

BEFORE THE GUAM PUBLIC UTILITES COMMISSION

IN RE: GTA TELEGUAM LLC AND)
GUAM POWER AUTHORITY/) GTA Docket 09-04
POLE ATTACHMENTS)
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)

DECISION AND SCHEDULING ORDER

This matter came before the Administrative Law Judge ["ALJ"] on July 6, 2010 at 10:00 a.m. TeleGuam Holdings LLC [GTA] appeared through its Counsel Terrence M. Brooks. Guam Cablevision LLC dba MCV [MCV] was represented by its Counsel Jennifer Calvo-Quitigua and its President Craig Thompson. Guam Power Authority [GPA] was not present due to illness of its Counsel, but its Counsel Graham Botha advised the ALJ that GPA had no objection to the holding of the scheduling conference notwithstanding Counsel's absence. The parties first proceeded to present oral argument on the issue of whether the PUC has jurisdiction to address the complaint herein for purpose of setting rates and charges for pole attachments, and whether such jurisdiction is preempted by federal telecommunications law.

Thereafter the parties discussed issues concerning the procedure that the ALJ should follow in determining the appropriate rates and charges which GPA may charge for pole attachments, in the event that the ALJ finds that jurisdiction exists. Having reviewed the pleadings and briefs of the parties and having considered oral argument, good cause appearing, the ALJ hereby ORDERS as follows:

1. The PUC has jurisdiction over the rates and charges charged by the Guam Power Authority for pole attachments to poles owned by GPA. During oral argument, MCV conceded that the Guam Power Authority is not a utility nor are its pole attachments subject to regulation by the Federal Communications Commission pursuant to 47 U.S.C. §224(a)(1). Pole attachments on GPA poles are exempt from federal regulation, as GPA is "owned by a state." The term "state" includes a possession of the United States, such as Guam. 47 U.S.C. §224(a) (3).

The Guam Power Authority is a public corporation owned by the government of Guam. 12 GCA §8103; Guerrero v. Government of Guam, DC Guam Civil Case #80-43A (1981) and Wood v. Guam Power Authority, Government of Guam (2000 Guam 18) 2000. Pursuant to 12

GCA §12015(a), a rate, charge or assessment cannot be established by a public utility without the prior approval of the Public Utilities Commission [PUC]. The Guam Power Authority is a public utility subject to the jurisdiction of the PUC. See 12 GCA §12000. In accordance with 12 GCA §12004: "The Commission shall have regulatory oversight supervision of rates as set forth in this Chapter over each public utility ... The Commission shall investigate and examine any rates and charges charged by any utility, and all records pertinent thereto ... the Commission shall establish and modify from time to time, reasonable rates and charges for service ...". (Emphasis added).

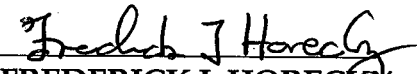
No rate or charge is effective without the approval of the PUC. 12 GCA §12025. Typically, the pole attachment agreements between GPA and telecommunications companies include a provision for charges by GPA to the licensees for each pole to which the licensee attachments are made. The amounts which GPA charges its licensees are "charges" pursuant to 12 CGA §12000 et. seq. The PUC has jurisdiction over GTA's complaint.

2. During the hearing, MCV raised the issue of whether PUC has jurisdiction over attachments to privately owned poles. MCV asserts that there are existing arrangements between companies and private pole owners for the placement of attachments. MCV argues that PUC cannot currently regulate private pole attachments as it has not followed the certification procedures to regulate such attachments under 47 USC §224. So that ALJ can more fully address this issue, any party that desires PUC to consider issues concerning poles that are not owned by GPA shall file brief(s) on or before July 22, 2010. Such poles may include those privately owned or owned by the US Military. The parties are requested to present any available information concerning the number of privately owned poles on island, and the number and nature of any existing agreements between parties for the placement of attachments on poles not owned by GPA. The ALJ reserves jurisdiction to enter any further or necessary orders on this issue.
3. During the hearing, MCV's Counsel suggested that the parties should be given an opportunity to negotiate a formula for determining appropriate pole attachment charges which GPA may utilize, and GTA's Counsel concurred. The ALJ also agrees that this approach should be attempted in order to conserve administrative resources and costs. During the next thirty (30) days, the parties shall meet and negotiate concerning the appropriate formula(s) to determine the allowable rates to be charged by

GPA for pole attachments that provide telecommunications services. The parties are further requested to use best efforts to propose an acceptable resolution of this issue. The ALJ will further review any proposal submitted by the parties to determine its acceptability.

4. On or before 5:00 p.m. on August 2, 2010, the parties shall file a joint status report detailing the extent of negotiations which have occurred, the scope thereof, and any proposed formula(s) for assessing appropriate pole attachment charges. The report shall also indicate what issues remain to be resolved.
5. The parties shall appear for a status conference at the Public Utilities Commission on August 5, 2010 at 10:00 a.m. The conference shall be conducted at the Public Utilities Commission, Suite 206, GCIC Building, 414 W. Soledad Avenue, Hagatna, Guam.

SO ORDERED this 9th day of July 2010.


FREDERICK J. HORECKY
Administrative Law Judge