

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

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

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).¹
2. On April 18, 2011, the PUC issued an Order approving the commencement of proceedings, conducted under the authority of the PUC Administrative Law Judge [ALJ], to establish and define the repair time interval for xDSL UNE and to hold appropriate hearings in this matter.²

BACKGROUND

3. On or about April 21, 2011, the PUC caused to be published in the Pacific Daily News, a “Notice of Proposed Rulemaking.”³
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

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

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

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

interval for such service. Written comments were requested to be submitted to the PUC on or before May 13, 2011.⁴

5. Comments were received from interested parties, including WISP Guam Inc., Pacific Data Systems Inc., and GTA.⁵
6. At the PUC regular meeting on May 16, 2011, the Chairman asked whether there were any public comments on GTA's Petition to define the appropriate Repair Time Interval for xDSL UNE in GTA Docket 11-03. There were no public comments.⁶
7. On June 1, 2011, the ALJ requested that PUC Consultant, the Georgetown Consulting Group Inc. provide a report on the appropriate repair time interval for xDSL Services with recommendations.⁷
8. On June 7, 2011, Georgetown submitted its report re: GTA Petition for Rulemaking, xDSL Repair Interval, GTA Docket 11-03.⁸
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 .

ANALYSIS

10. Herein the ALJ will summarize the viewpoints of the interested parties presented in written comments filed in this proceeding and at the conference held on June 15, 2011.

A. GTA Telecom LLC

⁴ Id.

⁵ 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.

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

⁷ Email from ALJ Frederick J. Horecky to Georgetown Consulting Group, GTA Docket 11-03, dated June 1, 2011.

⁸ GCG Report, GTA Petition for Rulemaking, xDSL Repair Interval, GTA Docket 11-03, filed June 7, 2011.

11. GTA submits that a 24 hour repair time interval is appropriate for xDSL UNE, and that such interval is a higher standard than other state commissions have adopted. GTA has presented evidence that its average repair time interval for a Basic Business DSL circuit for its own customers is over 42 hours. A Basic Business Data Only circuit repair interval is over 26 hours.⁹
12. GTA further indicates that it is currently only required to provide to its own customers with a 48 hour repair interval under GPUC Docket 93-007.¹⁰
13. Based upon the above factors, GTA takes the position that the 24 hour repair interval proposed by GTA for xDSL is a better interval than it provides to its own customers.¹¹
14. Legal authority cited by GTA establishes that it is only required to provide “parity” for repairs of CLEC circuits as required by 47 U.S.C. §251(c)(3), and has no obligation to provide a superior grade of service than it provides to its own customers.¹²
15. 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.¹³
16. Case precedent establishes 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 1996.¹⁴
17. Other ILECs, such as Verizon, only provide a xDSL repair interval in parity with what it provides to its own customers.¹⁵

⁹ GTA Reply Comments, GTA Docket 11-03, filed May 19, 2011, at p. 3 and Exhibit A.

¹⁰ GTA Petition, Docket 05-01 [renumbered as GTA Docket 11-03] Petition for Rulemaking, Interconnection Implementation Rules, filed March 16, 2011 at p. 2.

¹¹ Id.

¹² Id. at pgs. 2-3.

¹³ GTA Reply Comments, GTA Docket 11-03, filed May 19, 2011, at p. 3

¹⁴ Id; see Iowa Utilities Board v. FCC, 120 F.3d 753, 812-813 (8th Cir. 1977), rev'd on other grounds, Iowa Utilities Board v. AT&T Corp., 525 U.S. 366 (1999), on remand, Iowa Utilities Board v. FCC, 219 F.3d 744, 758 (8th Cir. 2000), rev'd on other grounds, Verizon Communications Inc. v. FCC, 535 U.S. 366 (2002).

