

GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
SEPTEMBER 25, 2014
SUITE 202, GCIC BUILDING, HAGATNA



MINUTES

The Guam Public Utilities Commission [PUC] conducted a regular meeting commencing at 6:35 p.m. on September 25, 2014, pursuant to due and lawful notice. Commissioners Johnson, Perez, McDonald, Pangelinan, Montinola, Cantoria, and Niven were in attendance. The following matters were considered at the meeting under the agenda made *Attachment "A"* hereto.

1. Approval of Minutes

The Chairman announced that the first item of business on the agenda was approval of the minutes of August 28, 2014. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the minutes subject to correction.

2. Guam Waterworks Authority

The Chairman announced that the next order of business was GWA Docket 14-06, Review and Approval of Bid and Proposed Contract with Sumitomo Mitsui Construction Company for Energy Efficiency Upgrades, ALJ Report, and Proposed Order. Counsel indicated that GWA seeks to enter into a contract with Sumitomo to institute energy efficiency upgrades for booster pump stations at Windward Hills, Malojloj, and Pago Bay. There were eight potential vendors for this bid, and GWA determined that Sumitomo Mitsui Construction was the lowest bidder. The contracted amount proposed by Sumitomo was \$1,065,766.00.

This project is designed to "right-size" pumps at booster stations so that they operate more efficiently; variable frequency drives will be installed that should produce significant energy cost savings. According to the ALJ Report, the project involves the replacement of three pumps including valves and piping, installation of a flow meter, pressure switch, pressure transducer, replacing electrical system and lighting, replacing the motor control systems with new variable frequency drives, and installing and integrating a new pump control system.

The scope of work includes testing the pumps and training and is the same for each of the three upgrades at Malojloj, Pago Bay, and Windward Hills. The contract is to be completed within 365 days. Although the bid amount was \$1,065,766, the Consolidated Commission on Utilities seeks to add on a 10% contingency amount; that would bring the total cost up to \$1,172,342.60. Counsel is not certain why this contingency is necessary, as there is a 20% contingency built into all contracts reviewed under the Contract Review Protocol.

The ALJ Report finds that the energy efficiency upgrades would result in annual energy savings of \$42,841 for Pago Bay after three years and three months; annual savings of \$12,102 for Windward Hills after six years and nine months; and annual savings of \$8,562 of Malojloj after eight years and six months. The ALJ concludes that these efficiency upgrades to the Windward Hills, Malojloj, and Pago Bay booster pump stations are reasonable and necessary and would result in savings for GWA. He recommends that the PUC approve the contract with Sumitomo in the total amount of \$1,172,300.

The Chairman asked whether the Malojloj upgrade was a grant from the US Department of Interior. GWA Legal Counsel Sam Taylor replied that it was. Commissioner Perez asked what amount the grant was for. Mr. Taylor was not certain as to the exact amount of the grant. He indicated that the grant covers more than one pump station.

Mr. Taylor pointed out that the 10% contingency was a modification from CCU's policy tracking the Contract Review Protocol for a 20% contingency. It's an effort to reduce the amount of change orders and modifications to the original bid price. CCU is attempting to contain costs for this project. There is no increase in the amount of the contingency, but a decrease. The Chairman asked whether GWA can come back to the PUC if the project exceeded the 10% contingency. Mr. Taylor indicated that GWA would follow the Contract Review Protocol. Commissioner Niven asked whether in the Contract Review Protocol the contingency is added on to the bid amount. Mr. Taylor indicated that it's probably not the case. The Chairman indicated that the PUC only examines the million-dollar threshold to determine whether contracts must be reviewed by the PUC [not including a contingency].

Commissioner Cantoria asked about the payback periods and how they were calculated. GWA Counsel Taylor was not certain. The Chairman stated that the analysis should have indicated the date upon which the entire project would be paid for and the ratepayers' savings that would have occurred thereafter. It is difficult to look at three separate projects in a different timeframe. Commissioner Perez asked whether GWA staff was involved with the bidding process. Counsel Taylor indicated that it was and GWA put this matter out to bid. Counsel Taylor indicated that the payback prices relate solely to the cost of the pumps and installation of the pumps. Other aspects, such as the variable frequency drives, were purchased for many of the booster stations already and the wells.

Commissioner McDonald asked whether the 10% contingency should be established in the Contract Review Protocol for fiscal year 2015 since it is not always included on contracts. PUC Counsel indicated that such a change, from 20% to 10% would require an amendment to the Contract Review Protocol. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the contract between GWA and Sumitomo Mitsui Construction Company for energy efficiency upgrades for the booster pump stations and adopted the Order made *Attachment "B"* hereto.

3. Guam Telecom LLC

The Chairman announced that the next item of business was GTA Docket 14-02, Petition for Annual USAC Certification, PUC Counsel Report, and Certification. Counsel commented that this is an annual process where the PUC issues certifications to Telecom Companies that Universal Support Funds will be used for the intended purposes. Such funds are useful for the Telecom Companies on Guam because they allow the companies to make improvements to the telecom infrastructure and to provide more services to a greater number of people. Recently the FCC has indicated an interest in expanding broadband services to previously unserved groups. However, the Commission still needs to determine, in each case, that the documents submitted by the Telecom Company are sufficient and that the support funds will only be used for the intended purposes.

With regard to Guam Telecom, Counsel found that it has complied with all of the requirements for certification. Guam Telecom has certified that it provides the nine services required for USAC and that the funds will only be used for the permitted purposes.

Guam Telecom has filed its updated report in its five year build out plan and improvements to the network structure. In 2014 and 2015, GT will continue to work on projects designed to expand its network to the outlying areas of the island and to bring service to more neighborhoods. These areas are in the southern part of the island. GT will increase its ability to remain active during power outages by deploying more optical lines and fiber with battery backup power supplies needed throughout the island. The underground-protected fiber network will include the Guam Police Department and the Guam Fire Department.

Upgrades will be made on switching equipment and connection capacity. GT had no outages during the last year. No formal complaints were filed against it. Consumer protection rules have been followed. Guam Telecom has been able to function in emergency situations. USF funds received in calendar year 2013 were used for the intended purposes. Counsel recommends that the Commission approve the request for USAC Certification and that the Chairman execute the certification letter.

For the record, Commissioner Pangelinan indicated that he would recuse himself from participating in this docket due to the fact that his firm represents Guam Telecom. Upon motion duly made, seconded and unanimously carried, the Commissioners approved issuance by the Chairman of a certification that Guam Telecom used the USF funds received in calendar year 2013 for the intended purposes and adopted the Certification made *Attachment "C"* hereto.

4. PTI Pacifica Inc.

The Chairman stated that the next item of business was PTI Docket 14-02, Petition for Annual USAC Certification, PUC Counsel Report, and Certification. Counsel stated that the same considerations which applied to Guam Telecom also apply to PTI Pacifica

Inc. PTI has filed the same certifications and also provide the nine services required for USF; it indicates that USF funds will be used for the intended purposes.

PTI also filed its five year quality service improvement plan. The plan provides a site by site description of improvements that have been made and those which are planned for the next five years. A spreadsheet showing expenditures on a site by site basis were also filed. The five year build out plan indicates that PTI has made process in improving its GSM and LTE capacity and service, made certain improvements to its billing system and upgrades to the IP network, and mounted its rectifiers. New battery backup systems and generators were also installed, and new cell sites were established. During 2014, it has contemplated that improvements will be made to the existing LTE sites.

PTI has committed to continue making these upgrades of its network in the future. PTI did report one "outage" event, although it is not certain that such was an "outage" as defined under the rule. A lightning strike caused a temporary disruption of the GSM service. It is not clear whether 10% of the end users were affected. There were no complaints in requests for services. PTI complies with the consumer code and can respond to emergency situations. It provides various local usage plans. Counsel has not seen any evidence that contradicts the certifications that PTI made.

Counsel believes that PTI has satisfied all of the required criteria. He recommends that the Chairman execute the Certification. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the execution by the Chairman of a Certification finding that PTI has used its USF Funds in 2013 for the intended purposes, and adopted the Certification made *Attachment "D"* hereto.

5. Teleguam Holdings LLC

The Chairman indicated that the next item of business was GTA Docket 14-03, Petition of GTA for an Annual USAC Certification, PUC Counsel Report, and Certification. Counsel indicated that GTA is now using a new filing format which is an improvement – it contains a site by site project listing and the expected time periods for each project, how much money was expended, and the percentage of people affected. GTA has filed the certification that it provides all of the core services required for USF funds. It also certifies that USF funds will only be used for the provision of the permitted core services. With regard to its five year plan, GTA presents case authority which updates the more recent FCC requirements concerning maintenance and extension of networks providing voice and broadband services. These requirements are now included in the USF program.

GTA's five year plan indicates that each of the projects proposed will expand the network or update technology and address maintenance issues. Some of the projects are installation of VDSL, upgrade of the fiber core network, fiber remediation, capacity upgrade, wireline integration, capacity enhancement and ongoing cable maintenance

and upgrades. GTA has also certified that it complies with the service quality standards of the PUC and the consumer protection rules.

GTA had no outages lasting thirty minutes. The only requests that GTA were unable to fulfill for service were situations where the subscriber(s) were unable to pay the required deposits for delivery of service. GTA was not aware of any end user complaints filed with the PUC or other regulatory body. GTA is able to perform in emergency situations and has adequate backup battery powered or copper fiber plant facilities to handle emergencies. GTA also submitted financial data to indicate that all funds were used to support core services. Based upon the petition, it appears that universal service funds received by GTA in calendar year 2013 have been used as intended. Counsel recommends that the Commission approve and that the Chairman execute the certification for 2015. Upon motion duly made, seconded and unanimously carried, the Commissioners authorized the Chairman to execute the Certification that GTA has used USF funds in 2013 for the intended purposes and approved the Certification made *Attachment "E"* hereto.

The Chairman announced that the next item of business was GTA Docket 14-04, Petition of GTA/PULSE Mobile for Annual USAC Certification, PUC Counsel Report, and Certification. Counsel stated that Pulse Mobile was previously a separate company but is now a division within Teleguam Holdings. It is a CMRS Carrier. Pulse provides all of the required core services. It has filed a certification that USF funds will be used only for the intended purposes.

GTA has provided a five year plan which indicates that it maintains three wireless networks on Guam: GSM, 3G, and LTE. Under the five year plan, Pulse will enhance the services and networks to build out various aspects of the wireless network. Four sites are being converted to UMTF. The 3G system has been deployed and coverage is being expanded in rural areas. Rollout of the 4G LTE network will continue. From 2013 to 2014, numerous cell site locations were converted to 4G LTE. Such conversion will continue in 2015.

