BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GUAM TELECOMMUNICATIONS ACT OF 2004 | DOCKET 05-1

ORDER

[Affiliate Transaction Rules]

By its order dated July 27, 2005 in this docket, the Guam Public Utilities Commission *[PUC]* authorized the commencement of a rulemaking proceeding under 12 GCA 12104 [c][8] to propose rules relating to cost allocation and affiliate transactions for incumbent local exchange carriers and other carriers *[Rules]*. The purpose of the Rules is to establish reasonable accounting, discrimination, structural separation, affiliate transaction and other safeguards consistent with the legislative findings and intent set forth in 12 GCA 12101 of the Guam Telecommunications Act of 2004 *[Act]*. It is the intent of the rules that they apply to GTA Telecom LLC *[GTA]*, which is the only incumbent local exchange carrier doing business on Guam.

On November 16, 2006, PUC's independent regulatory consultant [Georgetown Consulting Group *(GCG)*] filed proposed Rules. On November 20, 2006, PUC issued public notice of the proposed Rules and invited interested persons to file comments on or before December 22, 2006. Only GTA filed comments, in which it complained that: a] the proposed disaggregation of GTA's financial data is excessive; b] the requirement that it annually file a cost allocation manual is unnecessary; and c] the requirement that GTA obtain PUC approval of certain transactions is unprecedented. In responsive comments dated January 19, 2007, GCG asserts that GTA has available the disaggregated financial data, which would be required by the Rules. The issue is whether GTA should be required to provide this data to PUC, which GCG asserts is essential in order for PUC to regulate GTA's operations and the relationships between its regulated and non-regulated affiliates. Such data would be entitled to confidential treatment under PUC's Confidentiality Rules. GCG further asserts that a CAM requirement is entirely consistent with the Act's intent [12 GCA 12104[d] that PUC apply, to the extent practicable, accepted regulatory practices in other U.S. jurisdictions. With regard to the approval of sizeable affiliate transactions, GCG asserts that this requirement is grounded on assuring that such transactions do not adversely affect the rates, terms and conditions of service or the quality and availability of basic telecommunications services on Guam. GTA filed additional comments on January 23, 2007 and GCG on January 26, 2007.

After careful review of the GTA and GCG comments, for good cause shown and in furtherance of the Act's findings and intent, the Guam Public Utilities Commission, on motion duly made, seconded and carried by the undersigned commissioners **HEREBY ORDERS THAT:**

1. The Rules, in form attached to this order, are approved and made applicable to GTA. PUC finds that the Rules are reasonable and necessary in order for it: a] to have adequate information to monitor GTA's financial and business transactions to assure that they are consistent with the Act and with GTA's commitments in the Asset Purchase Agreement with the Government of Guam dated August 31, 2004; and b] to assure that sizeable transactions between GTA and its unregulated affiliates are at arms length and consistent with the public interest.

2. These rules shall be effective January 1, 2005, except Rule 8[g], which shall be effective on February 1, 2007. GTA shall file with PUC within ninety days of this Order, all financial reports for 2005, as required by the rules.

Dated this 1st day of February 2007.

Terrence M. Brooks	Joseph M. McDonald
Edward C. Crisostomo	Filomena M. Cantoria
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BEFORE THE GUAM PUBLIC UTLITIES COMMISSION

GUAM TELECOMMUNICATIONS ACT | **DOCKET 05-01**

RULES RELATING TO COST ALLOCATION AND AFFILIATE TRANSACTIONS FOR INCUMBENT LOCAL EXCHANGE CARRIERS AND OTHER CARRIERS

Rule 1. Background and Authority

The FCC has promulgated regulations prescribing a uniform system of accounts (including accounting for transactions with affiliates), the allocation of costs for regulated and non-regulated activities and the filing of cost allocation manuals by certain telecommunications carriers to provide a financial-based system maintained in sufficient detail to facilitate recurrent regulatory decision making and for other purposes, including the prevention of cross-subsidization between regulated and non-regulated services. The Commission desires to adopt similar rules to prescribe cost allocation methodologies for the segregation of intrastate investments and expenses, to prevent the price of deregulated and nonregulated services (hereinafter referred to as "nonregulated" services) from being set below cost by use of subsidization from customers of regulated services and to ensure that transactions between affiliates are fair and reasonable.

The Commission has authority and jurisdiction under 12 GCA 12104(c)(8) to establish reasonable accounting, discrimination, structural separation, affiliate transaction and other safeguards consistent with the legislative findings and intent set forth in 12 GCA 12101.

