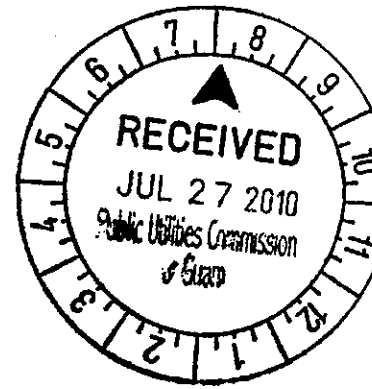


GUAM PUBLIC UTILITIES COMMISSION
SPECIAL MEETING
June 16, 2010
SUITE 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a meeting commencing at 12:30 p.m. on June 16, 2010 pursuant to due and lawful notice. Commissioners Johnson, McDonald, Perez, and Pangelinan were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

1. Pacific Data Systems

The Chairman announced that there are two telecom matters on the agenda. The first to be considered is PDS Docket 10-02, Request for Arbitration of Interconnection Agreement. There is an Administrative Law Judge [ALJ] Order dated June 8, 2010, a PUC Legal Counsel Report, and a Proposed Order on file. Counsel reported that this information had been provided to the Commissioners in their packets. Under the Federal Telecommunications Act, state public utilities commissions have a broad and expansive role in reviewing interconnection agreements. The PUC has the authority to approve or reject such agreements. Federal law provides for arbitration of such agreements by state PUCs. Here PDS and GTA are negotiating new interconnection agreements; their existing agreement is about to expire. PDS felt that negotiations were not moving ahead quickly enough and filed a request for arbitration with the PUC. Under the PUC Interconnection Implementation Rules [IIRs] the ALJ is designated as the Arbitrator. In this case, ALJ Mair opened PDS Docket 10-02 and commenced an arbitration process whereby the parties identified issues for resolution. PDS' petition outlined issues where the parties could not reach agreement. GTA moved to dismiss the petition claiming that the information provided was not sufficient and not in compliance with federal law. In his June 8, 2010, the ALJ recommends that the GTA motion to dismiss be denied. He found that there was substantial compliance by PDS with statutory requirements in its petition. The petition adequately described the provisions of the ICA in dispute and indicated the respective positions of the parties. The ALJ found that there was no lack of notice or prejudice to GTA and that it did have the necessary information. As to alleged delay in whether the parties had sufficient time to negotiate the issues, the ALJ found that both parties were responsible for some delay. Since there is a nine month deadline under federal law in which time the PUC must act, the ALJ felt that it was not appropriate to dismiss the petition because such dismissal could put compliance with the federal deadline in jeopardy. The ALJ recommends that the PUC affirm denial of the motion to dismiss.

As to the arbitration issues, some were resolved by the parties without the need for involvement by the ALJ, such as the definition of dark fiber, termination provisions under the ICA, and term provisions. The remaining issues were fully briefed by the parties and considered by the ALJ. Counsel's Report recommends that the Commission adopt the ALJ recommendations on each issue. Such recommendations are based upon the facts before the ALJ. The PUC should approve the ALJ recommendations on the following arbitrated issues:

- (1) Pre-billing. The issue is whether GTA can pre-bill in advance for certain services. GTA indicated that pre-billing was an accepted industry practice. However PDS wanted to remove pre-billing provisions from the ICA. The ALJ found that pre-billing is an accepted industry practice and that such practice is just, reasonable and non-discriminatory. It should continue to be provided for in the ICA.

- (2) Liability Provisions. This issue concerns what the liability provisions should be under §25 of the ICA and what remedies should be provided to one party for a breach of the agreement by another party. In GTA Docket 10-02, the ALJ had recommended in substantial detail what changes should be made to § 25. The ALJ recommends that the same changes be incorporated into the PUC Decision in this case. In a prior proceeding involving dark fiber between GTA and PDS, Docket 08-11, the ALJ found that GTA had failed to provide dark fiber in accordance with the IA. However, under existing § 25, the only remedy that the ALJ could award to PDS was to recover amounts and costs it had actually paid to GTA for services. No other types of damages were allowed. PDS alleged that it had entered into contracts with government entities to provide dark fiber. However, since the dark fiber was not available, PDS could not provide the services to such government agencies. It claimed a loss of profits in the amount of \$100,000. However, the ALJ found that the remedy for lost profits was not available under §25. The ALJ also found that, absent bad faith, a party could not recover attorney's fees in arbitration matters.