There were no outages or unfulfilled requests for service from customers. There is one pending complaint matter before the FCC. Pulse certifies compliance with the CTIA Consumer Code. It can function in emergency situations, and also has a local usage plan. Having found that the criteria have been duly satisfied, Counsel recommends that the Commission approve USAC Certification and that the Chairman execute the Certification. Upon motion duly made, seconded and unanimously carried, the Commissioners authorized the Chairman to execute the Certification that Pulse Mobile has used USF funds in 2013 for the intended purposes and adopted the Certification made *Attachment "F"* hereto.

6. Pacific Data Systems, Inc.

The Chairman indicated that the next matter before the Commission was PDS Docket 14-02, Formal Complaint by PDS Regarding the Interconnection Agreement Dispute

with Teleguam Holdings LLC for Failure to Respond to PDS Request for Fiber Layout Maps, ALJ Report, and Proposed Order. Counsel proceeded to provide background for this docket. With regard to Interconnection Agreements between Telecom companies, Section 252 of the Federal Telecommunications Act provides that state utility commissions such as the PUC act as arbitrators in interconnection disputes between such telecom companies. Interconnection agreements must be approved by the PUC; such agreements are generally entered into between the incumbent local exchange carrier such as GTA and a local exchange carrier such as PDS.

In this case there has been a dispute originating back to November of 2013. PDS requested certain fiber layout maps of GTA facilities. Various provisions of the Federal Telecommunications Act protect the right of a local exchange carrier such as PDS to obtain such information. The purpose of such provisions is to create competition in the telecom industry and to encourage new parties to come into the process and provide such services. A main right of local exchange carriers such as PDS is to interconnect with the facilities of the incumbent local exchange carrier (i.e. GTA).

The fiber layout maps that PDS was requesting relate to interconnection. Such maps would enable PDS to know where the cable is, where the entrances to the facilities are, and to then assist PDS in placing its facilities within GTA's central offices and going through the interconnection process. In accordance with the Interconnection Agreement between PDS and GTA, PDS is entitled to the fiber layout maps. Upon request, PDS is entitled to such maps and GTA has to provide them under the Interconnection Agreement.

A few years ago when GTA was sold to a foreign (Japanese) investor, GTA was required to enter into a Security Agreement with the federal government. This Federal requirement was designed to prevent foreign entities from gaining access into, or knowledge of, GTA facilities, without authorization. The purpose of the requirement was to ensure that the facilities of GTA were secure and not subject to unauthorized access or entry. The Security Agreement was entered into by GTA and the federal government after the original Interconnection Agreement between PDS and GTA.

When GTA received the request from PDS for the fiber layout maps, GTA responded to PDS that it had submitted the request to the federal authorities and was awaiting a response. However, the problem was that no response was forthcoming. PDS continued to request that such maps be provided. But GTA continued to respond that it had not had any response from the federal government. When GTA continued to fail to provide the maps, PDS filed a formal notice of dispute at the end of April, 2014. GTA again responded that it had not received any information from the federal government. PDS then asked that GTA appoint a representative for a good faith negotiation meeting under the Interconnection Agreement. GTA did appoint Ms. Lucia Perez as the representative.

PDS also sent numerous emails indicating to GTA that there was a requirement for a meeting between PDS and GTA, under the ICA, within 60 days. Section 14, the Dispute

Resolution Process in the ICA, requires that the parties meet within 60 days. However GTA did not respond to the requests to meet for a good faith negotiation. In July of 2013, PDS filed its formal complaint with the PUC. Grounds alleged in the complaint were: (1) that PDS was entitled to the fiber layout maps; disclosure was not prohibited by the federal Security Agreement; (2) that GTA had not engaged in good faith negotiations since no meeting between PDS and GTA had taken place. PDS made numerous efforts to obtain agreement as to a specific meeting date with GTA. This meeting never occurred. One day after the complaint was filed by PDS, GTA released the fiber maps. Thus, seven months after the initial request, there was compliance.

Nevertheless, PDS still requested that the matter be arbitrated by the PUC. A hearing was conducted on September 3, 2014. There was a formal evidentiary hearing at which the parties appeared and presented their testimony and evidence. At the hearing GTA indicated that there was not much reason to meet for the good faith negotiation because it hadn't heard from the federal authority. However, the ALJ indicated in the Order that the delay by GTA, seven months, was unreasonable and too long. PDS established a need for those maps to be able to complete its interconnection.

Without the maps, PDS is delayed in the permit process. It can't submit an application to Public Works, and obviously can't get a permit to begin construction. The purpose of the ICA is to enable parties such as PDS to interconnect. There was a violation of PDS' interconnection rights. Competitors such as PDS must be able to interconnect with GTA's facilities in order to compete. The interconnection agreement provides that where there is a substantial, unreasonable delay by a party in providing information, there is no showing of "good faith." In accordance with that provision, GTA violated the interconnection agreement. The length of the delay, seven months, was substantial and unreasonable.

The ALJ believes that GTA did submit the Interconnection Agreement to the federal authorities in good faith. However, after a certain length of time, it is not appropriate for GTA to wait and take no further action. It could have, for example, come to the PUC for a remedy or to disclose the fiber layout maps without federal approval. In fact, ultimately GTA did release the fiber layout maps to PDS on July 11, 2014, without having obtained any federal approval. The maps were released to PDS the day after the Complaint was filed. The amount of the time delay frustrated PDS' rights under the Interconnection Agreement. GTA should have attempted to do something earlier in order to provide the maps to PDS.

As far as submitting the maps to the federal authority, GTA did not do that in "bad faith." It was not done with intent to delay the process. The Security Agreement arguably requires that such information be submitted to the federal authorities. However, when one looks at other provisions of the Security Agreement, it is clear that such agreement did not intend to abrogate the rights and obligations of PDS under the ICA, or that the submission of information under an ICA, should be subject to the Security Agreement. Appendix A to the Security Agreement provides that "nothing in

this agreement is intended to limit any obligation imposed by federal law or regulation.”

Interconnection agreements are themselves basically an obligation created by federal law. Beyond that, there is a specific federal regulation (47 CFR §51.307(e)) which requires an incumbent local exchange carrier, such as GTA, to provide to a requesting telecommunications carrier “technical information about the incumbent LEC network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section.” The Federal government did create a right in a local exchange carrier to obtain precisely the type of information which PDS requested, under federal regulation.

Thus, the Security Agreement, Appendix A, specifically exempts information that GTA is otherwise required to provide under federal law or regulation. Through the Security Agreement, the Federal Government could not have intended to prevent local exchange carriers, who have rights under the Interconnection Agreement and federal law, from receiving information necessary to their interconnection rights.

The ALJ recommends that the PUC establish a rule that the federal Security Agreement does not affect the rights and obligations of PDS and GTA under the Interconnection Agreement. Federal approval should not be a requirement for a legitimate request for information under the ICA. If PDS had to wait, in every case, until the Federal Government approves the interconnection request, PDS’ right to obtain such information would be meaningless. The denial of PDS’ rights under the Interconnection Agreement does impact competition. If PDS cannot obtain the fiber layout maps, it can’t fully interconnect as intended under the ICA. The ALJ did not find that GTA intended to adversely affect competition. However, the seven month delay by GTA was unreasonable.

Section 14 of the ICA requires the representatives of the parties to meet at least one within 60 days after the date of the notice of dispute in an attempt to reach a good faith resolution of the dispute. In this case the notice of dispute was filed April 28, 2013. By June 27, 2013, there should have been a meeting. Despite repeated efforts by PDS to schedule such a meeting, GTA did not respond further. Then PDS filed its complaint, and the maps were provided by GTA one day later.

Under Rule 4(e) of the PUC Interconnection Implementation Rules, all parties participating in dispute resolution have a duty to participate in good faith. “Good faith participation means both parties meet and confer with minds open to persuasion and with an eye towards reaching an agreement on the disputed issues.” GTA’s argument that such a meeting would not have been “fruitful” is not a valid excuse for failing to meet. GTA should have met with PDS. This meeting could have done away with the need for a formal complaint.

Although GTA’s ultimate disclosure of the fiber layout maps was a good faith act, this issue could arise again in the future. That is why a PUC rule concerning the matter is

necessary. The rule should be that the Security Agreement of GTA does not limit, abrogate, or in any matter affect the rights of PDS under the Interconnection Agreement.

There were certain failures by GTA to act in good faith. The first was the substantial amount of delay in producing the fiber layout maps. The Interconnection Agreement specifically provides that an unreasonable delay in providing documentation required is a failure to act in good faith. Second, there was a violation by GTA of a good faith duty to meet and negotiate. Third, there was a violation of the federal regulation that requires GTA to turn over information to PDS related to interconnection. Since its rights had been violated under the ICA, PDS had no choice but to file a complaint herein. Therefore, the Commission should assess the regulatory fees from this docket against GTA.

As for attorney's fees, Counsel asks the Commission to authorize the ALJ to conduct a further proceeding on the attorney fee issue. The Order prepared for the Commissioners would approve the findings of fact and conclusions of law set forth in the ALJ Report, and would further authorize the ALJ to conduct a further proceeding on attorney's fees. The Order contains the determination that the Security Agreement does not abrogate, affect, restrict, diminish, or limit the duty of GTA to provide fiber layout maps to PDS under the ICA. GTA is obligated to provide such maps under the ICA and to disclose all required information under the federal regulation.

The Chairman asked GTA as to what agencies of the federal government was GTA requesting answers for on the Security Agreement, was it the FCC? Mr. Daniel Tydingco, the Executive Vice President of GTA indicated that it was a group called "Team Telecom." Mr. Tydingco wished to provide a little more clarity on the ALJ's report and findings concerning this docket. When PDS and GTA entered into the Interconnection Agreement, GTA was not foreign owned. Subsequently, in June 2011, GTA was purchased by a foreign private entity; it entered into a Network Security Agreement.

That Network Security Agreement imposes extraordinary obligations on companies such as GTA, particularly on the incumbent local exchange carrier. GTA must deal with two particular groups: "Team Telecom", a whole alphabet soup of security entities throughout the United States. The second is a Committee on Foreign Investment to the US. GTA must have a security officer and an appropriate law enforcement official with high security clearances. The Security Agreement obligates GTA to ensure that the network and facilities that GTA owns on Guam are safe and secure, not just from international threats but also domestic as well.

When PDS' request came to GTA late last year, it wanted to ensure that it struck the proper balance to fulfill its obligation to the ICA and also under the FCC's mandate to foster competition here on island. But GTA also had to comply with its obligations imposed by Team Telecom and other agencies. The 1996 Telecom Act preceded this NSA; the network security agreements are relatively new devices and instruments that

are an outgrowth of foreign telecommunications companies purchasing domestic telecommunications companies. The requirements only came into existence in 2003. Other companies on Guam, such as Docomo and IT&E, also have such National Security Agreements. However, GTA's agreement is more extraordinary as far as its obligations to fulfill with the federal government.