Rule 2. Applicability

These rules shall apply to the incumbent local exchange carrier in the Territory of Guam, as defined in 47 U.S.C. § 251(h) or designated by the FCC, and any other telecommunications carrier (except commercial mobile radio system providers) providing intrastate telecommunications services in the Territory of Guam that the Commission designates by Order.

Rule 3. Incorporation by Reference

References in these rules to Parts 32 and 64 are references to rules issued by the FCC found at 47 C.F.R. Part 32 (§32.1 *et seq.*) and 47 C.F.R. Part 64 (§64.1 *et seq.*), revised as of October 1, 2005, which rules are incorporated by reference.

Rule 4. Definitions

For purposes of these rules, the following definitions shall apply:

(a) "Affiliate" means any person or entity that directly or indirectly through one or more intermediaries, Control or are Controlled by, or are under common Control with, the accounting company.

(b) "Commission" means the Public Utilities Commission of Guam.

(c) "Control" (including the terms "Controlling," "Controlled by," and "under common Control with") means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether such power is exercised through one or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one or more other entities, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, affiliated companies, contract, or any other direct or indirect means.

(d) "Dominant Carrier" means the incumbent local exchange carrier in the Territory of Guam, as defined in 47 U.S.C. § 251(h), and any other telecommunications carrier providing intrastate telecommunications services in the Territory of Guam that the Commission designates by Order pursuant to Rule 2.

(e) "FCC" means the Federal Communications Commission.

Rule 5. Prohibition Against Cross-Subsidization

A Dominant Carrier shall not use revenues from services that are not competitive to subsidize services subject to competition. A Dominant Carrier shall not use revenues from regulated services to subsidize the services or products of its Affiliates.

Rule 6. Uniform System of Accounts

(a) The Uniform System of Accounts adopted by the FCC in Part 32 is hereby adopted and prescribed for all Dominant Carriers except as set forth in these rules. All Dominant Carriers shall maintain their books and accounts in accordance with Part 32 except as modified in these rules.

(b) In the event a Dominant Carrier is authorized by the FCC to maintain its books and accounts in a manner other than as set forth in Part 32, such Dominant Carrier may seek a variance from paragraph (a) allowing it to maintain its books and accounts as permitted by the FCC. However, the Dominant Carrier requesting such a variance shall implement a suitable alternative method of producing Guam intrastate-specific information to the Commission.

Rule 7. Allocation of Costs

(a) Each Dominant Carrier that provides both regulated and nonregulated intrastate service shall allocate intrastate investments, expenses and revenues between regulated activities and nonregulated activities according to the principles, procedures and accounting requirements in Part 32 and Part 64.

(b) In the event a Dominant Carrier is authorized by the FCC to allocate costs between regulated and nonregulated activities in a manner other than as set forth in Part 32 and Part 64, such Dominant Carrier may seek a variance from paragraph (a) allowing it to allocate costs as permitted by the FCC. However, the Dominant Carrier requesting such a variance shall implement a suitable alternative method of producing Guam intrastate-specific information to the Commission.

Rule 8. Transactions with Affiliates

(a) Unless otherwise approved by the Commission, transactions between a Dominant Carrier and any Affiliate of such Dominant Carrier involving asset transfers or provision of services into or out of regulated accounts shall be recorded by the Dominant Carrier in its regulated accounts as provided in paragraphs (b) through (e) below.

(b) Assets sold or transferred between a Dominant Carrier and its Affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed assets sold or transferred between a Dominant Carrier and its Affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this rule, shall be recorded at the prevailing price. For all other assets sold by or transferred from a Dominant Carrier to its Affiliate, the assets shall be recorded at no less than the higher of fair market value and net book cost. For all other assets sold by or transferred to a Dominant Carrier from its Affiliate, the assets shall be recorded at no more than the lower of fair market value and net book cost.

(1) Floor. When assets are sold by or transferred from a Dominant Carrier to an Affiliate, the higher of fair market value and net book cost establishes a floor, below which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or greater than the floor, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.

(2) Ceiling. When assets are purchased from or transferred from an Affiliate to a Dominant Carrier, the lower of fair market value and net book cost establishes a ceiling, above which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.

(3) Threshold. For purposes of this rule Dominant Carriers are required to make a good faith determination of fair market value for an asset when the total aggregate annual value of the asset(s) reaches or exceeds $500,000, per Affiliate. When a Dominant Carrier reaches or exceeds the $500,000 threshold for a particular asset for the first time, the Dominant Carrier must perform the market valuation and value the transaction on a going-forward basis in accordance with the Affiliate transactions rules on a going-forward basis. When the total aggregate annual value of the asset(s) does not reach or exceed $500,000, the asset(s) shall be recorded at net book cost.

