfer of Indirect Majority Ownership of the Licensees to AP TeleGuam Holdings, Inc.*, WC Docket No. 10-260 (filed Dec. 17, 2010), IBFS File Nos. ITC-T/C-20101216-00486 and ITC-T/C-20101216-00478 (filed Dec. 16, 2010) (“214 Application”); *Shamrock TeleGuam Holdings, LLC, Transferor, GTA Telecom, LLC, GTA Services, LLC, Pulse Mobile, LLC, Licensees, and AP TeleGuam Holdings, Inc., Transferee, Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act, as Amended*, IBFS File No. ISP-PDR-20101216-00021 (filed Dec. 16, 2010) (“Petition for Declaratory Ruling”). The Applicants have also sought approval from the Wireless Telecommunications Bureau for the transfer of control of certain wireless licenses. *See* ULS File No. 0004531711 (filed Dec. 16, 2010) (“Wireless Application,” and together with the 214 Application and Petition for Declaratory Ruling, “Applications”).

² *See Applications Filed For the Transfer of Control of the Licensees of TeleGuam Holdings, LLC to AP TeleGuam Holdings, Inc., Pleading Cycle Established*, Public Notice, DA 11-40 (rel. Jan. 10, 2011) (“Public Notice”).

the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act.”³ The Commission also has determined that merger proceedings are not the proper forum in which to raise carrier disputes, especially ones already pending before the Commission or a state public utility commission.

In rejecting attempts to import commercial and other disputes into the FCC’s transfer proceedings, this Commission has reminded parties that:

[i]t is important to emphasize that the Commission’s review focuses on the potential for harms and benefits to the policies and objectives of the Communications Act that flow from the proposed transaction - i.e., harms and benefits that are “merger-specific.” The Commission recognizes and discourages the temptation and tendency for parties to use the license transfer review proceeding as a forum to address or influence various disputes with one or the other of the applicants that have little if any relationship to the transaction or to the policies and objectives of the Communications Act.⁴

Consistent with this guidance, the Commission has declined to consider intercarrier disputes in the context of merger proceedings. For example, in the SBC/Southern New England Telecommunications, Inc. merger proceeding, the Commission declined to address objections that were based on a carrier’s dispute with SBC in which the carrier alleged that SBC was refusing to provide billing and collection services and was making unreasonable demands concerning collocation arrangements. The Commission responded by reiterating that such issues were not merger-specific and, therefore, should not be considered in a merger proceeding.⁵ In declining to address the disputes raised by the objecting party, the Commission emphasized that the disputes were pending in a separate proceed-

³ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, 16 FCC Rcd. 6547, 6550 (2001) (“AOL-Time Warner Order”).

⁴ *AOL-Time Warner Order*, at 6550.

⁵ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corp., Transferor to SBC Communications, Inc., Transferee*, 13 FCC Rcd. 21292 at 21306 (1998) (“SBC-SNET Order”).

ing and concluded that the public interest would be served by addressing those disputes outside of the merger proceeding.⁶

Even were the Commission to consider the matters raised by Commenters, their allegations are not supported by facts demonstrating that grant of the Application is inconsistent with the public interest, convenience, and necessity. Instead, the comments are replete with conclusory and unsupported allegations, and should therefore be summarily dismissed by the Commission. The Commenters have neither offered any evidence that the Applicants lack the qualifications needed to effectuate the proposed transaction, nor demonstrated that any of the TeleGuam Licensees have engaged in anti-competitive or discriminatory behavior. Rather, the comments are transparent attempts by IT&E and PDS to manipulate this Commission's transfer proceedings for their own commercial purposes by delaying the Commission's approval in order to create leverage over the Applicants in addressing Guam-specific matters.

II. THE COMMENTERS RAISE NO CONCERNS RELEVANT TO THE COMMISSION'S REVIEW OF THE PENDING APPLICATIONS

A. Commenters' "Concerns" About the Guam PUC's Proceeding are Not Relevant to the FCC's Consideration of the Applications

The Commission should not permit the Commenters to contort the public interest review process to serve their parochial commercial aims. As an initial matter, the issues raised by the Commenters largely focus on purported "concerns" about the application process at the Guam PUC.⁷ It is not the responsibility – or within the authority – of the FCC to sit in review of the decisions of a state or local commission on transfers of control of state-issued licenses.