GTA did not want to run afoul of its obligations both with the FCC to the Telecom Act and with its new NSA. GTA did not intend to frustrate Mr. Day and certainly didn't want to impose upon the PUC to have to engage in arbitration. That's the last thing that GTA intended to do. GTA wished to be extra cautious with regard to any request for information, whether from Mr. Day or anyone else who comes into the facilities of GTA and makes a request about the network. All such requests are vetted and scrubbed in accordance with the security provisions under the NSA.

GTA wanted to ensure that it was not jeopardizing its federal license with the FCC hand in hand with the obligations it has with Team Telecom and the Committee of Foreign Investment in the U.S. With regard to the ALJ proposal that a rule be adopted, GTA would want to sit down with a representative from the PUC, and the United States government officials who are on Team Telecom, to try and determine how GTA can move forward on this without getting bogged down. GTA is just as frustrated as Mr. Day/PDS was. We repeatedly contacted Team Telecom, but GTA has to contend with the speed of the government.

The Chairman asked whether Team Telecom had yet responded to GTA. Mr. Tydingco indicated that ultimately it did respond. GTA needs to provide a copy of the new ICA to Team Telecom.

Mr. John Day proceeded to make comments on behalf of PDS. He thanked the Commission for looking into this Complaint and indicated that he concurred with the ALJ's Report. GTA had delayed for over five months on this matter; when PDS attempted to negotiate in accordance with the ICA, there was no response from GTA. Although GTA provided PDS with the fiber layout maps after the complaint was filed, GTA did not respond to the complaint until it was ordered to do so by the ALJ. This whole matter has been one of extreme delay. No copy of the Security Agreement was provided to PDS by GTA.

GTA never indicated what part of the agreement prevented it from providing the information. When PDS found the agreement on the internet, it saw the section thereof which provided that nothing in this agreement would affect rights and obligations under federal law, which is what governs the ICA. The Security Agreement does not limit GTA. PDS believes that the ALJ recommendation is a good idea and will prevent PDS from having to come before the PUC for additional claims on this matter.

Commissioner Niven asked Legal Counsel whether, if the Commission adopts the findings that the ALJ recommends that there were violations by GTA, would there be any consequences from that. Counsel said that he could not fully say. The potential

ones are that GTA would have to pay regulatory fees and attorney's fees. Whether there were others, Counsel could not address. Commissioner Perez asked GTA, when the ICA required GTA to meet within sixty days, why it did not do so. Ms. Lucy Perez of GTA indicated that she and Mr. Day did meet on June 6th at 10:40 and on July 7th. They met and she informed him that feedback was still pending from Team Telecom, but that there was a conference call to try to get the matter resolved. She reminded Mr. Day that when GTA fell under a foreign owned company, the requirements changed as to how much information could be released. GTA stressed that it must go back to Team Telecom to get permission.

Commissioner Perez asked Ms. Lucia Perez if she was saying that GTA did meet the sixty day requirement. Ms. Perez stated that they met downstairs two times. However, Mr. Day indicated that they did not meet for negotiations, meetings are recorded. They are documented. If there had been a meeting, Mr. Day indicated that he would have presented Ms. Perez with the NSA agreement. Attorney Serge Quenga of GTA did indicate that there was not a formal meeting with PDS, but PDS was apprised of everything. PDS knew that GTA was attempting to proceed with the notice given to Team Telecom under the NSA. To run afoul of the NSA would be a serious issue for GTA and it could lose its clearance with Team Telecom.

It probably would not need to go through the entire exercise again should PDS ask for the same information or other information that is part of the ICA. This was the first time that GTA had gone through this process under the NSA, and it learned from this experience. The Chairman asked whether, if GTA were under domestic ownership, it would not have to deal with these issues. Mr. Tydingco indicated that they would not. If a US entity purchases GTA, it would not have to deal with these issues. The Chairman then asked whether the real concern was the governing entity of GTA rather than Mr. Day under the Security Agreement. Mr. Tydingco indicated that it refers to any individual who seeks to come into GTA facilities.

Counsel clarified that a copy of the Security Agreement had been attached by PDS to its papers during the arbitration. After the proceeding, Attorney Quenga of GTA did submit an actual copy of the agreement. There are provisions of the Security Agreement which are broad and could require that any request for information about networks and access to facilities be disclosed to the security officer and submitted to Team Telecom. GTA was acting in good faith in proceeding with this process. Mr. Tydingco also indicated that GTA is subject to an independent third party audit annually to determine whether GTA has complied with the existing Security Agreement.

The Chairman asked what was the name of the entity other than Team Telecom. Mr. Tydingco indicated that it was the Committee on Foreign Investment in the U.S. This Committee carefully examines ownership of telecom companies by foreign investors. Team Telecom is made up of the FBI, CIA, DIA, OSI, and NSA. There are a dozen or so entities involved. Mr. Tydingco offered to have its security officer meet with the entire Commission or with the ALJ.

Commissioner Pangelinan indicated that GTA apparently felt that it could release the fiber layout maps. However, he wondered whether there was other information for which approval might still be required. Mr. Tydingco indicated that he could not answer that off the top of his head. GTA does have to notify Team Telecom what the information is and who is requesting it. It does review information concerning requests about GTA facilities from the requesting party. Commissioner Pangelinan suggested that if there were a PUC Order that makes a finding and creates a precedent that could be an added protection for GTA. If there is a local requirement that information must be released, that could reduce GTA's liability or culpability for releasing information, particularly if the federal government comes back and tells GTA that it should not have released such information. Mr. Tydingco concurred with Commissioner Pangelinan.

Commissioner Perez indicated that GTA should have had a formal meeting with PDS under the ICA. Mr. Tydingco indicated that perhaps the ALJ should have been provided with communications between GTA and Team Telecom. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the ALJ Report concerning the PDS Complaint and adopted the Order made *Attachment "G"* hereto.

7. Administrative Matters

The Chairman indicated that the next item of business was the FY2015 Administrative Budget and Annual Assessment Order. There was a budget committee meeting; the Chairman requested that the Commissioners review the budget. The Assessment will result in approximately \$10,000.00 more per utility as administrative cost for FY2015. The total budget is approximately \$478,810, with an assessment fee per utility of \$95,762. For telecom companies, the assessment fee is prorated. Commissioner Niven asked about iPads, and whether there is money in the budget for this. The Chairman indicated that he thought so. There will be some flexibility. The software could be pricey, but the iPads themselves would not cost that much.

Counsel suggested that the Commissioners first review the budget and approve it if they desire. The second step would be to address the assessment. The Chairman indicated that the PUC would be working with its present IT Consultant to reduce its rate. The Commissioners also discussed professional fees, training, avoidance of special meetings, and publication costs. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the FY2015 Budget.

There was further discussion concerning the balance of the PUC administrative account. Commissioner Montinola asked what was the difference between administrative and regulatory fees, and how regulatory fees were determined. Counsel explained that the regulatory fees do not impact the PUC administrative budget. Upon motion duly made, seconded and unanimously carried, the Commissioners approved the FY2015 Annual Assessment Order.


The Chairman indicated that the next matter for discussion was Deliberations concerning Extension of PUC Contracts for Legal Counsel, Administrative Law Judge, and PUC Consultant. Counsel indicated that he prepared a resolution for extension of the contracts for one year, for the foregoing contracts. Each of the contracts, Legal Counsel, ALJ and Consultant, is for a possible five year term, but each is renewable annually. The Resolution, 14-04, would extend each of the contracts for an additional one year term.

Commissioner Perez had a concern about receiving Consultant or ALJ reports on the day of the evening of a meeting. She indicated that this had happened with GWA. Counsel indicated that each of the consultants tries hard to provide documents timely. However, on some occasions, reports and proposed orders are not finished until after the packets already go out to Commissioners. Commissioner Perez indicated that if such a situation occurs, she would prefer that the Commission table the matter. Counsel indicated that the Commissioners always have the option to table matters. Commissioner Perez indicated that if the information is not received in time, the Commission will table the matter until the next meeting. Again, Counsel stressed that the Commissioners have the absolute right to do this with any docket, particularly if they did not have a full and fair chance to review the documents.

There was discussion about a specific deadline for submission of documents, but the Chairman indicated that there was no need for a specific deadline but that there should be flexibility. Commissioner Pangelinan asked whether Resolution 14-04 would be made available on the website. Legal Counsel indicated that it would be. Commissioner Pangelinan suggested a revision to the resolution which would read "whereas each of the three above mentioned professional service agreements have been in effect for nearly one year pursuant to the respective terms." With that modification, upon motion duly made, seconded and unanimously carried, the Commissioners approved the one year extension of contracts of PUC Legal Counsel, Administrative Law Judge, and PUC Consultant.

The Chairman indicated that the next matter for consideration was Resolution 14-05, which was to extend the Services Agreement for the PUC Administrator Ms. Lou Palomo for fiscal year 2015. A salary increase was proposed in the amount of \$2,000. Upon motion duly made, seconded and unanimously carried, the Commissioners approved a one year extension of the Services Agreement for the PUC Administrator.

