

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE:) **GTA Docket 12-10**
))
JOINT APPLICATION OF TELEGUAM))
HOLDINGS, LLC AND GTA TELECOM,) **PUC COUNSEL REPORT**
LLC TO ASSIGN AND TRANSFER GTA))
TELECOM’S INTERCONNECTION))
AGREEMENT WITH PACIFIC DATA))
SYSTEMS, INC. TO TELEGUAM))
HOLDINGS.))

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Joint Application of Teleguam Holdings, LLC [“Teleguam”] and GTA Telecom, LLC [“Telecom”] to assign and transfer GTA Telecom’s Interconnection Agreement with Pacific Data Systems, Inc. [“PDS”] to Teleguam Holdings.¹
2. Teleguam is the sole owner of Telecom and is an Affiliate of Telecom pursuant to applicable definitions.² All of the subsidiaries/affiliates of Teleguam are referred collectively as “GTA.”

BACKGROUND

3. At present, GTA Telecom and PDS are parties to an Interconnection Agreement [“ICA”]. On October 29, 2010, the PUC approved the Interconnection Agreement between GTA Telecom, LLC and PDS.³ More recently, in GTA Docket 12-06, the PUC approved an amendment to the ICA between GTA and PDS, which provided for a new service, Virtual Collocation Rack Space, and a pricing attachment.⁴
4. In GTA Docket 11-14, the PUC authorized the assignment and transfer of GTA Telecom’s Certificate of Authority and Eligible Telecommunications Carrier Certificate to Teleguam Holdings, LLC.⁵

¹ Joint Application of Teleguam Holdings, LLC and GTA Telecom, LLC, GTA Docket 12-10, filed October 5, 2012.

² Id. at p. 2.

³ PUC Order Approving Interconnection Agreement, GTA Docket 10-08, dated October 29, 2010.

⁴ PUC Order, GTA Docket 12-06, dated August 27, 2012.

⁵ PUC Order, GTA Docket 11-14, filed March 26, 2012, at p. 10.

5. In such Order, the PUC recognized that the purpose of the transfer of the COA and ETC Certificate from Telecom to Teleguam was to consolidate GTA into one corporate entity, withdraw the foreign registrations in Guam to all of Teleguam's wholly owned subsidiaries, and to establish Teleguam as the sole entity providing telecommunications services in Guam as GTA.⁶
6. In GTA Docket 11-14, the PUC further appeared to implicitly recognize that Teleguam would be required to be substituted as a party in place of Telecom in existing Interconnections Agreements. The Order required Teleguam to pay all costs and expenses related to any necessary amendments of the interconnection agreements presently in effect between Telecom and other carriers.⁷
7. Furthermore, the ICA between GTA Telecom and PDS allows either party to assign or transfer the Agreement, and all rights and obligations thereunder, upon compliance with certain procedures.⁸
8. Teleguam Holdings, LLC and GTA Telecom, LLC followed the proper procedure under Section 5.1.2 of the ICA in providing PDS with 60 days advance written notice of their intent to transfer and assign the Interconnection Agreement to Teleguam Holdings, LLC.⁹ PDS was provided such written notice on June 4, 2012.¹⁰
9. According to GTA, PDS has refused to sign the Stipulation proposed by GTA. The Stipulation proposed by GTA would approve the transfer and assignment of the ICA from Telecom to Teleguam, subject to certain terms and conditions.¹¹
10. On October 8, 2012, PUC Counsel requested comment by PDS concerning its position on the assignment of PDS' ICA from Telecom to Teleguam.¹²
11. In a response dated October 15, PDS indicated that a stipulation was not required since the ICA between the parties adequately covers the process. PDS agreed that GTA had provided the required notice to PDS. PDS raised concerns that Teleguam would send PDS IXC and CMRS traffic over the interconnection circuits that have

⁶ Id. at p. 1.

⁷ Id. at p. 11.

⁸ Section 5.1.2 of the ICA between GTA Telecom and PDS, approved by the PUC on October 29, 2011.

⁹ Joint Application of Teleguam Holdings LLC and GTA Telecom LLC to Assign and Transfer GTA Telecom's Interconnection Agreement with Pacific Data Systems, Inc. to Teleguam Holdings, LLC, GTA Docket 12-10, filed October 5, 2012, at p. 2-3.

¹⁰ Id.; see also Attachment A to the Joint Application.

¹¹ Id. at p. 2-3.

