

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)	GTA DOCKET 11-04
)	
GTA TELECOM LLC INDIVIDUAL CASE BASIS FILING)	ORDER RE: PDS REQUEST FOR RECONSIDERATION/RE-HEARING AND IT&E PETITION FOR RE- HEARING
)	

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [PUC] pursuant to the Order issued by the PUC on April 18, 2011, which approved the filing of GTA Telecom LLC [GTA] to establish an Individual Case Basis arrangement with the Guam Department of Education [DOE] pursuant to GTA's ICB Tariff.¹
2. GTA's proposed tariff for ICB arrangements was previously approved by the PUC in Docket 05-03. The Individual Case Basis Tariff, originally filed by GTA as Tariff Transmittal No. 11 on December 1, 2008, contains three conditions: a) ICB's will be offered only to business or government customers having or ordering more than 10 access lines; b) Rates for services provided under competitive bids shall not exceed the tariff prices where specific charges are provided in the tariff; c) The ICB prices contained in any contract should be available to any similarly situation customer.²

BACKGROUND

3. In its April 18, 2011 Order, the PUC determined that GTA's proposed ICB arrangement with DOE satisfied the three conditions of the ICB tariff.³
4. The PUC issued findings that GTA's ICB arrangement with DOE: (a) offered more than ten access lines to a government customer, DOE; (b) offered a per-line cost to DOE that did not exceed the tariff prices provided in GTA's General Exchange Tariff No. 1;⁴ and (c) contained a certification by GTA that the ICB prices contained in the arrangement with DOE would be available to any similarly situated customer.

¹ PUC Order, GTA Docket 11-04 [GTA Telecom LLC Individual Case Basis Filing], issued April 18, 2011.

² GTA Telecom LLC Filing of Individual Case Basis Tariff, filed December 1, 2008.

³ PUC Order, GTA Docket 11-04, issued April 18, 2011, at p. 2.

⁴ Id.

5. The PUC further found that GTA had filed an “LRIC-like” analysis which established that DOE contract prices exceeded GTA’s incremental cost as determined using the long-run incremental cost standard.
6. The Commission, finding that all of the requirements for the tariff as set forth in the GCG Report of March 10, 2008 had been satisfied, approved GTA’s Individual Case Basis Filing with DOE.⁵
7. On April 28, 2011, Pacific Data Systems [“PDS”] filed a Request for Reconsideration and/or Rehearing.⁶ On the same date, PTI Pacifica Inc. dba IT&E [“ITE”] filed its Petition for Re-Hearing.⁷
8. PDS and IT&E file their requests pursuant to Rules 36 and 37 of the PUC Rules for Practice and Procedure. PDS alleges that PUC “may” have violated its processes in the handling of this filing, and that serious defects exist in the original GTA Telecom filing and the process used by the Commission to review/approve the filing...” PDS seeks rehearing to allow it to bring “additional pertinent facts and necessary considerations” to the attention of the Commission.⁸ IT&E also raises notice issues and suggests that GTA’s ICB Tariff is not in effect due to an alleged lack of approval by the PUC ALJ.⁹

ANALYSIS

9. On May 13, 2011, the Administrative Law Judge filed his Report concerning the PDS and IT&E motions.
10. In accordance therewith, and Rule 39 of the PUC Rules for Procedure and Practice, the PUC, after consideration of an application for rehearing or reconsideration, “shall determine whether good and sufficient cause has been shown by the applicant for rehearing or reopening.”¹⁰
11. No good or sufficient cause has been demonstrated by PDS and IT&E for the PUC to reconsider or reopen its April 18, Order in this docket or proceedings in Docket 05-03. The PUC concurs with the reasoning and findings in the ALJ Report filed herein on May 13, 2011.

⁵ PUC Order, GTA Docket 11-04, issued April 18, 2011, at p. 3.

⁶ PDS Request for Reconsideration and/or Rehearing, GTA Docket 11-04, dated April 28, 2011.

⁷ ITE Petition for Re-Hearing, GTA Docket 11-04, filed April 28, 2011.

⁸ PDS Request for Reconsideration and/or Rehearing, GTA Docket 11-04, dated April 28, 2011, at p. 1.

⁹ ITE Petition for Re-Hearing, GTA Docket 11-04, filed April 28, 2011.