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



Jeffrey C. Johnson
Chairman

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION
REGULAR MEETING
SUITE 202, GCIC BUILDING
414 W. SOLEDAD AVE. HAGATNA, GUAM
6:30 p.m., December 1, 2014**

Agenda

- 1. Approval of Minutes of September 25, 2014**
- 2. Guam Power Authority**
 - GPA Docket 15-01, Filing of Guam Power Authority 2015 Budget(Informational)
 - GPA Docket 15-02, Petition for Review and Approval of FY2015 GPA CIP Ceiling Cap, Lummus Consultant Report, and Proposed Order
 - GPA Docket 15-03, Filing of GPA FY2015-2017 Construction Budget(Informational)
 - GPA Docket 14-01, GPA Petition for Approval of the Customer Information System Contract beyond the One Million Dollar Threshold under the Contract Review Protocol, PUC Counsel Report, and Proposed Order
 - GPA Docket 14-01, GWA Petition to approve Customer Information System Expenditures by GWA beyond \$1M, PUC Counsel Report, and Proposed Order
 - GPA Docket 14-09, Petition for Use of 2014 Bond Proceeds on Projects, Slater Consultant Report, PUC Counsel Report, and Proposed Order
 - GPA Docket 14-12, GPA Interim LEAC Filing, Report of the PUC Chairman, Order, and Proposed Ratification Order
 - GPA Docket 14-05, GPA Petition for Review and Approval of Contract for the Supply of Diesel Fuel to GPA, PUC Counsel Report, and Proposed Order
 - GPA Docket 15-04, GPA Petition for Approval of Financing of Property Insurance Contract, PUC Counsel Report, and Proposed Order

3. **Guam Waterworks Authority**
 - **GWA Docket 13-01, GWA Petition for Approval of Additional \$2.458M in GWA's Program Management Office Contract with Brown & Caldwell, Lummus Consultants' Report, ALJ Report, and Proposed Order**
 - **GWA Docket 13-01, GWA's Annual True-Up, Lummus Consultants' Report, ALJ Report and Proposed Order**
 - **GWA Docket 15-01, Petition to Approve Fuel Contract with IP&E, ALJ Report, and Proposed Order**
4. **Administrative Matters**
 - **PUC Administrator Report on Ipads**
5. **Other Business**

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN RE: REVIEW AND APPROVAL OF)
BID AND PROPOSED)
CONTRACT WITH SUMITOMO)
MITSUI CONSTRUCTION)
COMPANY, LTD. FOR)
EFFICIENCY UPGRADES)
_____)

GWA DOCKET 14-06

ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the September 3, 2014 Petition for Approval of the Bid and the Proposed Contract with Sumitomo Mitsui Construction Co. for Energy Efficiency Upgrades to GWA’s Windward Hills, Malojloj and Pago Bay Booster Pump Stations (the “Petition”), filed by the Guam Waterworks Authority (“GWA”).

DETERMINATIONS

On May 1, 2014, GWA issued bid No. IFB-01-ENG-2014 to seek a contractor to perform energy efficiency upgrades to the following booster pump stations: Windward Hills, Malojloj, and Pago Bay.¹ On August 8, 2014, GWA received bids from eight (8) vendors.² Thereafter, GWA’s consultants, Duenas, Camacho and Associates (“DCA”) reviewed the bid documents and determined that Sumitomo Mitsui Construction Co. (“Sumitomo”) was the lowest bidder.³ DCA indicated in its review that Sumitomo “is

¹ Petition, p. 1.

² Petition, p. 2.

³ Petition, Exhibit 2 (DCA’s Construction Bid Evaluation, p. 1 (July 18, 2014)).

ATTACHMENT B

a well know[n] contractor on Guam” and recommended that GWA move “forward with this lowest responsible bidder.”⁴

On September 22, 2014, the Administrative Law Judge of the PUC (the “ALJ”) filed an ALJ Report regarding the Petition which included his findings and recommendations based on the administrative record before the PUC. In the ALJ Report, the ALJ found the following. Pursuant to 12 G.C.A. §12004, GWA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC’s express approval. In addition, GWA’s Contract Review Protocol requires that “[a]ll professional service procurements in excess of \$1,000,000” require “prior PUC approval under 12 G.C.A. §12004, which shall be obtained before the procurement process is begun”⁵ Further, all externally funded loan obligations and other financial obligations, such as lines of credit, bonds, etc., in excess of \$1,000,000, and any use of such funds, must be approved by the PUC.⁶

The subject procurement sought the service of a contractor to perform energy efficiency upgrades to GWA’s Windward Hills, Malojloj, and Pago Bay booster pump stations. GWA submits that the work primarily consists of “‘right sizing’ the pumps at the booster stations so that they operate more efficiently and installing variable frequency drives thereby producing significant energy cost savings.”⁷

⁴ Petition, Exhibit 2 (DCA’s Construction Bid Evaluation, p. 2 (July 18, 2014)).

⁵ GWA’s Contract Review Protocol (“GWA CRP”), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

⁶ *Id.*

⁷ Petition, p. 1.

With respect to the Malojloj Line upgrades, the contractor is required to replace three (3) pumps, which includes valves and piping; installation of a flow meter, pressure switch, and pressure “transducer”; replacing electrical system and lighting; replacing the motor control system with new variable frequency drives (“VFDs”), and installing and integrating a new pump control system. The scope of work also includes testing the pumps, and training.

With respect to the Pago Bay Booster Pump Station upgrades, the contractor is also required to replace three (3) pumps, which includes valves and piping; installation of a flow meter, pressure switch, and pressure “transducer”; replacing electrical system and lighting; replacing the motor control system with new VFDs; installing and integrating a new pump control system; testing the pumps, and training.

With respect to the Windward Hills upgrades, again the contractor is required to replace three (3) pumps, which includes valves and piping; installation of a flow meter, pressure switch, and pressure “transducer”; replacing electrical system and lighting; replacing the motor control system with new VFDs, and installing and integrating a new pump control system. The scope of work again includes testing the pumps, and training related to these upgrades.

The contract requires that all the work specified in the bid be completed within 365 days following the execution of the contract and GWA’s issuance of the Notice to Proceed.

GWA submitted that the entire cost of the contract is \$1,172,342.60,⁸ which includes a ten percent (10%) contingency on top of the \$1,065,766.00 total bid.⁹ GWA

⁸ Petition, Exhibit 2 (Resolution No. 31-FY2014 (Aug. 12, 2014)), p. 3.

further submitted that the contract will be funded by 2010 Bond proceeds, as well as federal funds issued by the U.S. Department of Interior.¹⁰ Specifically, the upgrades to the Pago Bay and Windward Hills booster pump stations will be funded by the 2010 Bond; while a federal grant issued by the U.S. Department of Interior will fund the upgrade to the Malojloj booster pump station.¹¹

In its Petition, GWA maintained that the energy efficiency upgrades will result in annual energy savings. For instance, GWA submitted that the Pago Bay upgrades will result in an annual savings of \$42,841 after about three (3) years and three (3) months; the Windward Hills upgrade will result in an annual savings of \$12,102 after about six (6) years and nine (9) months; and finally, the Malojloj Line upgrades will result in an annual savings of \$8,562 after about eight (8) years and six (6) months. Accordingly, GWA submitted that these upgrades results in savings for its ratepayers “over the long term while costing them little to nothing.”¹²

GWA further maintained that its initial cost estimate for the project was \$996,373.90; and, therefore, did not seek PUC approval of the procurement. However, since Sumitomo’s bid, which was the lowest bid, exceeded \$1 million, the PUC’s regulatory review was triggered.

⁹ Petition, Exhibit 2 (Resolution No. 31-FY2014), p. 3.

¹⁰ Petition, Exhibit 2 (Resolution No. 31-FY2014), pp. 1-2.

¹¹ Petition, Exhibit 2 (Resolution No. 31-FY2014), pp. 1-2.

¹² Petition, p. 2.

This project has already been approved and reviewed by the Commission as CIP PW 05-06, Water Booster Pump Station.¹³

The instant petition is supported by Resolution No. 31-FY2014 issued by the Consolidated Commission on Utilities (the “CCU”) at its August 17, 2014 meeting. In the Resolution, the CCU found the terms of Sumitomo’s proposal to be fair and reasonable; and, therefore, authorized GWA to contract with Sumitomo for the project.¹⁴ The CCU further approved funding of \$1,065,766.00, plus a ten percent (10%) contingency, for a total of \$1,172,342.60.¹⁵

Based on the above, the ALJ found that GWA’s energy efficiency upgrades to the Windward Hills, Malojloj, and Pago Bay booster pump stations were reasonable and necessary, and would eventually result in savings for GWA’s ratepayers. In addition, the ALJ found that GWA provided adequate documentation to support its selection of Sumitomo as the winning lowest bid, and that the submission of eight (8) vendors for the subject procurement made the selection fairly competitive.

Moreover, the ALJ found that the PUC had already reviewed and approved these projects, including the sources of funding, as CIP PW 05-06, Water Booster Pump Station. Therefore, the ALJ recommended that the PUC ratify the subject procurement and approve GWA’s contract for the energy efficiency upgrades with Sumitomo.

The Commission hereby adopts the findings made in the September 22, 2014 ALJ Report and therefore issues the following:

¹³ Petition, Exhibit 2 (Resolution No. 31-FY2014), p. 2.

¹⁴ Petition, Exhibit 2 (Resolution No. 31-FY2014), p. 3.

¹⁵ Petition, Exhibit 2 (Resolution No. 31-FY2014), p. 3.

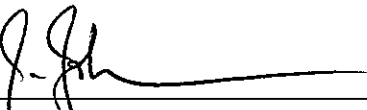
ORDERING PROVISIONS

Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:


1. That the contract between GWA and Sumitomo for the Energy Efficiency Retrofit Pump Station upgrades, is hereby APPROVED for a total cost of \$1,172,342.60.

2. GWA is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this docket. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

SO ORDERED this 25th day of September, 2014.




JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ
Commissioner



JOSEPH M. MCDONALD
Commissioner




FILOMENA M. CANTORIA
Commissioner



MICHAEL A. PANGELINAN
Commissioner



PETER MONTINOLA
Commissioner



ANDREW L. NIVEN
Commissioner

P143060.JRA

Guam Public Utilities Commission

**To: Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554**

**Irene M. Flannery
Vice-President - High Cost & Low Income Division
Universal Service Administration Company
2000 L Street, N.W. Suite 200
Washington, DC 20036**

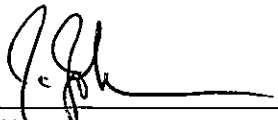
**RE: CC Docket 96-45/WC Docket No. 10-90 - Annual State-Certification of
Support for Eligible Telecommunications Carriers Pursuant to 47 C.F.R.
§54.314**

Pursuant to the requirements of 47 C.F.R §54.314, the Guam Public Utilities Commission hereby certifies to the Federal Communications Commission and the Universal Service Administrative Company that Guam Telecom, LLC, is eligible to receive federal high-cost support for the program years cited.

The Guam Public Utilities Commission certifies for Guam Telecom, LLC, that all federal high cost support provided to such carrier within Guam was used in the preceding calendar year (2013) and will be used in the coming calendar year (2015) only for the provisioning, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Communications Act.

I am authorized to make this certification on behalf of the Guam Public Utilities Commission. This certification is for study area 669005 for the Territory of Guam.

Dated this 26th day of September, 2014.



Jeffrey C. Johnson
Chairman
Guam Public Utilities Commission

ATTACHMENT C

Guam Public Utilities Commission

**To: Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554**

**Irene M. Flannery
Vice-President - High Cost & Low Income Division
Universal Service Administration Company
2000 L Street, N.W. Suite 200
Washington, DC 20036**


**RE: CC Docket 96-45/WC Docket No. 10-90 - Annual State-Certification of
Support for Eligible Telecommunications Carriers Pursuant to 47 C.F.R.
§54.314**

Pursuant to the requirements of 47 C.F.R §54.314, the Guam Public Utilities Commission hereby certifies to the Federal Communications Commission and the Universal Service Administrative Company that PTI Pacifica Inc. is eligible to receive federal high-cost support for the program years cited.