¹² E-mail from PUC Counsel Fred Horecky to PDS President John Day dated October 8, 2012.

been setup under the ICA between the parties, and that the current ICA contains no provisions for these types of traffic.¹³

12. GTA responded to the PDS e-mail on October 16, 2012 through its Counsel Serge Quenga. GTA indicated that PDS agreed with GTA that proper notice had been provided and that no stipulation was required for an assignment pursuant to ICA §5.1.2. It contends that the allegation by PDS that GTA will pass IXC and CMRS traffic under the terms of the ICA is unfounded and untrue. Furthermore, the issues raised by PDS are outside the scope of this docket. In any event, GTA has asserted in the Joint Application that Teleguam will comply with all rights and obligations under the ICA.¹⁴

ANALYSIS

13. Interconnection Agreements between an incumbent local exchange carrier [Teleguam] and a competitive local exchange carrier [PDS] are subject to the approval of the Guam Public Utilities Commission.¹⁵
14. Teleguam Holdings, LLC is now the duly authorized corporate entity to provide telecommunications services pursuant to its Certificate of Authority; Telecom no longer possesses a Certificate of Authority to provide such services. As GTA Telecom no longer has a COA, all Interconnection Agreements involving GTA should be in the name of Teleguam Holdings and not GTA Telecom.
15. The transfer of the Interconnection Agreement is consistent with the prior orders of the PUC and clarifies that the proper party to such Interconnection Agreement is Teleguam Holdings, LLC and not GTA Telecom.
16. PDS concurs that the transfer and assignment of the ICA to Teleguam does not require PDS' consent; the ICA between Telecom and PDS does not require the consent of the other party for transfers or assignment. Section 5.1.2 of the ICA's General Terms and Conditions gives either party the unilateral right to transfer or assign the ICA if certain conditions are met: (1) the other party must receive at least 60 days advance written notice; (2) the assignment or transfer cannot be inconsistent with applicable law (including the Affiliate's obligation to obtain and maintain proper Commission certifications and approvals) or the terms and

¹³ E-mail from PDS President John Day to PUC Legal Counsel Fred Horecky dated October 15, 2012.

¹⁴ E-mail from GTA Legal Counsel Serge Quenga to PUC Legal Counsel Fred Horecky dated October 16, 2012.

¹⁵ 47 U.S.C. §252(e)(1) [Section 252(e) of the Telecommunications Act of 1996].

conditions of the ICA; (3) the Assigning Party shall remain responsible for continuing compliance with all provisions of the ICA by itself and its affiliate; and (4) the Assigning Party shall not be relieved of any liability incurred pursuant to the ICA prior to the assignment.

17. Counsel believes that GTA has complied with all of the applicable terms and conditions for transfer and assignment of the ICA as set forth in paragraph 14 above. In addition, Counsel suggests that, although the Stipulation proposed has not been formally adopted by the parties, the transfer and assignment of the ICA, and all rights and obligations of Telecom, to Teleguam, should be in accordance with each of the 7 conditions referred to in the Stipulation made a part of Attachment A to the Joint Application and incorporated herein by reference.¹⁶
18. PDS raises a concern that Teleguam will start sending PDS IXC and CMRS traffic over the interconnection circuits that have been setup under the ICA. To date, no evidence has been provided that such traffic has in fact been sent over circuits setup under the ICA. Should improper traffic be sent over the interconnection circuits, PDS has a full range of possible remedies, such as dispute resolution under the IIRs [PUC Interconnection Implementation Rules] or the statutory complaint procedure.
19. The issues raised by PDS appear to be outside of the scope of this docket and should be raised in a separate proceeding.

RECOMMENDATION

20. The Joint Application to Assign and Transfer GTA Telecom's Interconnection Agreement with Pacific Data Systems, Inc. to Teleguam Holdings should be approved.
21. The assignment and transfer is consistent with the public interest, convenience and necessity.

¹⁶ The proposed Stipulation includes seven conditions for transfer and assignment of the ICA to Teleguam: (1) all rights and obligations of Telecom in the ICA will be assigned to Teleguam;(2) Teleguam's obligation to obtain and maintain proper Commission certification and approvals will continue; (3) Telecom will remain responsible for continuing compliance with all provisions of the ICA by itself and Teleguam; (4) Telecom shall not be relieved of any liability incurred pursuant to this ICA prior to the assignment; (5) all rights and obligations of Telecom under the ICA will be binding upon Teleguam; (6)all terms and conditions of the ICA remain unchanged and will continue in full force and effect; and (7) any costs associated with the assignment and transfer of the ICA to Teleguam will be paid by Teleguam. See Attachment B to the Joint Application

22. Counsel has submitted a proposed Order which would approve the transfer and assignment of the ICA as set forth herein.

Dated this 25th day of October, 2012.

Frederick J. Horecky
PUC Legal Counsel