

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE:)
PACIFIC DATA SYSTEMS, INC.) PDS Docket 11-01
REQUEST FOR RULEMAKING RE: PUC)
ADMINISTRATIVE ASSESSMENT FOR)
TELECOMMUNICATIONS COMPANIES)
_____)

ADMINISTRATIVE LAW JUDGE REPORT

Introduction

1. This matter comes before the Guam Public Utilities Commission [PUC] upon the Filing/Request of Pacific Data Systems Inc. [PDS] that PUC examine the methodology by which it assesses annual administrative expenses against telecommunications companies.¹
2. In its Filing, PDS lists various reasons why it believes that the current assessment methodology must be changed. PDS claims that the current assessment methodology is both flawed and possibly discriminatory.

Background

3. The current methodology for assessment of PUC administrative expenses against telecommunications companies is set forth in the PUC Rules Governing Regulatory Fees for Telecommunications companies.²
4. The PUC is authorized under 12 GCA §12104(c)(7) to adopt reasonable rules to apportion its reasonable operating expenses among telecommunications companies.³
5. At present, the PUC allocates its administrative expenses among the regulated utilities [GPA, GWA, PAG, SWD/DPW) and telecommunications companies. The portion of the assessment charged to telecommunications companies is allocated in the manner described in section 2[a] of the Rules.⁴ The assessment to

¹ PDS Filing Re: GPUC Telecom Assessment for FY2011, PDS Docket 11-01, filed November 15, 2010.

² Guam Telecommunications Act of 2004, Docket 05-01, Rules Governing Regulatory fees for telecommunications companies, adopted on July 27, 2005.

³Id. at sec. 1a.

⁴ Id. at sec. 2a.

telecommunications companies [carriers] is shared among all carriers which were assessed regulatory fees during the preceding fiscal year.

6. The total amount of the regulatory assessments on all carriers for the preceding year is determined, and a calculation done as to the percentage which each carrier's regulatory assessment bears to the total regulatory assessments. Based upon a carrier's percentage of total regulatory assessment, the carrier is assessed a corresponding portion of the total annual PUC administrative assessment for telecom companies, which is determined by multiplying the above percentage by the annual expenses.⁵
7. In simple terms, the administrative fees paid by a carrier for the current fiscal year is based upon the percentage of the total regulatory fees which such carrier incurred in the prior year. The theory appears to be that those carriers which incur higher regulatory fees utilized the PUC's services to a greater extent and placed greater administrative and resource burdens upon it. Those carriers that utilize the Commission's resources to a greater degree should be required to pay a higher portion of its administrative expenses.
8. The present methodology for assessing administrative expenses against a telecommunications company/carriers has now been in effect for over six years. The basic assessment methodology has not been altered; in 2009, there was an amendment to Rule 1.b.ii, which provides that the PUC may allocate regulatory expenses in a proceeding against such party or parties as it deems appropriate.⁶

Course of these Proceedings

9. On April 27, 2011, the Administrative Law Judge [ALJ] notified all telecom companies of the request of PDS that the Guam PUC undertake a rulemaking proceeding to examine the current rules governing assessment of administrative expenses to telecom companies. The ALJ attached to his letter the PDS' filing, PUC Assessment Order dated September 29, 2010, and a copy of the current Rules Governing Regulatory Fees for Telecommunications Companies.⁷

⁵ Id.

⁶ In Re: Pacific Data Systems Inc. Request for Rulemaking, PDS Docket 09-02, Order Amending Rule 1.b.iii of the Rules Governing Regulatory Fees for Telecommunications Companies, adopted February 25, 2010.

⁷ ALJ Letter to Telecom Parties, PDS Docket 11-01, dated April 27, 2011.