In GTA Docket 10-02 (Financial Incentive Plan), the ALJ was authorized by the PUC to consider either a plan or remedy provisions, that would create incentives for an Incumbent Local Exchange Carrier (ILEC) to comply with its service obligations to a competitive local exchange carrier (CLEC) under interconnection agreements. The ALJ rejected implementing a rigid schedule of penalties for service failures, as PDS requested, and felt there should be a revision of the remedy provisions in the interconnection agreement. Specific provisions should be adopted providing for "consequential damages" and

attorneys fees. Those remedy provisions would allow for a party to recover lost profits and attorneys fees in contested proceedings. Counsel recommends that the PUC adopt the ALJ's recommendations. The remedies available to a CLEC do not appear to be sufficient under the existing ICA. Without such remedies, the CLEC is not made whole. By strengthening the provisions the ILEC will have more incentive to comply with the provisions of the ICA. Despite some objections which were raised by GTA in the FIP Docket, Counsel believes that the PUC does have authority to require that remedy provisions be included in interconnection agreements. The PUC does have the authority to change provisions of interconnection agreements proposed by telecommunications parties.

- (3) Assurance of payment. Current ICA §9 authorizes GTA to require PDS to make certain deposits and assurance of payments. PDS asked the ALJ to remove such provisions from the ICA. However, the ALJ held that PDS had previously agreed to those provisions during arbitration and wondered why PDS was raising the issue again. The ALJ found that such advance deposit requirements to guarantee payment by a party and performance did comply with industry practice and standards. Since §9 and assurance of payments don't violate the IIRs or any other provision of law, they should remain in the ICA.
- (4) Pricing. Although PDS raised certain potential issues about pricing during hearings, these issues were not fully presented to the ALJ, discussed in detail, or arbitrated. Since the issues were not fully arbitrated, the ALJ does not address the pricing issues. Since the parties were unable to reach agreement on pricing, the current pricing and rates should remain in effect. The parties can later attempt to bring up such issues in an appropriate proceeding. The ALJ recommendation should be approved.
- (5) Dispute Resolution. Currently the parties have 45 days to engage in negotiations before arbitration occurs. PDS requests a modification of the provision to provide that the failure of a party to engage in negotiation during that period would "*per se* constitute bad faith." Such failure to negotiate would be evidence or proof of bad faith actions by the other party. While generally agreeing to such a provision, the ALJ recommended that the 45 day dispute resolution period should be expanded to 60 days, and that the failure of a party to meet during the negotiation period would constitute a "rebuttable"

presumption of failure to negotiate in good faith. A party could present evidence to “rebut” the presumption.

Counsel has prepared a proposed Order for PUC consideration. The proposed Order would adopt and approve the ALJ recommendations and would deny GTA’s motion to dismiss. Pre-billing provisions would remain in the new ICA; §9 and assurance of payment would remain in the ICA. The new ICA between the parties would include a 60 day dispute resolution period and provide that failure of one party to meet and negotiate with the other party would be rebuttable evidence of a failure to negotiate in good faith. GTA and PDS would be required in their new ICA to incorporate into §25 the provisions recommended by the ALJ concerning consequential damages, attorneys fees, and other matters. In the proposed Order, the same pricing presently existing under the ICA would remain in effect. The two parties, PDS and GTA, should share regulatory fees and expenses for this docket.