¹⁰ Rule 39 of the PUC Rules for Practicing Procedure.

12. The GCG recommendations concerning pricing and support for Tariff Revisions-Individual Case Basis (ICB) Contract Filings were fully approved and adopted by the PUC on October 3, 2008. The issues which PDS and IT&E seek to raise concerning such cost and pricing standards is not subject to further review in this docket. The issue before the PUC in its April 18 Order is whether GTA Telecom LLC's ICB Filing for the Department of Education complied with the ICB Tariff and cost pricing standards that had previously been approved by the PUC.
13. Neither PDS nor IT&E have timely raised any issues concerning alleged lack of notice in Docket 05-03 for this proceeding. Neither party has pointed to any rule, law or regulation which was violated in terms of notice provided in this proceeding. Both parties did have an opportunity to participate in this docket.
14. The PUC does not concur that GTA's ICB tariff was never formally approved by the PUC. In accordance with the October 3, 2008 and November 24, 2008 PUC Orders¹¹, GTA was authorized to file its revised tariff sheet. GTA did file its Tariff for ICB with the PUC on December 1, 2008.¹² The Tariff was effective without any further requirement for approval by the PUC.
15. Even had any further action been contemplated by prior PUC orders on the ICB filing, such a tariff filing becomes final where the PUC takes no further action. The PUC took no further action within thirty days after the GTA ICB tariff filing, or at any time thereafter. The ICB tariff is final.¹³
16. PDS and IT&E have not demonstrated that GTA's ICB pricing arrangements violate FCC Rules. No specific rule allegedly violated has been referenced. GTA has presented evidence that it does charge a Subscriber Line Charge.¹⁴ PDS/IT&E may raise such complaint with the FCC.
17. PDS and IT&E claim that TeleGuam Holdings LLC is not the proper party to the DOE bid. Any such issue should be resolved in the procurement process and not by PUC.
18. In sum, neither PDS nor IT&E have shown cause, or good and sufficient cause, for the PUC to reconsider its April 18, 2011 Order in this Docket, or to reopen or rehear the matter. The Commission finds no reason to revisit its determination that the

¹¹ See PUC Orders, Docket 05-03, issued October 3, 2008, and November 24, 2008.

¹² GTA Filing of Tariff Transmittal No. 11, ICB, dated December 1, 2008.

¹³ See 12 GCA §12106(e).

¹⁴ See Addendum 1-Bid Form at Exhibit C [to position of GTA].

ICB arrangement proposed by GTA with the Department of Education satisfies the three ICB tariff conditions.

19. There is no basis herein upon which the PUC should exercise its discretion to rehear this matter. No appropriate ground has been demonstrated by PDS or IT&E within Rule 37 of the Commission's Rules for Practice and Procedure to justify a rehearing.

ORDERING PROVISIONS

Upon consideration of the record herein, PDS and IT&E's Request for Reconsideration and/or Rehearing, and Petition for Re-Hearing, the Position of GTA, the responsive filings herein, the ALJ Report, for good cause shown and on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS that:

1. The ALJ Report filed on May 13, 2011, including the findings and recommendations contained therein, is hereby adopted and approved.
2. As set forth in the ALJ Report, and the Analysis section herein, the PUC finds that PDS and IT&E have not demonstrated "good and sufficient cause" for PUC to reconsider, rehear, or reopen the April 18, 2011 PUC order in this Docket or the proceedings in Docket 05-03.
3. Approval hereunder is conditioned upon submission by GTA to the PUC of its DOE invoices demonstrating that GTA is charging subscriber line charges to DOE. GTA Invoices to DOE for this current fiscal year and the next fiscal year shall be submitted by GTA to PUC showing and detailing the subscriber line charges. Such invoices shall be submitted to PUC on or before May 23, 2011 and when available thereafter.
4. With regard to the PUC regulatory fees and expenses incurred in this Docket, GTA is required to pay for such fees and expenses incurred by the PUC up to and including April 28, 2011. For all PUC regulatory fees and expenses incurred in this Docket after April 28, 2011, said regulatory fees and expenses shall be apportioned to be paid in equal shares by GTA, PDS, and IT&E. 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.

Dated this 16th day of May, 2011.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner

Michael A. Pangelinan
Commissioner