

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN RE: )  
 ) **GTA Docket 11-03**  
 )  
 **GTA PETITION FOR RULEMAKING** )  
 **TO ESTABLISH AN APPROPRIATE** )  
 **REPAIR TIME INTERVAL FOR xDSL** )  
 **UNE (“UNBUNDLED NETWORK** )  
 **ELEMENT”)** )

**ORDER APPROVING THE ADOPTION OF A REPAIR TIME INTERVAL FOR  
xDSL UNE (RULE 7F OF THE INTERCONNECTION IMPLEMENTATION RULES)**

**INTRODUCTION**

1. This matter comes before the Guam Public Utilities Commission [PUC] upon the Petition of GTA Telecom LLC [GTA] for Rulemaking to Define the appropriate repair time interval for xDSL UNE (Unbundled Network Element).<sup>1</sup>
2. On April 18, 2011, the PUC issued an Order approving the commencement of proceedings, through the authority of the PUC Administrative Law Judge, to establish and define the repair time interval for xDSL UNE and to conduct appropriate hearings in this matter.<sup>2</sup>

**BACKGROUND**

3. On April 21, 2011, the PUC published “Notice of Proposed Rulemaking” in the Pacific Daily News.<sup>3</sup>

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<sup>1</sup> GTA Petition for Rulemaking to Define the Appropriate Repair Time Interval for xDSL UNE, GTA Docket 11-03, filed March 16, 2011.

<sup>2</sup> PUC Order Instituting Rulemaking, GTA Docket 11-03, issued April 18, 2011.

<sup>3</sup> PUC Notice of Proposed Rulemaking, GTA Docket 11-03, published in the Pacific Daily News on or about April 21, 2011.

4. The Notice indicated that, at present, the Interconnection implementation Rules [adopted by the PUC on August 13, 2007 in Docket 05-1, do not define the repair time interval for xDSL UNEs. Therein the PUC invited written comments from any interested party or member of the public as to whether a repair time interval should be defined for xDSL UNE, and if so, whether 24 hours is the appropriate repair time interval for such service. Written comments were requested to be submitted to the PUC on or before May 13, 2011.<sup>4</sup>
5. Written comments were received from interested parties, including WISP Guam Inc., Pacific Data Systems Inc., and GTA.<sup>5</sup>
6. Although at the PUC meeting on May 16, 2011, the Chairman invited public comments on GTA's Petition, no public comments were offered.<sup>6</sup>
7. On June 7, 2011, the Georgetown Consulting Group Inc. submitted its report re: GTA Petition for Rulemaking, xDSL Repair Interval, GTA Docket 11-03.<sup>7</sup>
9. On June 16, 2011, at the PUC Office, the ALJ held a conference among interested parties in this proceeding to provide them with an opportunity to comment upon the Report submitted by the Georgetown Consulting Group and to raise any additional matters concerning the appropriate repair time interval for xDSL .
10. On June 18, 2011, the Administrative Law Judge filed his Report herein.<sup>8</sup>

### DETERMINATIONS

11. Based upon the testimony of the parties, there is a demonstrated need for the PUC to establish a repair time interval for xDSL UNE. The PUC should establish such a repair time interval.

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<sup>4</sup> Id.

<sup>5</sup> See Email from David Sykes, President, WISP Guam, Inc., Re: Public Comments for GPUC, filed May 10, 2011; John Day, President, Pacific Data Systems, Re: GTA Docket 11-03, GTA Petition for Rulemaking to Establish an Appropriate Repair time interval for xDSL UNE, filed May 13, 2011; and GTA Reply Comments, GTA Docket 11-03, filed May 19, 2011.

<sup>6</sup> See Agenda for PUC Regular Meeting of May 16, 2011, and PUC Minutes from the Regular Meeting of May 16, 2011.

<sup>7</sup> GCG Report, GTA Petition for Rulemaking, xDSL Repair Interval, GTA Docket 11-03, filed June 7, 2011.

<sup>8</sup> ALJ Report, GTA Docket 11-03, filed June 17, 2011.