(c) Services provided between a Dominant Carrier and its Affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed services provided between a Dominant Carrier and its Affiliate pursuant to publicly-filed agreements submitted to a state commission pursuant to Section 252(e) of the Communications Act of 1934 or statements of generally available terms pursuant to Section 252(f) shall be recorded using the charges appearing in such publicly-filed agreements or statements. Non-tariffed services provided between a Dominant Carrier and its Affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this rule, shall be recorded at the prevailing price. For all other services sold by or transferred from a Dominant Carrier to its Affiliate, the services shall be recorded at no less than the higher of fair market value and fully distributed cost. For all other services sold by or transferred to a Dominant Carrier from its Affiliate, the services shall be recorded at no more than the lower of fair market value and fully distributed cost.

(1) Floor. When services are sold by or transferred from a Dominant Carrier to an Affiliate, the higher of fair market value and fully distributed cost establishes a floor, below which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or greater than the floor, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.

(2) Ceiling. When services are purchased from or transferred from an Affiliate to a Dominant Carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded. Dominant Carriers may record the transaction at an amount equal to or less than the ceiling, so long as that action complies with the Communications Act of 1934, as amended, FCC and Commission rules and orders, and is not otherwise anti-competitive.

(3) Threshold. For purposes of this rule, Dominant Carriers are required to make a good faith determination of fair market value for a service when the total aggregate annual value of that service reaches or exceeds $500,000, per Affiliate. When a Dominant Carrier reaches or exceeds the $500,000 threshold for a particular service for the first time, the Dominant Carrier must perform the market valuation and value the transaction in accordance with the affiliate transactions rules on a going-forward basis. All services received by a Dominant Carrier from its Affiliate(s) that exist solely to provide services to members of the Dominant Carrier's corporate family shall be recorded at fully distributed cost.

(d) In order to qualify for prevailing price valuation in paragraphs (b) and (c) of this rule, sales of a particular asset or service to third parties must encompass greater than 25 percent of the total quantity of such product or service sold by an entity. Dominant Carriers shall apply this 25 percent threshold on an asset-by-asset and service-by-service basis, rather than on a product-line or service-line basis.

(e) Income taxes shall be allocated among the regulated activities of the Dominant Carrier, its nonregulated divisions, and members of an affiliated group. Under circumstances in which income taxes are determined on a consolidated basis by the Dominant Carrier and other members of the affiliated group, the income tax expense to be recorded by the Dominant Carrier shall be the same as would result if determined for the Dominant Carrier separately for all time periods, except that the tax effect of carry-back and carry-forward operating losses, investment tax credits, or other tax credits generated by operations of the Dominant Carrier shall be recorded by the Dominant Carrier during the period in which applied in settlement of the taxes otherwise attributable to any member, or combination of members, of the affiliated group.

(f) Each Dominant Carriers shall file with the Commission annually a statement identifying all Affiliates that engage in transactions with the Dominant Carrier and all transactions between such Affiliates and the Dominant Carrier; provided, such statement may be included in the cost allocation manual filed by the Dominant Carrier pursuant to these rules. The statement shall describe: (i) the nature of each transaction, including whether the transaction involves the provision of services or asset transfers and how such transfers are accomplished; (ii) the terms at which the service is provided, including the amounts charged and the basis of valuation used *(i.e.*, at the tariff rate, prevailing market price or fully distributed cost); and (iii) the frequency with which the service is rendered. Copies of any agreements between the Dominant Carrier and any Affiliate shall be made available to the Commission's staff for review. The statement and agreements filed or made available to the Commission's staff pursuant to this paragraph may be treated as confidential pursuant to applicable Commission rules governing confidential information.

(g) Notwithstanding anything to the contrary in this rule, any transaction or series of transactions between a Dominant Carrier and its Affiliates which involve either (i) the transfer from the Dominant Carrier to its Affiliates of assets with an aggregate fair market value of more than $1,000,000 in any year or (b) the purchase by the Dominant Carrier from its Affiliates of services with an aggregate price of more than $1,000,000 in any year, shall require the prior approval of the Commission.