The Guam Public Utilities Commission certifies for PTI Pacifica Inc. that all federal high cost support provided to such carrier within Guam was used in the preceding calendar year (2013) and will be used in the coming calendar year (2015) only for the provisioning, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Communications Act.

I am authorized to make this certification on behalf of the Guam Public Utilities Commission. This certification is for study area 669004 for the Territory of Guam.

Dated this 26th day of September, 2014.



Jeffrey C. Johnson
Chairman
Guam Public Utilities Commission

ATTACHMENT D

Guam Public Utilities Commission

**To: Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554**

**Irene M. Flannery
Vice-President - High Cost & Low Income Division
Universal Service Administration Company
2000 L Street, N.W. Suite 200
Washington, DC 20036**

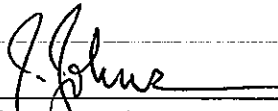
**RE: CC Docket 96-45/WC Docket No. 10-90 -Annual State-Certification of
Support for Eligible Telecommunications Carriers Pursuant to 47 C.F.R.
§54.314**

Pursuant to the requirements of 47 C.F.R §54.314, the Guam Public Utilities Commission hereby certifies to the Federal Communications Commission and the Universal Service Administrative Company that Teleguam Holdings, LLC, is eligible to receive federal high-cost support for the program years cited.

The Guam Public Utilities Commission certifies for Teleguam Holdings, LLC, that all federal high cost support provided to such carrier within Guam was used in the preceding calendar year (2013) and will be used in the coming calendar year (2015) only for the provisioning, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Communications Act.

I am authorized to make this certification on behalf of the Guam Public Utilities Commission. This certification is for study area 663800 for the Territory of Guam.

Dated this 26th day of September , 2014.


Jeffrey C. Johnson
Chairman
Guam Public Utilities Commission

ATTACHMENT E

Guam Public Utilities Commission

**To: Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554**

**Irene M. Flannery
Vice-President - High Cost & Low Income Division
Universal Service Administration Company
2000 L Street, N.W. Suite 200
Washington, DC 20036**

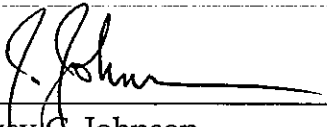
**RE: CC Docket 96-45/WC Docket No. 10-90 - Annual State-Certification of
Support for Eligible Telecommunications Carriers Pursuant to 47 C.F.R.
§54.314**

Pursuant to the requirements of 47 C.F.R §54.314, the Guam Public Utilities Commission hereby certifies to the Federal Communications Commission and the Universal Service Administrative Company that Teleguam Holdings, LLC, f/k/a Pulse Mobile, LLC, is eligible to receive federal high-cost support for the program years cited.

The Guam Public Utilities Commission certifies for Teleguam Holdings, LLC, f/k/a Pulse Mobile, LLC, that all federal high cost support provided to such carrier within Guam was used in the preceding calendar year (2013) and will be used in the coming calendar year (2015) only for the provisioning, maintenance and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the Communications Act.

I am authorized to make this certification on behalf of the Guam Public Utilities Commission. This certification is for study area 669003 for the Territory of Guam.

Dated this 26th day of September, 2014.



Jeffrey C. Johnson
Chairman
Guam Public Utilities Commission

ATTACHMENT F



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE:)
) PDS Docket 14-02
The Complaint of Pacific Data Systems,)
Inc. [PDS] Regarding Interconnection)
Agreement Dispute with Teleguam)
Holdings LLC-PDS Request for Fiber)
Layout Maps)

ORDER

This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Findings of Fact and Conclusions of Law issued by the Administrative Law Judge ["ALJ"] Frederick J. Horecky on September 23, 2014, which is made *Attachment A* hereto.¹ Therein ALJ Horecky addresses issues raised in Pacific Data Systems, Inc.'s ["PDS"] July 10, 2014 Complaint ["the Complaint"] against TeleGuam Holdings LLC ["GTA"].²

On September 28, 2010, GTA and PDS entered into an Interconnection Agreement ["ICA"].³ The ICA was approved by the PUC on October 29, 2010 pursuant to 47 U.S.C. §252.⁴

In its Complaint, PDS raised various issues concerning the failure of GTA to provide PDS with Fiber Layout Maps. PDS alleged that GTA violated the Dispute Resolution provisions of the ICA, as well as the provision requiring GTA to provide PDS with such maps (Section 8.2.19.1 of the PDS-GTA ICA Network Elements Attachment). A hearing was conducted before ALJ Horecky on September 3, 2014, at which time submissions, testimony, evidence and argument were presented by the parties and considered by ALJ Horecky.⁵ Subsequent to the hearing, ALJ Horecky issued his Findings of Fact and Conclusions of Law (Attachment A). Therein, the ALJ makes various recommendations to the PUC pursuant to Interconnection Implementation Rule 4(e)(9).

¹ Findings of Fact and Conclusions of Law issued by ALJ Frederick J. Horecky on September 23, 2014, *Attachment A* hereto (hereinafter referred to as "ALJ Findings and Conclusions").

² PDS Complaint against Teleguam Holdings LLC, filed July 10, 2014 in PDS Docket 14-02.

³ Agreement by and between PDS and GTA Telecom (September 28, 2006).

⁴ PUC Order, GTA Docket 10-08, issued October 29, 2010.

⁵ ALJ Findings and Conclusions, pg. 1.

ATTACHMENT G

ALJ Horecky finds that GTA had a duty pursuant to Section 8.2.19.1 of the Network Elements Attachment of the PDS-GTA ICA to timely produce the GTA Fiber Layout Maps. PDS is entitled to the timely production of such maps and has demonstrated a need for such maps to protect its ability to interconnect with the facilities of the Incumbent Local Exchange Carrier, GTA. Although ALJ Horecky understood GTA's desire to submit the PDS request to federal authorities under the review procedures of the Security Agreement, he finds that the seven month delay in the provision of the Maps to PDS was unreasonable and untimely. Rule 5(c)(1)(v) in the IIRs precludes a telecommunication carrier from unreasonably refusing to disclose, in a timely manner, all information necessary to achieve interconnection. In this case, GTA did eventually, on July 11, 2014, disclose the Fiber Layout Maps to PDS notwithstanding the fact that there had been no federal approval under the Security Agreement.

Based upon the record, ALJ found that GTA has an explicit duty in the ICA to provide the Fiber Layout Maps to PDS. Since the issue of whether the Security Agreement provides a justification for non-disclosure of such information required under the ICA or under federal regulation could arise again in the future, the ALJ recommends that the PUC establish a governing rule or principle for this issue. The ALJ recommends that the PUC make a determination that the review requirements of the Security Agreement do not in any matter abrogate, affect, restrict, diminish or limit the duty of GTA to provide Fiber Layout Maps to PDS under the ICA. In fact, Appendix A to the Security Agreement states: "Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation." 47 C.F.R. §51.307(e) provides that an incumbent LEC such as GTA "shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section."

The ALJ also finds that after PDS filed its formal Notice of Dispute on April 28, 2014, the representatives of PDS and GTA were required, pursuant to Section 14 of the ICA, to meet at least once within 60 days after the date of PDS written notice "in an attempt to reach a good faith resolution of the dispute." Although PDS made numerous requests in an attempt to schedule a time, place and date for such meeting, GTA did not respond to PDS' May 27, 2014 request for a Dispute Resolution meeting. Under Section 14.1 of the ICA, the failure by one party to meet with the other party within the 60 day dispute resolution period is rebuttable evidence of a party's failure to meet its good faith obligations to negotiate the dispute.

The ALJ concluded as follows:

“... GTA has failed to act in good faith by failing to meet with PDS within the 60 day dispute resolution period to negotiate the dispute concerning Fiber Layout Maps. GTA also failed to fully disclose, in a timely manner, the Fiber Layout Maps. PDS is entitled to the production of such maps pursuant to Section 8.2.19.1 of the PDS-GTA Interconnection Agreement (ICA) Network Elements Attachment. A delay by GTA for a seven month period in disclosing such Fiber Layout Maps is a violation of its duty under federal regulation to provide technical information about the incumbent LEC's network facilities sufficient to allow PDS to achieve access to unbundled network elements. PDS was delayed in its ability to implement and provide competitive telecommunications services. These actions constitute violations of IIR 4(e), 5(a), and 5(c)(1)(v), and 47 C.F.R. §51.307(e).”

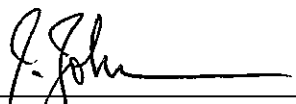
PUC is required to issue a final order accepting or rejecting, in whole or in part, the recommendation of the arbitrator [ALJ] within ten (10) days after the recommendation has been filed.⁶ Having considered the record of the proceedings herein, the pleadings of the parties, and the Findings of Fact and Conclusions of Law issued by the ALJ on September 23, 2014, and good cause appearing, the Guam Public Utilities Commission hereby ORDERS as follows:

1. The Findings of Fact and Conclusions of Law issued by the ALJ on September 23, 2014 are hereby adopted and approved.
2. The ALJ is authorized to notice and conduct a hearing for the purpose of determining and recommending to the PUC whether attorney's fees should be assessed against GTA and, if so, in what amount.
3. The PUC hereby determines that the review requirements of the Security Agreement between GTA and the federal authorities do not in any manner, abrogate, affect, restrict, diminish, or limit the duty of GTA to provide Fiber Layout Maps to PDS under the ICA, or other information required to be provided under the ICA or federal regulation.
4. GTA is ordered to fully comply with the information disclosure requirements under the ICA and federal regulation.


⁶ IIR 4(h)(10).

5. GTA is required to pay the PUC's regulatory expenses pursuant to Amended Rule 1.b.iii (RULES GOVERNING REGULATORY FEES FOR TELECOMMUNICATIONS COMPANIES). Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12002(b) and 12024(b), and Rule 40 of the Rules of Practice and Procedure before the Public Utilities Commission.

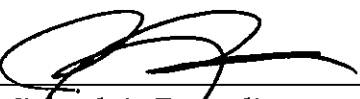
Dated this 25th day of September, 2014.