⁶ *SBC-SNET Order*, at 21306.

⁷ "PDS is still concerned whether the GPUC is providing appropriate scrutiny to the proposed transaction." PDS Comments at 3.

Moreover, the Guam PUC has been thorough and diligent in its analysis and consideration of the application filed with it. The close scrutiny applied by the PUC is evidenced in its request for additional information beyond what the parties provided in the initial application filing. In response to the Guam PUC's request, the Applicants filed confidential documents that discussed in further detail the ownership and financial qualifications of the Transferee. And, although the Applicants believe that the Guam PUC acted appropriately when it initially granted the application, Applicants did not object when Commenters sought a rehearing with the Guam PUC to voice their purported concerns. The Guam PUC thereafter afforded the Commenters another opportunity to raise specific concerns about the transaction. As they have in this docket, the Commenters responded to the Guam PUC by complaining about the process that the Guam PUC used prior to granting the rehearing, and by raising unsubstantiated non-merger-related concerns in an effort to gain access to AP TG's confidential financial statements and create competitive leverage over the Applicants. The Commenters' filings with the Guam PUC, as here, completely failed to establish any substantive reason for the Guam PUC to reject the application. The Guam PUC ultimately rejected the unsupported "concerns" raised by the commenters, and unanimously approved the application on February 21, 2011.⁸

B. The FCC and Guam PUC Applications are Fully Consistent

The Commenters argue that the AP TG ownership information provided to the Commission was somehow inconsistent with the information provided to the Guam PUC.⁹ Importantly, Commenters make no allegation whatsoever that Applicants have failed to provide either the Commis-

⁸ See *Joint Application of TeleGuam Holdings, LLC, and GTA Telecom, LLC for Approval of the Transfer of Control of TeleGuam Holdings, LLC and GTA Telecom, LLC to AP TeleGuam Holdings, LLC, Order Approving Sale/Transfer of Ownership and Control of TeleGuam Holdings, LLC and GTA Telecom, LLC (Subject to Conditions), GTA Docket 10-09 (Feb. 21, 2011) ("Guam PUC Feb. 21 Order")*.

⁹ See IT&E Comments, at 3; PDS Comments, at 2.

sion or the Guam PUC with the ownership information required by each agency's respective rules. Instead, their claims amount to nothing more than a recognition that the Commission's transfer rules and obligations under Section 310 of the Communications Act require a detailed description of the ownership of the domestic, international, and wireless licenses issued by the FCC, whereas the Guam PUC's rules do not require the same level of detail.

Although it does not – and need not – describe the Transferee's indirect ultimate ownership to the extent required by the FCC, the application filed with the Guam PUC does not state or otherwise imply that the ownership of the Licensees would end at AP TG post-closing. The Applicants made this fact abundantly clear in filings made with the Guam PUC during the processing of the applications, specifically discussing the funds that sit above AP TG in the ownership chain, and the Guam PUC described the ownership of AP TG in its order approving the transaction.¹⁰ Of course, as noted above, the FCC is not responsible for local PUC procedures concerning the level of detail required for PUC transfer of control applications. However, the Commission should be reassured that the Guam PUC has access to the same information as the FCC, is well aware of the ownership structure of AP TG,¹¹ and that Commenters' concerns otherwise are wholly unfounded and irrelevant to the FCC's review process.