B. WISP Guam, Inc. [WISP], and Pacific Data Systems Inc. [PDS]

18. WISP provides corporate internet services to many significant businesses on Guam, some of which rely upon the transmission of important information to foreign destinations.¹⁶ WISP believes that the repair time interval suggested by GTA is “discriminatory and anti-competitive”, as “it would mean extreme unnecessary burden on our company and our customers.”
19. WISP recommends that the Commission not adopt the repair time interval advocated by GTA, but establish a GTA repair standard for xDSL UNE at 2 hours [the same repair time interval for similarly provisioned GTA services].¹⁷
20. PDS agrees that there is a need for PUC to define the repair intervals for circuit types such as xDSL UNE circuits. PDS points out that it is presently the only competitive local exchange carrier currently using the types of Unbundled Network Elements referred to by GTA. Since PDS and its end users would be most affected by any changes approved by the PUC in this docket, PDS is an interested party.¹⁸
21. PDS indicates that it presently has over 500 of the xDSL UNE circuits in place across its network, providing a wide variety of services to its customers. PDS further requests that the PUC consider including other similar UNE circuit/services for rulemaking in this proceeding that also do not have repair intervals currently defined in IIR R 7(f).
22. In addition to xDSL, PDS indicates numerous other services which it believes need appropriate repair time intervals, including ADSL, HDSL, SDSL, and ISDN among others. PDS indicates that there are 8 other services which no repair time interval is presently defined in IIR 7(f).¹⁹
23. PDS’ analysis indicates that all of the xDSL services defined by GTA would be categorized to be in between the first class of circuit types (DS3/OC3) and the

¹⁵ GTA Petition, GTA Docket 11-03, Petition for Rulemaking, Interconnection Implementation Rules, filed March 16, 2011 at p. 2.

¹⁶ Email from David Sykes, President, WISP Guam Inc., GTA Docket 11-03, filed May 10, 2011.

¹⁷ Id.

¹⁸ John Day, President, Pacific Data Systems, Re: GTA Docket 11-03, Petition for Rulemaking to Establish an appropriate repair time interval for xDSL UNE, filed May 13, 2011.

¹⁹ Id.

second class of circuit types (DS1/Fractional DS1/Design DSO). The repair time interval for the first class is 2 hours, and 4 hours for the second class. Therefore, PDS recommends that a new class labeled as xDSL UNE circuits be assigned a repair interval of 3 hours.²⁰

C. Georgetown Consulting Group Inc. [GCG]

24. On June 7, 2011, the Georgetown Consulting Group Inc. submitted its Report on the appropriate xDSL Repair Interval.²¹
25. GCG indicates that “DSL is a family of technologies that are primarily used to provide access to the internet over copper loops connecting the telephone company’s central office to customer premises. There are a number of variations- - ADSL, HDSL, IDSL, SDSL, VDSL, ADSL2, ADSL2 plus, etc. – which vary in transmission speed in each direction.”²²
26. The transmission speeds of all DSL services are not guaranteed and depend on a number of factors such as length and quality of the loop and the capacity of the Internet Service Provider.²³
27. GCG agrees with GTA that ILECs are not required to provide repair service to competitors superior in quality to that which it provides to itself.²⁴ However, a PUC generally has an obligation to insure reasonable services for all customers. The purpose of the IIRs is to insure that an incumbent provides an opportunity for other carriers to compete using the incumbent’s facilities.²⁵
28. GCG does not concur with GTA that 24 hours is a typical repair interval standard for larger carriers, indicating that Qwest calls for restoration of service within 4 hours for ADSL. However, GCG also submits that PDS’ suggestion of 3 hours is unreasonable.²⁶ Contrary to PDS’ assumption, GCG does not find that there is any direct relationship between transmission speed and the required repair interval.

²⁰ Id. at p. 2.

²¹GCG Report, GTA Docket 11-03, Re: GTA Petition for Rulemaking, xDSL Repair Interval, filed June 7, 2011.

²² Id. at p. 1.

²³ Id.

²⁴ Id. at p. 2.

²⁵ Id. at p. 2.

²⁶ Id.

29. GCG agrees with GTA that the work involved in troubleshooting a DSL line is essentially the same regardless of what type of DSL is being supported: “since the loop portion of DSL services is basically the same piece of copper wiring as used for traditional POTS [plain old telephone service] there is no reason to conclude that the repair interval should be different from POTS.”²⁷
30. The present repair interval for Residential and Business Resale POTS in Rule 7f is 24 hours. GCG finds that GTA has offered repair on xDSL facilities within 24 hours even though its own performance averaged 42 hours for business basic DSL customers. Thus, GCG recommends acceptance of GTA’s 24 hour standard.²⁸
31. GCG concludes that the 24 hour standard should be applied for all services within the xDSL family.²⁹

D. CONFERENCE CONDUCTED ON JUNE 15, 2011

32. On June 15, 2011, the ALJ conducted a conference in this matter at the PUC office. In attendance were GTA and PDS. The parties were given an opportunity to address the GCG Report, and to comment on any further matters.
33. PDS generally did not concur with the conclusions in the GCG Report, and in particular that POTS is comparable to xDSL. POTS (“Plain Old Telephone Service”) involves residential/business lines connected to a service capability, whereas xDSL is the most basic type of service, involving dry copper loops which do not transit other wire centers.³⁰
34. PDS believes that xDSL repairs are technically more akin to repairs of DS-1 and T1 lines, and should therefore have a three hour repair interval (between the two hour repair interval for DS-3 and OC-3 and the four hour interval for DS-1). Based upon the repair intervals which PUC has already established for DS-1 and OC-3, it has essentially already determined that the repair interval for xDSL should be similar or within the same range of two to four hour repair time.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ PDS presentation was conducted by its President John Day.