10. The ALJ indicated that participation by telecom companies in this docket was voluntary; and that PUC subsequently planned to issue public notice soliciting comments concerning the suggestions of PDS and any matters relative to the annual assessment of administrative fees by the PUC against telecom companies.⁸
11. On August 1, 2011, PDS reminded the ALJ that no further proceedings had been undertaken in this docket since the ALJ's letter to telecom companies dated April 27, 2011.⁹
12. On August 2, 2011, the ALJ advised all telecom parties, through written notice, that the PUC would accept written comments on the matters raised in PDS' filing, until August 26, 2011.¹⁰
13. In addition, the ALJ advised PDS and all telecom parties in writing that a hearing would be conducted at 10:00 a.m. on September 6, 2011, at the PUC office; at that time, any interested party would have the opportunity to present its position concerning any matter involving the PUC annual administrative assessment methodology and the issues set forth in the PDS letter.¹¹ On August 5, 2011 and August 12, 2011, the PUC published its REQUEST FOR PUBLIC COMMENT in the Pacific Daily News.
14. In the REQUEST FOR PUBLIC COMMENT, the PUC invited any interested party to provide written comment, on or before August 26, 2011, upon the changes and revisions suggested by PDS to the current PUC method of assessment of administrative expenses; and concerning any aspect of the present system for assessment of administrative expenses or the improvement thereof pursuant to Rule 2 of the Rules Governing Regulatory Fees for Telecommunications Companies.
15. Neither PDS, any member of the public, any telecom company, or any other interested party submitted any additional written comments to the PUC before, on, or after August 26, 2011.
16. In addition, neither PDS nor any other party appeared at the hearing conducted by the Administrative Law Judge at 10:00 a.m. on September 6, 2011, at the PUC Office,

⁸ Id.

⁹ Email from John Day, President of PDS, to Administrative Law Judge, PDS Docket 11-01, dated August 1, 2011.

¹⁰ Email from ALJ to telecom parties, PDS Docket 11-02, dated August 2, 2011, with REQUEST FOR PUBLIC COMMENT attached.

¹¹ Id.

Suite 207, GCIC Building. No comment or testimony was provided. Only the ALJ and the Court Reporter attended the hearing.

17. Thus, the only evidence of any nature in the record in this Docket is the written comments filed by PDS on November 15, 2010. There is no other evidentiary or factual support for any proposed change in the current administrative expense assessment methodology. The ALJ will proceed to analyze the comments filed by PDS herein.

Analysis

18. PDS raises a number of criticisms of the current PUC administrative expense assessment methodology in its November 15, 2010, Filing.
19. PDS claims that the current assessment methodology is flawed because: “telecommunications companies already pay the GPUC 100% of any costs associated with telecommunications related dockets. To use these docket costs (usually associated with ILEC/CLEC interconnection disputes) as a basis for the allocation of GPUC administration expenses is wrong and results in a double assessment to these companies.”
20. Initially, it is not correct that regulatory costs for telecom companies are “usually associated with ILEC/CLEC interconnection disputes”. Among other matters, such dockets involve USAC Certification, ETC Designation, Tariff filings and disputes, Applications for Certificates of Authority and the transfer and sale thereof, and numerous other issues.
21. Regulatory costs for dockets are associated with a broad range of diverse issues other than interconnection disputes.
22. The use of the current allocation methodology for administrative expenses does not result in any “double assessment” to telecom companies. It is simply not true that telecommunications companies pay “100% of any costs associated with telecommunications related dockets” through regulatory fees. Regulatory assessments only pay the fees that PUC Consultants, the Administrative Law Judge, and Legal Counsel charge to the particular regulatory docket.