Rule 9. Cost Allocation Manual

(a) Each Dominant Carrier shall maintain and file with the Commission annually a cost allocation manual describing the methodology used for allocating its costs between its regulated activities and its nonregulated activities in accordance with these rules. The cost allocation manual shall contain the following information regarding the Dominant Carrier's allocation of costs between regulated and nonregulated activities:

(1) A description of each of the Dominant Carrier's nonregulated activities;

(2) A list of all the activities to which the Dominant Carrier now accords incidental accounting treatment and the justification therefor;[1]

(3) A chart showing all of the Dominant Carrier's corporate Affiliates;

(4) A statement identifying each Affiliate that engages in or will engage in transactions with the Dominant Carrier and describing the nature, terms and frequency of each transaction;

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[1] Incidental accounting treatment refers to small nonregulated activities that do not constitute a line of business, such as rental of space in a telephone company's building to another party for purposes unrelated to telecommunications services. The revenues and expenses of such activities are accounted as regulated and are not subject to allocation using the cost allocation manual procedures.

(5) A cost apportionment table showing, for each account containing costs incurred in providing regulated services, the cost pools with that account, the procedures used to place costs into each cost pool, and the method used to apportion the costs within each cost pool between regulated and nonregulated activities; and

(6) A description of the time reporting procedures that the Dominant Carrier uses, including the methods or studies designed to measure and allocate non-productive time.

(b) Each Dominant Carrier shall ensure that the information contained in its cost allocation manual is accurate. Dominant Carriers must update their cost allocation manuals at least annually, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at the time of implementation. Annual cost allocation manual updates shall be filed on or before the last working day of each calendar year. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in cost apportionment tables must be quantified in $100,000 increments at the cost pool level. The Commission may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure. In the event no changes to the cost allocation manual were needed or made during the calendar year, a statement attesting thereto shall be provided to the Commission in accordance with the above schedule and Rule 12.

Rule 10. Financial Records

(a) A Dominant Carrier's financial records shall be kept in accordance with generally accepted accounting principles to the extent permitted by the system of accounts adopted in these rules. The financial records shall be kept with sufficient particularity to show fully the facts pertaining to all entries in these accounts. With limiting the foregoing, the financial statements shall contain sufficient detail to display total company, total nonregulated and total regulated network plant assets, revenues and operating expenses. Revenues shall be reported at the detailed account level (*e.g.*, Basic Local Service, Private Line, Other Local Service, Cellular, Long Distance, End User Access Charge, Switched and Special Access, *etc.*). The remaining data shall be disaggregated at least by major account category. Telecommunications Plant in Service shall report General Support Facilities, Central Office Equipment, Information Origination/Termination Equipment, and Cable & Wire Facilities separately. Operating Expenses shall report at a minimum Plant Specific, Plant Non-specific, Depreciation, Customer Operations and Corporate Operations expenses. The detail records shall be maintained and filed in such manner as to be readily accessible for examination by the Commission and its staff.

(b) Each Dominant Carrier shall provide the Commission with copies of its consolidated audited financial statements for each fiscal year promptly after such financial statements are available and at such other times as may be requested by the Commission. Any work papers used by independent auditors shall be made available for the Commission staff's review. The Dominant Carrier shall authorize the release of such work papers by auditors to the Commission's staff.

(c) Each Dominant Carrier shall maintain subsidiary accounting records in sufficient detail to support the amounts reported on its financial reports. These records should be based on the assignments or allocations used in its cost allocation manual in accordance with these rules. These records should also include detailed subsidiary records of each affiliate transaction showing the services rendered or assets transferred, the amounts charged and the basis of valuation used for each transaction

(d) The financial records, including auditor's report and work papers, provided by a Dominant Carrier under these rules may be treated as confidential pursuant to applicable Commission rules governing confidential information.

Rule 11. Independent Audit

If the Commission enters upon an investigation regarding a Dominant Carrier's compliance with these rules, the Commission may require such Dominant Carrier to have either (a) an attest engagement performed by an independent auditor that the systems, processes, and procedures applied by the Dominant Carrier to generate the results reported pursuant to these rules comply with these rules, or (b) a financial audit performed by an independent auditor that the Dominant Carrier's annual financial report required by these rules present fairly, in all material respects, the information of these rules.

Rule 12. Annual Certification

Each Dominant Carrier shall file a certification with the Commission stating that (a) it is complying with these rules and (b) it has followed its cost allocation manual throughout the year for regulatory reporting purposes. The certification must be signed, under oath, by an officer of the Dominant Carrier, and filed with the Commission on an annual basis at the time that the Dominant Carrier files its cost allocation manual as provided by these rules.

Rule 13. Effective Date

These rules shall be effective January 1, 2005, except that Rule 8(g) shall be effective on the date of approval of these rules by the Commission. Any financial reports or other information for 2005 shall be filed with the Commission within ninety (90) days of the promulgation of these rules.