Jeffrey C. Johnson
Chairman



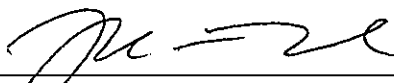
Rowena E. Perez
Commissioner



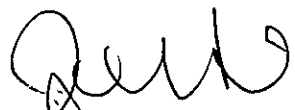
Michael A. Pangelinan
Commissioner



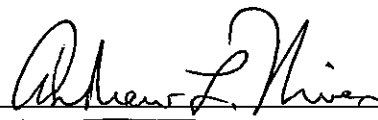
Filomena M. Cantoria
Commissioner



Joseph M. McDonald
Commissioner



Peter Montinola
Commissioner



Andrew E. Niven
Commissioner

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN RE:) PDS Docket 14-02
)
The Complaint of Pacific Data Systems,)
Inc. [PDS] Regarding Interconnection) RECOMMENDATION OF THE
Agreement Dispute with Teleguam) ADMINISTRATIVE LAW JUDGE;
Holdings LLC-PDS Request for Fiber) FINDINGS OF FACT AND
Layout Maps) CONCLUSIONS OF LAW

This matter came before the Administrative Law Judge ["ALJ"] of the Guam Public Utilities Commission ["PUC"] for a hearing pursuant to Pacific Data Systems, Inc.'s ["PDS"] July 10, 2014, Formal Complaint [the "Complaint"] against Teleguam Holdings, LLC ["GTA"]. The Complaint concerns GTA's alleged failure to respond to PDS' request for Fiber Layout Maps or to engage in dispute resolution as required by the Interconnection Agreement. PDS requested that the PUC, through its Administrative Law Judge ["ALJ"], conduct arbitration (a formal proceeding for dispute resolution) in accordance with Interconnection Implementation Rules adopted by the PUC in Docket 05-1.

On September 3, 2014, the ALJ conducted a hearing on this matter and received testimony, evidence and argument by the parties. The ALJ now issues his Findings of Fact and Conclusions of Law and makes his recommendations to the PUC pursuant to Interconnection Implementation Rule 4(h).¹

¹ In addition to the complaint concerning Fiber Layout Maps, PDS filed a second complaint on July 14, 2014 concerning GTA's alleged failure to respond to PDS request for Dark Fiber Field Surveys. Although this complaint was heard at the hearing on September 3, 2014, the parties advised the ALJ on September 10, 2014 the parties had agreed to negotiate a stipulation to dismiss PDS' complaint regarding Dark Fiber Field Surveys. The ALJ queried the parties as to whether this meant he was no longer required to address the complaint regarding Dark Fiber Field Surveys; the parties confirmed that they were no longer requesting that the ALJ resolve the second Complaint. In addition, on September 15, 2014, at the request

ATTACHMENT A

FINDINGS OF FACT

A. The Parties

1. GTA is the incumbent local exchange carrier ["ILEC"] operating within the territory of Guam, which provides long distance telecommunication services, as well as other communication services, such as wireless telecommunications and broadband Internet access service within Guam.

2. PDS is a competitive local exchange carrier ["CLEC"] that provides telecommunication services, and other communication services in Guam.

B. Interconnection Agreement and Interconnection Implementation Rules

3. PDS and GTA are parties to an Interconnection Agreement. Although the parties recently entered into a new Interconnection Agreement, the relevant Interconnection Agreement, for purposes of this proceeding, was approved by the PUC on October 29, 2010.²

4. On February 1, 2007, the PUC authorized and directed the commencement of rulemaking proceedings under 12 GCA §12104 to propose rules, consistent with Federal Communications Commission policy, to establish timelines, conditions and

of the ALJ, GTA submitted to the ALJ an executed copy of the "Security Agreement" between the Tele Guam Entities and the US Department of Justice. Such Agreement is relevant to the defense of GTA in this matter, but an executed copy of the Agreement had not been provided to the ALJ at the hearing on September 3. At the September 3 hearing, PDS submitted an unexecuted copy of the Security Agreement as Exhibit 8. The Record in this Docket includes all documents filed of record, emails between the parties and/or the ALJ, testimony and exhibits introduced by the parties at the hearing, briefs submitted, the argument presented by the parties at the hearing, and the executed Security Agreement.

² PUC Order Approving Interconnection Agreement, GTA Docket 10-08, dated October 29, 2010.

standards which GTA should meet in order to implement PUC-approved interconnection arrangements and to provide new entrants with a fair and reasonable opportunity to compete in the local exchange market. Another stated purpose of the rules was to establish a monitoring system by which the PUC could be assured that GTA was taking appropriate action to accommodate competitors (such as PDS) as well as its own customer base in the future.³

5. Thereafter, on August 13, 2007, the PUC approved the Interconnection Implementation Rules ["IIR" or "IIRs"].⁴

C. The Course of the Proceedings in this Docket

6. On November 27, 2013, PDS, through its President John Day, presented a written request to GTA for "Fiber Layout Map[s] showing GTA Fiber Cable Sheaths" for ten GTA central offices and/or Remote Centers.⁵ PDS' Request was made pursuant to Section 8.2.19.1 of the PDS-GTA Interconnection Agreement (ICA) Network Elements Attachment, which provides as follows:

"8.2.19 PDS may request the following:

8.2.19.1 A fiber layout map that shows the streets within a GTA Wire Center where there are existing GTA fiber cable sheaths. GTA shall provide such maps to PDS subject to the agreement of PDS, in writing, to treat the maps as confidential and to use them for preliminary design purposes only. PDS acknowledges that fiber layout

³ PUC Order, Docket 05-01, issued August 13, 2007.

⁴ Id.

⁵ PDS Exhibit "1".

maps do not show whether or not spare Dark Fiber IOF are available. GTA shall provide fiber layout maps to PDS subject to a negotiated interval.”

7. On December 27, 2013, the President of PDS wrote to the Executive Vice President of GTA indicating that thirty days had passed without response by GTA on various PDS requests, including its request for Fiber Layout Maps. Mr. Day requested a response from GTA in a “timely, good faith manner.”⁶

8. On the same day, December 27, 2013, Daniel J. Tydingco, Executive Vice President of GTA, responded to Mr. Day indicating that GTA was aware of its obligations under the ICA. However, GTA indicated that it was restrained by its “Network Security Agreement, as mandated under Federal Law and FCC provisions,” and that the provision of information requested by PDS may be subject to certain restrictions. He further indicated that “GTA’s security officer is reviewing your request and we will respond as soon as possible.”⁷

9. On April 28, 2014, PDS submitted to GTA its “Notice of Dispute-GTA Failure to Respond to PDS Request of November 27, 2013 regarding PDS Request for Fiber Layout Map.” PDS indicated that this was a legitimate request under the terms of the ICA, and that GTA had failed to respond as required by the ICA even though five

⁶ GTA Response to PDS Complaint regarding Fiber Layout Maps, PDS Docket 14-02, filed August 29, 2014, at Attachment 1.

⁷ Id.

months had passed since PDS's request.⁸ PDS stated that it was bringing a dispute in accordance with Section 14, Dispute Resolution, of the PDS-GTA Interconnection Agreement. Pursuant to Section 14.1, PDS requested a meeting with GTA to negotiate a settlement of the dispute and assigned John Day as the PDS representative for that purpose.⁹

10. On April 30, 2014, GTA, through its Executive Vice President Mr. Tydingco, responded to PDS concerning its request for Fiber Layout Maps. GTA stated that such request was "inextricably linked with our FCC requirement and compliance obligations embedded in our Network Security Agreement ("NSA")." GTA had sought clarification from the federal entities on PDS' request and was awaiting their responses.¹⁰ GTA further indicated that the material requested was ready and available for release, conditional upon receipt of federal clearance and imprimatur.¹¹

11. On April 30, President of PDS sent an email to Ms. Lucy Perez, the Managing Director, Legal, Regulatory, Security & External Affairs, at GTA. Ms. Perez had forwarded the April 30 letter response of GTA to Mr. Day. Mr. Day indicated to Ms. Perez that the letter was not an adequate response to the issues nor in accordance with the ICA Dispute Resolution Process. PDS requested that GTA appoint an

⁸ PDS Exhibit 4.

⁹ Id.

¹⁰ GTA Response to PDS Compliant regarding Fiber Layout Maps, PDS Docket 14-02, filed August 29, 2014 at Attachment 1.

¹¹ Id.

individual responsible to enter into good faith negotiations with PDS in an effort to reach a resolution of the Fiber Layout Map dispute. PDS further requested that GTA make such assignment as soon as possible so that a meeting could be held in order for the parties to discuss a resolution of the disputes [including the dispute of PDS' Request for Fiber Maps]. PDS suggested that failure by GTA to meet in an effort to reach a negotiated resolution within the Section 14 timelines could result "in a finding of bad faith and other sanctions as applicable."¹²

12. On May 12, 2014, the Executive Vice President of GTA responded to the PDS Notice of Dispute dated April 28, 2014 and designated Lucia Perez as the representative of GTA in the Notice of Dispute concerning PDS' Request for Fiber Maps. GTA reiterated that it had a federal mandate and obligation to fully comply with the provisions of the Network Security Agreement (NSA) between Teleguam Holdings LLC and the United States Government. He indicated that: "Any and all requests, particularly requests peering into or accessing facilities and the network, must be screened accordingly." He indicated that GTA Security Personnel had notified the appropriate federal entities of the PDS request and had referred it to them. GTA was awaiting feedback from the federal authorities and would apprise PDS of updates.¹³

¹² PDS Exhibit 5.

¹³ GTA Response to PDS Compliant regarding Fiber Layout Maps, PDS Docket 14-02, filed August 29, 2014, at Attachment 1.

13. On May 14, 2014, Mr. Day of PDS wrote the GTA Representative-Fiber Map Dispute [Ms. Lucia Perez], inquiring as when she would want to meet to discuss these disputes.¹⁴ PDS followed up their previous request and “voicemail” to Ms. Perez regarding the need to schedule meetings for resolution of the dispute. PDS indicated that: **“This section also states that ‘Failure by one party to meet with the other Party within the 60 day dispute resolution period shall constitute rebuttable evidence of that Party’s failure to meet its good faith obligations to negotiate the dispute.’”**

14. GTA did not respond further to PDS’ request that parties meet within the 60 day dispute resolution period to discuss the Fiber Map dispute.

15. Section 14, Dispute Resolution, of the ICA provides as follows:

“14. Dispute Resolution

14.1 Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties. To initiate such negotiation, a Party must provide to the other Party written notice of the dispute that includes both a detailed description of the dispute or alleged nonperformance and the name of an individual who will serve as the initiating Party’s representative in the negotiation. The other Party shall be ten Business Days to designate its own representative in the negotiation. The Parties’ representatives shall meet at least once within 60 days after the date of initiating Party’s written notice in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties’ representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations. Failure by one Party to meet with the other Party within the 60 day dispute resolution period shall constitute rebuttable evidence of that Party’s failure to meet its good faith obligations to negotiate the dispute. (emphasis added).

¹⁴ PDS Exhibit 6.

- 14.2 If the Parties have been unable to resolve the dispute within 60 days of the date of the initiating Party's written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction."