23. It is only fair and proper that telecommunications companies pay the specific consultant regulatory fees that the Commission is compelled to incur because of the filing by a telecom company of a particular docket.
24. On the other hand, administrative assessments which telecom companies pay to the PUC are used to pay administrative expenses incurred by the Commission in carrying out its statutory mandates: such items as office rent, PUC Administrator salary, equipment costs, operational costs and expenses, and other administrative costs. The payment of PUC administrative expenses by telecommunications companies allows the PUC to carry out its mandated duties and obligations. Regulatory fees do not pay any of the foregoing costs.
25. In no manner is there a “double assessment” to telecom companies. Comparing “regulatory” assessments and “administrative” assessments is comparing apples and oranges. Each assessment covers a different type of expense. Furthermore, telecom companies and carriers that utilize the PUC services more frequently are generally required to pay a higher portion of the PUC administrative expenses based upon such usage.
26. PDS claims that the methodology gives “some telecommunications companies (CMRS) and payphone particularly) a “free ride” while placing a disproportionate burden on the local exchange carriers. To the contrary, PUC only has a limited jurisdiction over CMRS providers, and no certificate of authority is required for any person to provide commercial mobile service. 12 GCA §12103(a).
27. Furthermore, CMRS providers are not required to file tariffs with the PUC. PUC jurisdiction over CMRS is generally limited to registration of such providers, approval of interconnection agreements and review of interconnection disputes and other matters.¹² However, CMRS providers do not get a “free ride”: if one examines the PUC Assessment Orders for 2009 through 2011, it is evident that various CMRS providers have been assessed administrative expenses.¹³ The ALJ is not aware of any recent proceeding before the PUC or regulatory activity involving “Payphone” which has occurred since September 2008.
28. PDS further claims that PUC has administrative costs and obligations “that are directly related to all telecommunications companies”, for example E911. However,

¹² 12 GCA §12105(a)

¹³ See Administrative Assessment Orders for FY2009, 2010, and 2011.

PDS fails to take into account that regulatory fees for E911 are not assessed by the PUC directly to telecom companies, but are paid by GTA out of the E911 receipts. Telecom carriers do not directly pay regulatory fees to PUC for E911 matters. For example, when issues arose with PDS concerning E911 compliance issues, the regulatory fees were billed to GTA through E911. **E911 fees are not included in the calculation of regulatory fees for the prior year.**

29. Regulatory Fees for E911 are properly excluded from the calculation of the allocation of administrative expenses. Most of the other PUC administrative functions referred to by PDS relate to review of the ILEC, and are funded from the administrative assessment paid by the ILEC. In fact, the ILEC, GTA Telecom LLC has borne by far the greatest burden of all carriers in covering the administrative expenses of the Commission. In only one year (FY2011) did a carrier other than GTA pay a larger administrative assessment than GTA.
30. PDS claims that PUC “has incorrectly lumped some ILECs and CMRS or CLECs and CMRS carriers into a single entity “an example being GTA Telecom (ILEC) and MPulse Wireless (CMRS).” There is nothing in the Rules that require separate assessments against GTA Telecom and MPulse Wireless (Pulse Mobile). Both companies have a common owner, the holding company known as GTA TeleGuam Holdings LLC. TeleGuam Holdings is a holding company for both entities, and there is nothing that prevents PUC from assessing an administrative fee against the common owner.
31. Practically, the issue raised by PDS is irrelevant. To assess GTA Telecom and Pulse Mobile separately in terms of regulatory fees would have no impact at all upon the total amount that GTA must pay to the PUC in annual assessment fees. The regulatory fees assessed to GTA Telecom and Pulse Mobile take into account the dockets of both entities. Also, the Rules Governing Regulatory fees expressly provide that the administrative fees assessed against carriers “shall be the responsibility of Teleguam Holdings LLC, or its successor, as the dominant carrier; provided, however, that they shall be shared with all other carriers, which were assessed during the preceding fiscal year....”¹⁴
32. Contrary to PDS’ assertion, the GPUC assessment mechanism does, in almost all years, assess a majority of the GPUC administrative costs to GTA. That trend has

¹⁴ Guam Telecommunications Act of 2004, Docket 05-01, Rules Governing Regulatory fees for telecommunications companies, adopted on July 27, 2005, at Sec. 2a.

repeated itself for the proposed FY2012 Assessment Order. GTA is bearing nearly 70% of the administrative assessment expenses of the PUC.