12. In accordance with 47 USC §251(c)(3), an Incumbent Local Exchange Carrier (ILEC) cannot be required to provide service to Competitive Local Exchange Carriers (CLECs" which is "superior" to that provided by the ILEC to its own customers.
13. Provisions of the Code of Federal Regulations, 47 C.F.R. Part 51 [§§51.305(a)(3) and 51.311 (b)] also require that an ILEC provide services to CLECs in "parity" ["at least equal in quality"]with those provided to the ILECs own customers.<sup>9</sup>
14. Case precedent reinforces that ILECs are not required to offer services to CLECs which are "superior in quality", and any regulatory attempt to do so violates the Telecommunications Act of 1996.<sup>10</sup>
15. GTA has presented evidence that its average repair time interval for a Basic Business DSL circuit for its own customers is over 42 hours.<sup>11</sup>
16. The GTA website contains "legal terms and conditions" under which "Spyder" broadband services are provided. Basic Business DSL service is provided under "Spyder." The website provides that, for Spyder services, "Service outages and repairs may take up to 48 hours."
17. Based upon federal law and case precedent, PUC cannot compel an ILEC such as GTA to provide superior service to CLECs than the ILEC provides to itself or its own customers. GTA cannot be required to provide repair service for xDSL UNE in a period of less than 24 hours.
18. In fact, the 24 hour repair time service interval which GTA proposes for xDSL UNE is superior to that which it provides to its own customers.
19. GCG's recommendation that a 24 hour repair time interval be approved for xDSL UNE is hereby adopted.In accordance with GCG's conclusion, the 24 hour standard

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<sup>9</sup> GTA Reply Comments, GTA Docket 11-03, filed May 19, 2011, at p. 3

<sup>10</sup> Id; see Iowa Utilities Board v. FCC, 120 F.3d 753, 812-813 (8<sup>th</sup> Cir. 1977), rev'd on other grounds, IowaUtilities Board v. AT&T Corp., 525 U.S. 366 (1999), on remand, Iowa Utilities Board v. FCC, 219 F.3d 744, 758 (8<sup>th</sup> Cir. 2000), rev'd on other grounds, Verizon Communications Inc. v. FCC, 535 U.S. 366 (2002).

<sup>11</sup> GTA Reply Comments, GTA Docket 11-03, filed May 19, 2011, at p. 3 and Exhibit A.

should also be applied for other services within the xDSL family, such as ADSL, HDSL, IDSL, SDSL, VDSL, ADSL2, ADSL2+, etc.<sup>12</sup>

### **ORDERING PROVISIONS**

After careful review of the GTA Petition to define the appropriate repair time interval for xDSL UNE, the comments of PDS and WISP Guam Inc., the report of GCG and the ALJ Report, and for good cause shown, based upon the determinations herein, on motion duly made, seconded, and unanimously carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. A 24 hour repair time interval is hereby adopted for xDSL UNE.
2. Rule 7f of the Interconnection Implementation Rules shall be amended to include such repair time interval for xDSL UNE, in the form attached as Exhibit "1" to this Order.
3. The 24 hour standard should also be applied for other services "within the xDSL family", such as ADSL, HDSL, IDSL, SDSL, VDSL, ADSL2, ADSL2+, etc.
4. The PUC adopts the analysis, reasoning and recommendations as set forth in the aforementioned ALJ Report and the GCG Report filed herein.
5. GTA is ordered to pay for the PUC's regulatory fees and expenses incurred in this Docket, including, without limitations, consulting and counsel fees and expenses. Assessments of the PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §12002(b) and 12024(b), 12104, 12103, the Rules Governing Regulatory fees for Telecommunications Companies, and Rule 40 of the Rules of Practice and Procedure before the PUC.

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<sup>12</sup> Id.

Order  
Rulemaking to Establish  
an Appropriate Repair Time Interval for  
xDSL UNE  
GTA Docket 11-03  
June 20, 2011

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Dated this 20<sup>th</sup> day of June, 2011.

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Jeffrey C. Johnson  
Chairman

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Joseph M. McDonald  
Commissioner

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Rowena E. Perez  
Commissioner

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Filomena M. Cantoria  
Commissioner

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Michael A. Pangelinan  
Commissioner