¹⁰ See *Guam PUC Feb. 21 Order*, at 3. The Administrative Law Judge Report issued in connection with the application also rejected the Commenters' concerns over the ownership information provided by the Applicants, concluding that, "[t]here has not been a failure by GTA or AP TG to provide accurate ownership information or any attempt to mislead the PUC or the parties in that regard. To the contrary, GTA and AP TG have been diligent and fully cooperative in providing detailed responses to the three sets of information requests issued by the PUC. GTA and APTG have filed timely and informative responses." *Joint Application of TeleGuam Holdings, LLC, and GTA Telecom, LLC for Approval of the Transfer of Control of TeleGuam Holdings, LLC and GTA Telecom, LLC to AP TeleGuam Holdings, LLC*, ALJ Report, GTA Docket 10-09, at 8 (Feb. 18, 2011).

¹¹ Indeed, the Administrative Law Judge Report incorporated the post-transaction corporate structure chart filed with the FCC as an exhibit. *Id.* at Exhibit 1.

C. The Commenters Have Shown No Factual Basis for Investigating the Financial Qualifications of AP TG

The Commenters also request that the FCC undertake a financial audit of AP TG based on nothing more than references to instances of over-leveraging in the telecommunications market by carriers wholly unrelated to either the TeleGuam Licensees or Transferee. IT&E requests such an audit even after acknowledging that, “[h]istorically it has been rare for an ILEC to declare bankruptcy.”¹² Neither Commenter demonstrates any basis for the Commission to take the extraordinary step of second-guessing the business judgment of the parties and engaging in an audit of the financial statements of a Transferee.¹³ The Guam PUC reviewed information relevant to the financial qualifications of the Transferee in connection with its consideration of whether the Transferee possesses the requisite financial resources and abilities to provide the telecommunications services offered by the TeleGuam Licensees in Guam. The Guam PUC received copies of the Transferee’s financial statements (filed under seal), exhaustively reviewed the financial strength of the Transferee, and concluded that AP TG has “sufficient financial resources to fund the sale transaction and to assist GTA in continuing to provide telecommunications services in Guam under the existing Certificates of Authority.”¹⁴

Moreover, the press reports cited by the Commenters concerning the investment made by the AP Funds¹⁵ in the Tokyo Star Bank are completely irrelevant.¹⁶ All investments made by the AP

¹² IT&E Comments, at 1.

¹³ *In the Matter of Applications Filed by Frontier Communications Corp. and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd. 5972, ¶ 19 (2010) (noting that “it is not the Commission’s role to substitute its business judgment for that of the applicants or the market”).

¹⁴ *Guam PUC Feb. 21 Order*, at 5.

¹⁵ For purposes of this transaction, the AP Funds consist of: (1) Advantage Partners IV, ILP (Only for Qualified Institutional Investors (with Resale Restriction to Non-Qualified Institutional Investors) and for a Small Number of Other Investors); (2) AP Cayman Partners II, L.P.; and (3) Japan Ireland Investment Partners.

Funds are executed and managed separately on an investment-by-investment basis, and neither Advantage Partners, LLP nor the AP Funds has any liability to the creditors of the Tokyo Star Bank investment.¹⁷ After reviewing the matter, the Guam PUC concluded that “[t]here is no evidence in the record that the transaction involving Advantage Partners LLP and Tokyo Star Bank has any impact upon the GTA sale. There is no showing that the Purchaser of GTA is liable for the loans involving the Tokyo Star Bank.”¹⁸ As demonstrated in documents filed with the Guam PUC (some of which are filed under seal), the AP Funds are more than adequately funded, and AP TG has secured sufficient capital commitments from the AP Funds for purposes of carrying out the instant transaction.¹⁹

At base, this transaction is a financial investment transaction that will essentially replace one financial investor with another. As discussed in the Applications, the day-to-day operations of the TeleGuam Licensees will not be affected by the transaction. Rather, the same GTA management team will continue to exist on the ground, and the company will continue to operate as it currently does. The Commenters’ requests for the Commission to conduct a duplicative review of financial

¹⁶ See IT&E Comments, at 2; PDS Comments, at 3.

¹⁷ See *In re: Joint Application of TeleGuam Holdings, LLC and GTA Telecom LLC for Approval of the Transfer of Control of TeleGuam Holdings, LLC and GTA Telecom LLC to AP TeleGuam Holdings, Inc.*, Guam PUC Docket No. 10-09, AP TeleGuam Holdings, Inc.’s Response to Third Set of PUC Requests for Information (Feb, 9, 2011).