33. PDS claims that the current administrative assessment methodology is contrary to Section 12104(c)(7) of the Guam Telecommunications Act of 2004, which requires PUC to implement “reasonable” rules to apportion the operating expenses of the GPUC. PDS has failed to present any evidence that the current assessment methodology is “unreasonable” or does not fairly apportion the operating expenses of GPUC.
34. PDS claims that the current assessment methodology is not reasonable “since it punishes PDS for its work to protect and foster competition and enforce GPUC rules; since the more PDS has to engage the GPUC in more regulatory action against GTA to insure competition, the more the GPUC then allocates to PDS in GPUC administrative costs, even though these costs are not affected by and have no bearing on the regulatory dockets that PDS has been involved with over the previous year.”
35. PDS indicates that it has adopted a role as “enforcer” of competition under the Telecom Act. It is certainly free to do so, but such role is voluntarily undertaken and is not required by statute. Having chosen such a role, there is nothing in the PUC Rules that exempts PDS from its share of administrative expenses for regulatory dockets which it decides to bring. PDS must bear its appropriate portion of administrative expenses resulting from its dockets.
36. PDS is in error when it alleges that PDS is punished for the regulatory proceedings which it brings. As a result of the PUC’s responsiveness to PDS, in PDS Docket 09-02, the Commission specifically adopted, at PDS’ request, an amendment to its Rules Governing Regulatory Fees for Telecommunications Companies. That amendment allows the Commission to apportion regulatory expenses in proceedings. The current framework for assessment of Administrative expense specifically allows PDS to shift unjustified regulatory expenses from itself to another carrier **if it convinces the PUC to do so**. Such shifting mechanism potentially can result in a reduction of PDS’ portion of the administrative expenses.
37. If PDS is successful in convincing the PUC that a party other than it should be responsible for certain regulatory fees, a lesser portion of administrative expenses will be assessed against PDS.

38. The reason that the FY 2011 administrative assessment for PDS was higher than that of GTA was that PDS brought numerous regulatory proceedings in that year; however, PDS bears only a small portion of the administrative assessment for FY2012.
39. PDS also points to the perceived need by the Office of Public Accountability for PUC to expand its staff in order to fully implement its statutory obligations regarding 911 collections and reporting. As previously mentioned, the regulatory fees and costs of the E911 program have no relationship to the PUC administrative assessment; E911 costs are funded directly from surcharge receipts of the E911 program. All carriers who participate in the E911 program collect E911 surcharges and indirectly participate in the funding of the program.
40. PDS has not made any specific proposals as to how the PUC could practically “reform” its annual telecom assessment formula. PUC did seek input from all telecommunications carriers, but no one other than PDS has any interest in participating in this docket. No input or comments were provided by any other carrier, which is an indication that other carriers are not dissatisfied with the current administrative assessment methodology of the PUC.

Recommendation

41. The ALJ recommends that the current administrative expense assessment methodology utilized by the PUC be retained. While no methodology is “perfect”, the current methodology fairly places the burden of PUC administrative expenses upon the parties who utilize the resources of the PUC the most. As a general principle, the primary burden of the assessment of administrative expenses for telecom companies has fallen upon the ILEC, GTA.
42. Contrary to PDS’ assertion, the current Rules now do provide a mechanism whereby PDS can shift responsibility for regulatory fees in a proceeding by petitioning the PUC and convincing it to allocate such regulatory fees to another party.
43. Since PDS is the proponent of a change in the current assessment methodology, the burden is upon it to justify a change. In the opinion of the ALJ, PDS has failed to meet that burden. There is an insufficient evidentiary or factual basis in the record to justify a change in the current assessment methodology. The present methodology has been in effect for over six years and should remain in effect.

ALJ Report
PDS Request for Rulemaking
Re: PUC Administrative Assessment
PDS Docket 11-01
September 13, 2011

44. Since no other party participated in this proceeding, the ALJ recommends that all regulatory fees and expenses of this proceeding be assessed against PDS.
45. A proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 13th day of September, 2011.

Frederick J. Horecky
Administrative Law Judge