35. PDS presented a demonstration indicating that xDSL is a simpler service to repair than DS-3, OC-3 and higher, since DSL (unlike OC-3 and higher) do not transit other wire centers.
36. While agreeing with GTA that the service repair interval for xDSL needs to be defined, PDS argues that as many as eight additional services provided for in the Interconnection Agreement between GTA and PDS also need to be defined.
37. PDS is not convinced that GTA's stated xDSL repair time for its own business customers (42 hours) is accurate, and believes that GTA may not have included video in such repair time calculation.
38. PDS will be unable to meet its own repair obligation for its DS-1 and T1 lines within four hours if GTA has twenty-four hours to repair xDSL Circuits.
39. GTA agrees with the GCG Report and its recommendation of a 24 hour repair service interval for xDSL.³¹
40. GTA again emphasizes that under applicable statute, regulation, and case law precedent, it cannot be required to provide superior quality xDSL services to CLECs such as PDS. Since its repair service interval for xDSL to its own customers is only 42 hours, its offer of a 24 hour repair service interval is generous and greater than it is required to give.
41. According to GTA, other ILECS do have a 24 hour repair service interval for xDSL. CLECS such as PDS can purchase platinum repair service for xDSL (but at a substantially increased cost).

RECOMMENDATIONS

42. All parties concur that there is a need for the PUC to establish a repair time interval for xDSL UNE. The PUC should establish such a repair time interval.
43. In accordance with the GCG recommendation, there does not appear to be a need to adopt specific repair time intervals for the complete list of UNE services (referred to in the PDS comments) that are presently provided by GTA to PDS. The same repair standard should be applied to all services within the xDSL family.

³¹ GTA's presentation was conducted by Eric Votaw and Serge Quenga, Esq.

44. During the conference, PDS and GTA appeared to agree that a 24 hour repair time interval could be established for 2 wire analog voice grade loop and 4-wire analog voice grade loop. However, the ALJ adopts GTA's suggestion that such services should be the subject of a separate rulemaking. If either party believes other services need a stated repair time interval in the IIRs, a separate proceeding should be filed with the PUC.
45. PDS has presented plausible arguments that xDSL UNE may be more akin to services for which the PUC has previously established 2 and 4 hour repair time intervals; and that an ILEC could repair xDSL UNE in less than a 24 hour repair time interval.
46. However, based upon federal statute, regulations, and case law, there is a substantial body of precedent, cited above, which precludes a PUC from compelling an ILEC to provide superior service to CLECs than it provides to itself. The evidence in the record establishes that the 24 hour repair time service interval which GTA proposes for xDSL UNE is superior to that which it provides its own customers.
47. Consistent with federal law, neither the ALJ nor the PUC can compel GTA to provide a more stringent repair time interval for xDSL UNE than GTA provides to its own customers, and not less than the 24 hours which GTA offers to provide.
48. GTA has presented a strong argument, based upon 47 USC §251(c)(3), that it cannot be required to provide service to CLECs which is superior to that provided to its own customers. Its offer to repair xDSL facilities within 24 hours is superior to the performance standard offered to its own customers, which is an average of 42 hours.
49. While Rule 7f) of the IIRs does establish a repair interval for certain services such as DS-3, OC-3 and higher, Ds-1 Fractional DS-1, etc. which repair intervals are between two and four hours, no specific repair time interval has ever been established for xDSL UNE. It cannot be assumed that repair time interval for xDSL must be the same as for other services for which a repair time interval has already been established.
50. At the conference, the parties discussed the applicable repair time for xDSL contained in GTA's website. The ALJ further notes that 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.”

51. The 24 hour repair standard interval should be adopted and applied for all services within the xDSL family, including but not limited to ADSL, HDSL, IDSL, SDSL, VDSL, ADSL2, ADSL2+, etc.
52. The PUC should adopt an Amended Rule 7f) to the Interconnection Implementation Rules in the form attached hereto as Exhibit “1”.
53. An order has been submitted herewith for the consideration of the Commissioners.

Dated this 16th day of June, 2011.

Frederick J. Horecky
Administrative Law Judge