Commissioner Pangelinan asked Counsel what the PUC options were with regard to the proposed order: could the Commission adopt the entire Order or only individual recommendations in the Order? Counsel responded that the Commission could adopt the ALJ Order “in whole or in part.” Commissioner Pangelinan expressed his concern with the §25 Liability provision recommendations. Commissioner Pangelinan stated that the §25 issue related to determinations made in FIP Docket, GTA Docket 10-02. Commissioner Pangelinan was not comfortable in voting in that docket because his client MCV issued public comment; he did not want there to be any appearance of impropriety by voting on an issue that his client has directly taken a position on. Since the issues concerning §25 and the liability provisions are matters he did not wish to vote on in GTA Docket 10-02, he also did not wish to vote on such issues in this proceeding. However, he was comfortable approving the Order absent §25 issues. He asked Counsel if that could be done. Counsel indicated that the problem here is that the PUC only has 10 days to issue a final Order. The Commission must rule within 10 days of the ALJ decision under the IIRs. The ALJ would likely believe that the §25 issues are at the heart of this arbitration and an essential part of the decision in the public interest. An alternative for the Commission would be to approve the provisions in the ALJ Order except §25. Counsel believed that this might be a feasible approach. Commissioner Pangelinan felt that, because the decision in this docket incorporates provisions by reference from the FIP docket (GTA Docket 10-02), the fact that the provisions are exactly the same in both dockets and that the same changes are proposed in both dockets make him uncomfortable with voting on the issue. Commissioner Pangelinan only wished to approve the Order if it did not include provisions referring to §25. There was further discussion between Counsel and the Commissioners as to whether the Commissioners could vote on some of the provisions now but table other until the return of Commissioner Cantoria. After further discussion of the proper method of proceeding, and a short five minute recess, Counsel recommended that the

best manner of proceeding was that the Commissioners approve an Order without the provisions of §25 of the ICA which the ALJ had recommended. The Commission can subsequently take any appropriate action on the issues regarding §25 and the remedy provisions.

Commissioner Perez asked why GTA Telecom does pre-billing prior to the rendering of services. Eric Votaw, Vice President of GTA indicated that there are two types of billings: fixed services, like landlines, are billed in advance (pre-billed); metered or services like long distance are always billed in arrears because you can't bill such services until after the services are rendered. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the ALJ Order in PDS Docket 10-02 as written, with the exception that item number 6 in the Ordering provisions, in reference to ICA §25, is removed, and with the removal of par. no. 2 under arbitrated issues. It was also stipulated by the Commissioners that the reason that they were not ruling on the merits of the §25 and the remedy provisions was a lack of quorum. The Commission's actions should not be construed as a decision on the merits or a determination that the remedy provisions proposed by the ALJ in §25 were inappropriate.

2. GTA Telecom

The Chairman announced that the next matter before the Commission was GTA Docket 10-02, Financial Incentive Plan in Re: ILECS/CLECS. On file is an ALJ Order dated June 10, 2010. Counsel indicated to the Commissioners that he had given the background in this matter to the Commissioners in PDS Docket 10-02. Commissioner Pangelinan indicated that this matter should be tabled. Upon motion duly made, seconded and unanimously carried, the Commissioners moved to table consideration of GTA Docket 10-02. A discussion on docket numbering followed. Subsequently, on motion duly made, seconded and unanimously carried, the Commissioners approved a resolution instructing Counsel to work with the ALJ to open a docket concerning the Interconnection Implementation Rules. Recommendations from the ALJ should be provided concerning the existing 10 day deadline within which the PUC must review and/or approve an ALJ decision in an arbitration matter, or to address any other provisions of the rules that the ALJ felt appropriate.

As an update, Counsel indicated to the Commissioners that the PUC website should be ready in the near future.

There being no further business, the Commissioners moved to adjourn the meeting.

15/ J. Johnson

Jeffrey C. Johnson
Chairman

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

**SPECIAL MEETING
SUITE 206 GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM
12:00 p.m. June 16, 2010**

Agenda

1. GTA Telecom LLC

- GTA Docket 10-02, Financial Incentive Plan for Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs); Administrative Law Judge Order dated June 8, 2010; PUC Legal Counsel Report and Proposed Order.

2. Pacific Data Systems Inc.

- PDS Docket 10-02, Request for Arbitration of Interconnection Agreement; Administrative Law Judge Order dated June 8, 2010; PUC Legal Counsel Report and Proposed Order.

3. Other Business

ATTACHMENT A