¹⁸ See *Guam PUC Feb. 21 Order*, at 7 (“The investment of Advantage Partners in the Tokyo Star Bank is through a ‘special purpose vehicle’ and there is no recourse by the creditors on the Tokyo Star Bank Loan to the AP Funds, or Advantage Partners LLP.”).

¹⁹ As noted by the Guam PUC, “[t]he Financial Statements of the Shareholders of AP TG, AP Cayman Partners II, L.P. and Advantage Partners IV, ILP, indicate that both companies have substantial financial assets,” as well as capital commitments from their investors. *Guam PUC Feb. 21 Order*, at 6. The Guam PUC also noted that the leverage of the proposed transaction, as calculated by the ratio of debt to EBITDA, is “substantially lower now than it was in 2007,” and “is consistent with that of other middle market leverage deals.” *Id.* at 7. Finally, the Guam PUC recognized that “GTA appears to have sufficient cash available to service its debt.” *Id.* at 7.

information that has already been scrutinized by the Guam PUC is again a thinly veiled attempt to delay the Commission's consideration for their own commercial gain.

D. The Commenters Should Not Be Permitted to Bootstrap Pre-Existing Disputes Unrelated to the Transfer Into the FCC's Application Process

PDS provides no basis for bringing pre-existing disputes into a transfer of control review proceeding. The FCC has consistently refused to permit parties to hold their competitors' transactions hostage by injecting these kinds of disputes into the Commission's merger review proceedings. Any existing or perceived future disputes between carriers should be handled on their own accord. Issues such as wholesale service rates, and the other alleged concerns posed by PDS regarding existing services provided by the TeleGuam Licensees, have no bearing whatsoever on the transfer of control transaction.

The inappropriateness of bringing existing disputes into a merger proceeding is highlighted by the purported concerns raised by PDS about the management qualifications of the TeleGuam Licensees, which appear in essence to complain that there isn't *enough* of a transfer of control being undertaken in this transaction because existing management will continue to remain in place. So, on one hand, PDS claims that the Commission and the Guam PUC should be wary of AP TG's ownership of the TeleGuam Licensees based on wholly unsubstantiated concerns over its qualifications to run the businesses, but at the same time claims that the transaction will not result in enough of a change because it will leave existing day-to-day operations and management in place. If PDS believes the TeleGuam Licensees have in any way violated the Communications Act or Guam telecommunications laws, the appropriate remedy would be to file a complaint in the proper forum,

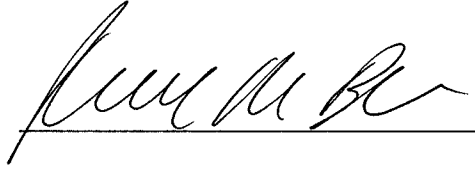
rather than trying to delay the proposed transaction in an effort to extract concessions from the Applicants.²⁰

III. CONCLUSION

The Commenters attempt to manufacture a cognizable “public interest” argument under the Communications Act with a volley of empty allegations and speculative assertions, all of which should be rejected by the Commission. The Commenters mask their self-interests as public interests in an effort to frustrate the FCC’s process. The Applicants respectfully request that the Commission dismiss the comments filed in this proceeding as transparent attempts to bootstrap Guam-specific competitor disputes into the FCC transfer process and to create leverage over the Applicants.

²⁰ In dismissing the non-merger specific claims of the commenters, the Guam PUC concluded, “there is no proper evidentiary record before the PUC at the present time proving or establishing the substance or validity of any of these concerns,” and that “[s]uch concerns should be brought in the appropriate manner and in a separate docket.” *Id.* at 9.

Respectfully submitted,



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Dated: February 24, 2011

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was sent via electronic mail on February 24, 2011, to:

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Additionally, on February 24, 2011, I caused a copy of the foregoing Reply Comments to be mailed by first class U.S. mail, postage prepaid, to:

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