16. On July 10, 2014, PDS filed its Formal Complaint regarding an Interconnection Agreement Dispute with Teleguam Holdings LLC for failure to respond to PDS request for Fiber Layout Maps.

- (1) PDS indicated that, despite regular follow ups with GTA regarding the matter, the requested Fiber Layout Maps were never provided by GTA.
- (2) PDS never received a response from GTA regarding requests for a meeting to negotiate the dispute; the 60 day dispute resolution period lapsed without an attempt by GTA to participate in good faith negotiations to resolve the dispute.
- (3) PDS requested that the PUC order GTA to act on its ICA request for GTA Fiber Layout Maps and to rule on the violations alleged by PDS in its Complaint.

17. On July 11, 2014, GTA provided all of the requested Fiber Layout Maps to PDS. In its transmission, GTA indicated that it still had not received feedback from the

Department of Defense but was still sending the information to PDS on the 60th day of the assignment of the GTA representative.¹⁵

D. The September 3, 2014 Hearing

18. After the submission of briefs, the parties convened with the ALJ for a hearing on the PDS Fiber Layout Maps Complaint on September 3, 2014.

19. Through the testimony of its President John Day, PDS established that GTA did not provide the Fiber Layout Maps to PDS until seven months after its initial request.

20. According to Mr. Day, the ICA establishes a clear right in PDS to the provision of these maps by GTA pursuant to Section 8.2.19.1 thereof.

21. Mr. Day testified that receipt of these Fiber Layout Maps is needed by PDS so that it can gain access to GTA facilities and to bring its fiber optic cables into the GTA central offices.

22. He further stated that, without such maps, PDS' plans and permitting process through the Department of Public Works is delayed; without the maps, PDS has no certainty as to where the entrance is for each of GTA's facilities.

¹⁵ Email from Lucia Perez to PDS Representatives, dated July 11, 2014, with RSC and CO Fiber Maps attached.

23. Although PDS followed up its request to GTA on numerous occasions, GTA did not provide the Fiber Layout Maps until seven months after the initial PDS request.

24. According to Mr. Day, GTA relied upon its National Security Agreement as the reason for non-disclosure. PDS submitted what appeared to be a copy of GTA's Security Agreement as Exhibit "8", which it obtained from the Internet. However, PDS was not certain whether this was the actual Security Agreement nor had GTA provided a copy of such agreement to PDS.

25. PDS took the position that the Security Agreement in no manner prevented GTA from disclosing the Fiber Layout Maps to PDS. Appendix A of the Security Agreement provides that: "Nothing in this Agreement is intended to limit any obligation imposed by Federal Law or Regulation."

26. PDS contended that disclosure of the Fiber Layout Maps was required by federal regulation, 47 CFR §51.307(e), which states as follows:

"An Incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section."

27. After PDS filed its Notice of Dispute, it made a number of requests to GTA to meet within the 60 day dispute resolution period under the ICA. However, GTA never responded to the PDS May 27, 2014 email requesting a meeting. PDS viewed

GTA as failing to comply with its legitimate requests and that there was no valid reason for delay.

28. PDS also requested that the PUC find that GTA's failure to provide the requested Fiber Layout Maps delayed PDS' ability to implement competitive services, in violation of PUC IIR Rule 5(c)(1)(iii), Rule 5(c)(1)(vi), and the requirement of federal law that GTA provide PDS with technical information regarding GTA's network in order to allow PDS to access unbundled network elements as defined by the Telecom Act.

29. During cross-examination, Mr. Day admitted that GTA's response on July 11, 2014, which provided the Fiber Layout Maps, was "a compliant response, albeit late."

30. Mr. Daniel Tydingco, Executive Vice President, testified on behalf of GTA. He indicated that there was a "National Security Agreement" in effect between Teleguam Holdings LLC and the United States Department of Justice and other federal authorities. The appointment of a "Security Officer" by GTA was required; there had been no such federal review requirement under prior ICA Agreements.

31. GTA believed that it was required to submit information requests, such as that for PDS of Fiber Layout Maps, for federal review within the confines of the new Security Agreement. Ongoing communications were made with Mr. Day of PDS concerning the need to have PDS' request reviewed through appropriate federal

channels. As recently as one week ago, Team Telecom received federal communications that there should be a confidentiality agreement between GTA and PDS.

32. According to GTA, the cause of the delay in providing the Fiber Layout Maps to PDS was not intentional, but resulted from the need of GTA to seek federal guidance regarding its obligations. Even though what GTA transmitted to PDS may be acceptable to the federal authorities, a confidentiality agreement is still required.

33. GTA also had concerns regarding the recent alleged illegal entry to a GTA facility and tampering by a PDS employee with GTA facilities.

34. On cross examination, Mr. Tydingco testified that GTA was, on an ongoing basis, attempting to receive follow ups from its Security Officer regarding federal communications. Scheduling a meeting with PDS might well have not been fruitful because of the ongoing federal review.

CONCLUSIONS OF LAW

A. The Federal Telecommunications Act of 1996

35. "Seeking to spur competition in the telecommunications industry," Congress "passed the Telecommunications Act of 1996" (hereinafter the "Act").¹⁶

36. The Act is "designed in part, to erode the monopolistic nature of the local telephone service industry by obligating the current providers of local phone service

¹⁶ PDS Exhibits 15 and 16.

(known as ‘incumbent local exchange carriers’ or ‘incumbent LECs’) to facilitate the entry of competing companies into the local telephone service markets across the country.”¹⁷

37. “The Act not only permitted competitors to operate their own local exchange networks in competition with the local telephone company, but also obliged the local incumbent to assist new entrants in several respects.”¹⁸

B. The Guam Telecommunications Act of 2004

38. Guam’s Legislature enacted the Guam Telecommunications Act of 2004 (hereinafter the “Guam Act”) to create a “new regulatory environment conducive to competition” that would “promote the development of modern, innovative, accessible, and affordable telecommunications services and products for the people of Guam.”¹⁹

39. The Guam Act exists to “[e]ncourage the entry of new providers of telecommunication services, encourage the introduction of new telecommunications services and products for the consumers of Guam, and increase investment in telecommunications infrastructure in Guam.”²⁰

C. Jurisdiction of ALJ and GPUC to Resolve ICA Disputes

40. The PUC established the IIRs to provide “administrative procedures for Commission resolution of disputed issues arising under or pertaining to ICAs approved

¹⁷ Iowa Utilities Board v. FCC, 120 F.3d 753, 791 (8th Cir. 1997).

¹⁸ Worldnet Communications, 497 F.3d at 3 (internal citations omitted).

¹⁹ 12 G.C.A. §12101(a)(3).

²⁰ 12 G.C.A. §12101(b)(3).

by the Commission pursuant to its authority under the Federal Telecommunications Act of 1996 and the Guam Telecommunications Act.”²¹

41. Under the IIRs, the GPUC’s “ALJ shall act as arbitrator” of disputes involving the “terms and conditions in the ICA” and the “[i]mplementation of activities explicitly provided for, or implicitly contemplated in the ICA.”²²

D. The Duty of GTA to Produce Fiber Layout Maps to PDS

42. In accordance with Section 8.2.19.1 of the Network Elements Attachment of the PDS-GTA ICA, PDS is entitled to request from GTA Fiber Layout Maps which show the streets within a GTA Wire Center where there are existing GTA fiber cable sheaths: “GTA shall provide such maps to PDS subject to the agreement of PDS, in writing, to treat the maps as confidential and to use them for preliminary design purposes only.” (Emphasis added). The section further provides that: “GTA shall provide fiber layout maps to PDS subject to a negotiated interval.”

43. The right of PDS to obtain such Fiber Layout Maps relate to its ability to interconnect with GTA’s office facilities. The Federal Telecommunications Act of 1996, as well as the federal regulations requiring interconnection, sought to protect the right of local exchange carriers such as PDS to interconnect with the facilities of the Incumbent local exchange carrier, GTA. While GTA ultimately did provide the Fiber

²¹ IIR 4(a).

²² IIR 4(b)((1)-(4)).

Layout Maps to PDS approximately seven months after PDS' initial request, and after PDS filed its Complaint herein, there was a substantial delay in PDS' ability to exercise its interconnection rights.

44. However, notwithstanding GTA's eventual production of the Fiber Layout Maps, PUC must address the issue of the impact of GTA's Security Agreement upon GTA's duty to produce Fiber Layout Maps to PDS. The issue could well arise again in the future. When PDS requests information in the future relating to interconnection access to GTA's facilities, GTA could possibly again raise the Security Agreement as a reason for non-production. It is an issue that is "capable of repetition, yet evading review."²³

45. There are provisions of the Security Agreement which arguably could require review by the United States Government Authorities of a request such as that of PDS to GTA for Fiber Layout Maps.²⁴ In particular, Section 3.5 of implies that information requests to GTA regarding facility access or sensitive information must be reviewed by the Security Officer and the appropriate federal officials.²⁵

46. GTA does have significant legal obligations with the United States Government with which it must comply pursuant to the Security Agreement. In the

²³ *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115 (1974)

²⁴ See Sections 2.3, 3.1, 3.2 and 3.5 of the Security Agreement submitted herein on September 19, 2014 (It is also set forth in PDS Exhibit 8).

²⁵ *Id.*

first instance, GTA could reasonably have believed that it needed to clear the request for provision of the Fiber Layout Maps with the Department of Justice before releasing such maps.

47. That being said, however, the ALJ does not agree that the provisions or requirements of the Security Agreement provide an excuse to GTA, or a justification for the failure to produce the Fiber Layout Maps. Even assuming that GTA was required to submit PDS' request for Fiber Layout Maps to federal officials, GTA should have taken proactive action regarding the request prior to the expiration of a seven month period. GTA could have brought this matter to the attention of the PUC for action. Having notified USDOJ of the request, it could have earlier released the maps to PDS when there was no federal response. Ultimately, GTA took the last course of action when it released the maps to PDS without prior federal approval in July of 2014.

48. Under federal law, GTA has a duty to provide information regarding access to interconnection facilities to PDS. An Incumbent Local Exchange Carrier such as GTA has the duty to negotiate interconnection agreements in good faith with other telecommunication carriers such as PDS.²⁶ GTA has contractual obligations to PDS in the Interconnection Agreement that were established and solidified prior to GTA's entry into the Security Agreement. The ALJ finds it highly unlikely that the Federal Government intended the Security Agreement to hinder or restrict the rights of LECs

²⁶ 47 U.S.C. §251.

such as PDS. A major purpose of the Federal Telecommunications Act of 1996 was to protect the interconnection rights of local incumbent exchange carriers and to create competition in the telecommunications industry. As will be discussed *infra*, federal law in fact expressly protects the right of LECs to information regarding access to interconnection facilities.

49. Federal law also imposes a duty upon state commissions such as the Guam Public Utilities Commission to assist parties such as GTA and PDS with arbitration of Interconnection Agreements, and also requires Guam PUC to approve such Interconnection Agreements.²⁷ Thus, the requirement that GTA and PDS enter into an interconnection agreement is in reality a contractual obligation established by federal law.

50. The PUC has expressly adopted the interconnection requirements contained in Part 51 of Title 47 of the Code of Federal Regulations, and incorporated such requirements into its own Interconnection Implementation Rules.²⁸

51. The ALJ is not convinced that the Security Agreement in any matter abrogates, affects, restricts, diminishes or limits the duty of GTA to provide Fiber Layout Maps to PDS under the ICA. In fact, Appendix A to the Security Agreement

²⁷ 47 U.S.C. §252.

²⁸ PUC Order, Docket 05-1 [Interconnection Implementation Rules], adopted August 13, 2007.

states: **"Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation."**²⁹

52. The duty of GTA and PDS to enter into an Interconnection Agreement and to abide by its terms and obligations is a duty which originates in federal law. In addition, 47 C.F.R. §51.307(e) provides that an incumbent LEC such as GTA "shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section."

53. Under both the Interconnection Agreement and 47 C.F.R. §51.307(e), GTA has a duty to provide the Fiber Layout Maps to PDS.

54. In this case, GTA's failure to provide the Fiber Layout Maps to PDS until seven months after PDS's initial request was an unreasonable and unjustified delay. The ALJ notes that GTA, notwithstanding the fact that no action had been taking by the USG parties in approving release of the maps under the Security Agreement, nonetheless determined that it would release such maps on July 11, 2014, one day after PDS filed its Complaint.

55. For future reference of the parties, it is important for the PUC to establish a rule that that governs the release of information required under the ICA. The PUC should issue a determination that the Security Agreement does not provide a

²⁹ PDS Exhibit 8, Appendix A.

justification or excuse for the non-release of information to a LEC such as PDS, if release is required under the Interconnection Agreement or federal regulation,. The Security Agreement cannot be construed as an absolute excuse or defense for nonproduction of information to which PDS is entitled under the ICA. Otherwise, the right of PDS to obtain Fiber Layout Maps and other information under the ICA or federal regulation would be meaningless.

56. The PUC should expect, with regard to future dealings of the parties, that GTA will produce all information required under the ICA and federal regulation.

57. PDS has also alleged that GTA's failure to provide the requested Fiber Layout Maps delays PDS' ability to implement competitive services in various parts of Guam. The delay in providing the Fiber Layout Maps to PDS could likely have this effect. In the testimony of John Day, PDS established that it needs the Fiber Layout Maps to interface with and access GTA's network. For planning and permitting purposes, PDS must know where the entrances to the GTA office facilities are located; this apparently cannot be determined by a mere visual inspection. To the extent that PDS is unable to commence and complete its network planning, the delay in the provision of the requested layout maps is anti-competitive. PDS was delayed in its plans to install services. GTA's failure to provide the Fiber Layout Maps would tend to

delay PDS' ability to make permit applications for such facilities with the Department of Public Works or to obtain permits.³⁰

58. GTA and PDS are obligated to implement the provisions of the ICA in good faith, and to comply with the provisions of the ICA with "the highest standards of professionalism, decency and honesty."³¹ As previously stated, the ALJ can understand that, initially, GTA may have felt it necessary to process PDS's request through the federal review procedures of the Security Agreement. However, given the length of the delay, it was not reasonable for GTA to continue to refuse to provide PDS with the Fiber Layout Maps for such an extended period. Rule 5(c) of the IIRs indicates that certain prohibited acts "are examples of failure to act in good faith." Rule 5(c)(1)(v) states that "No telecommunications carrier shall: ... upon bona fide request, unreasonably refuse to fully disclose in a timely manner all information necessary to achieve interconnection;..." Here PDS made a legitimate request for information, the Fiber Layout Maps; GTA did not disclose, in a timely manner, all information necessary for PDS to achieve interconnection.

E. GTA's Failure to Meet with PDS within the 60 Day Dispute Resolution Period.

59. PDS' filing of a formal Notice of Dispute, on April 28, 2014, regarding GTA's failure to provide Fiber Layout Maps, initiated the Dispute Resolution process in

³⁰ Testimony of John Day.

³¹ IIR 5(a).

Section 14 of the ICA. Thereunder, once the parties' representatives are designated, they have an obligation to meet: "the Parties' representatives shall meet at least once within 60 days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute."³² (Emphasis added).

60. When PDS filed its Notice of Dispute on April 28, 2014, the Parties' representatives were required to meet on or before June 27, 2014. As detailed in the Findings of Fact above, PDS requested, on numerous occasions, that the representatives of PDS and GTA meet to discuss the dispute regarding Fiber Layout Maps. In his email to GTA dated May 27, 2014, the President of PDS Mr. Day pointed out that a meeting for the dispute was mandated by Section 14.1 of the ICA. He specifically requested that GTA communicate a time and place for the required dispute resolution.

61. GTA never responded to PDS' May 27, 2014 request for a Dispute Resolution meeting. During the hearing on this matter, Mr. Daniel J. Tydingco, EVP of GTA, suggested that since GTA was attempting to receive a follow-up from its Security Officer concerning PDS' request, holding of a meeting "might not have been fruitful."³³

62. However, the ICA does not authorize the parties to fail to hold a meeting on the grounds that the meeting might not lead to resolution of a dispute. Section 14 of the ICA **requires** such a meeting. The purpose for such a Dispute Resolution Process is

³² §14.1 of the ICA.

³³ Testimony of Daniel J. Tydingco.

that the holding of a required meeting will lead the parties to discuss ideas for the resolution of a dispute and hopefully lead to a resolution. In this case, an earlier resolution would have dispensed with the necessity of PDS' having to file a Complaint to obtain the Fiber Layout Maps.

63. Section 14.1 of the ICA expressly provides that: "Failure by one party to meet with the other party within the 60 day dispute resolution period shall constitute rebuttable evidence of that party's failure to meet its good faith obligations to negotiate the dispute." (Emphasis added). GTA has not rebutted the evidence of its failure to meet its good faith obligation to negotiate the dispute.

64. The PUC Interconnection Implementation Rules place an extremely high significance upon the duties of the parties to participate in dispute resolution. IIR 4, Dispute Resolution, subsection (e), provides as follows:

"All parties participating in dispute resolution under this rule have a duty to participate in good faith. Good faith participation means both parties meet and confer with minds open to persuasion and with an eye toward reaching agreement on the disputed issues." (emphasis added).

In this matter, GTA did not demonstrate a "good faith participation" in the dispute resolution process.

F. Violations of GTA

65. For the foregoing reasons, the ALJ finds GTA has failed to act in good faith by failing to meet with PDS within the 60 day dispute resolution period to

negotiate the dispute concerning Fiber Layout Maps. GTA also failed to fully disclose, in a timely manner, the Fiber Layout Maps. PDS is entitled to the production of such maps pursuant to Section 8.2.19.1 of the PDS-GTA Interconnection Agreement (ICA) Network Elements Attachment. A delay by GTA for a seven month period in disclosing such Fiber Layout Maps is a violation of its duty under federal regulation to provide technical information about the incumbent LEC's network facilities sufficient to allow PDS to achieve access to unbundled network elements. PDS was delayed in its ability to implement and provide competitive telecommunications services. These actions constitute violations of IIR 4(e), 5(a), and 5(c)(1)(v), and of 47 C.F.R. §51.307(e).

G. Assessment of Regulatory Fees.

66. In accordance with Amendment Rule 1.b.iii (RULES GOVERNING REGULATORY FEES FOR TELECOMMUNICATIONS COMPANIES), for proceedings under Rule 4 of the Interconnection Implementation Rules, including dispute resolution, "PUC's regulatory expenses... shall be allocated against such party or parties as the Commission deems appropriate." The ALJ recommends that the PUC allocate all of the regulatory expenses in this proceeding to GTA. PDS was required to institute these proceedings because GTA had not provided the Fiber Layout Maps and did not participate in the meeting between the parties pursuant to the Dispute Resolution process. Although GTA did ultimately, after seven months, provide the Fiber Layout Maps to PDS, this delay was unreasonable and detrimental to PDS. In

light of GTA's position concerning the Security Agreement, PDS had a need to proceed with this proceeding to obtain clarification as to whether GTA could withhold documents under the ICA by virtue of the requirements of the Security Agreement. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12002(b), 12104, 12109, the Rules Governing Regulatory fees for Telecommunications Companies, and Rule 40 of the Rules of Practice and Procedure before the PUC.

H. Attorney's Fees.

67. Pursuant to 12 GCA §§12107, the Commission may impose attorney's fees against a party. Attorney's fees may be imposed if the Commission determines, after notice and opportunity for hearing, that a party has failed to act in good faith. PDS has requested that it be awarded its attorney's fees in this proceeding and that such fees be assessed against GTA. However, this issue has not been fully addressed by the parties, nor has there been a full opportunity for a hearing on the issue. The PUC should authorize the ALJ to conduct a hearing to determine whether attorney's fees should be assessed against GTA, and, if so, in what amount.

CONCLUSION

Having found in favor of PDS on its Complaint, the ALJ hereby makes the following recommendations to the PUC:

1. That the PUC approve the findings of fact and the conclusions of law of the ALJ, and award relief to PDS in accordance therewith;

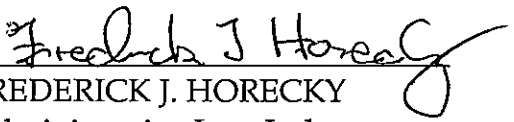
2. That the PUC authorize the ALJ to notice and conduct a hearing pursuant to 12 GCA §12107(d) or other applicable provision to determine whether attorney's fees should be imposed against GTA, and if so, in what amount;

3. That the PUC determine that the review requirements of the Security Agreement do not in any manner abrogate, affect, restrict, diminish or limit the duty of GTA to provide Fiber Layout Maps to PDS under the ICA. GTA is obligated to provide such Maps to PDS under the ICA and to disclose all required information;

4. That GTA be ordered to fully comply with its information disclosure requirements under the ICA and federal regulation;

5. That GTA be required to pay the PUC's regulatory expenses pursuant to Amended Rule 1.b.iii (RULES GOVERNING REGULATORY FEES FOR TELECOMMUNICATIONS COMPANIES).

Dated this 23rd day of September, 2014.


FREDERICK J. HORECKY
Administrative Law Judge