

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE:)
) GTA DOCKET 11-14
)
JOINT APPLICATION OF GTA TELECOM,)
LLC AND TELEGUAM HOLDINGS, LLC)
FOR APPROVAL OF THE ASSIGNMENT)
AND TRANSFER OF TELECOM’S)
CERTIFICATE OF AUTHORITY AND)
ELIGIBLE TELECOMMUNICATIONS)
CARRIER CERTIFICATE TO TELEGUAM)
HOLDINGS, LLC)
_____)

**ORDER APPROVING ASSIGNMENT AND TRANSFER OF CERTIFICATE
OF AUTHORITY OF GTA TELECOM, LLC AND ELIGIBLE
TELECOMMUNICATIONS CARRIER CERTIFICATE TO
TELEGUAM HOLDINGS, LLC**

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [“PUC” or “Commission”] upon the Joint Application of GTA Telecom, LLC, and TeleGuam Holdings, LLC, for approval of the assignment and transfer of Telecom’s Certificate of Authority and Eligible Telecommunications Carrier Certificate to TeleGuam Holdings, LLC.
2. In this proceeding, the parties seek to transfer the existing Certificate of Authority [COA] held by Telecom to TeleGuam. Telecom is a wholly owned subsidiary of TeleGuam. The purpose is to consolidate “GTA” into one corporate entity; as an effort to simplify and streamline business operations, TeleGuam plans to withdraw the foreign registrations in Guam for all of TeleGuam’s wholly owned subsidiaries, including Telecom.¹
3. TeleGuam will become the sole entity providing Telecommunications services under the COA and ETC Certificate issued by the Commission.²

¹ Id. at p. 8; Presentation of Applicant’s Attorneys, Carlsmith Ball, LLP, at the evidentiary hearing conducted by the ALJ on February 9, 2012.

² Id. at p. 8.

BACKGROUND AND PROCEDURAL HISTORY

4. On September 19, 2011, the Commission ordered TeleGuam to file an amended general exchange tariff which clearly indicates that its provisions are applicable to Telecom.³
5. In this proceeding, GTA TeleGuam seeks to streamline and simplify its current business operations. If the Joint Application herein is approved by the PUC, Telecom will not need to further amend General Exchange Tariff No. 1. General Exchange Tariff No. 1 currently applies to TeleGuam.
6. The organizational structure proposed by Teleguam, after a transfer of the COA to it, is set forth as Exhibit "A" to the ALJ Report filed herein.
7. On January 6, 2012 and January 20, 2012, the PUC caused a notice to be published in the Pacific Daily News attesting to: (1) the filing of the Joint Application; (2) the opportunity for interested persons to file comments of the record regarding the Joint Application; and (3) the holding of a public hearing to receive public comment and testimony on the Joint Application.⁴
8. On February 6, 2012, Pacific Data Systems Inc., through its President John Day, filed written comments regarding the Joint Application.⁵
9. On February 9, 2012, the PUC conducted a Public Hearing during which testimony on the Joint Application was taken. Testimony was provided by representatives of TeleGuam, Telecom, and PDS.
10. On March 16, 2012, Applicants submitted an executed copy of the Assignment and Contribution Agreement to the Commission.⁶ Thereunder, GTA Services, Pulse

³ Joint Application at p. 8.

⁴ PUC Public Notice of Joint Application of TeleGuam Holdings, LLC and GTA Telecom, LLC for Expedited PUC Approval of the Assignment and Transfer of the Certificate of Authority and Eligible Telecommunications Carrier Certificate from GTA Telecom LLC to TeleGuam Holdings, LLC, GTA Docket 11-14, published in the Pacific Daily News on January 6, 2012 and January 20, 2012.

⁵ Public Comments of PDS, GTA Docket 11-14, filed February 6, 2012.

⁶ Assignment and Contribution Agreement, GTA Docket 11-14, submitted under seal, March 16, 2012.

Mobile, and Telecom each transfer and assign all right, title and interest in all “service assets” to TeleGuam, which essentially includes all property and assets of the companies.⁷ The transferred assets include the COA and the ETC Certification.⁸

11. If the Joint Application is approved, TeleGuam will become the sole entity providing Telecommunications services under the COA and ETC issued by the Commission.⁹
12. On March 21, 2012, the Administrative Law Judge [ALJ] filed his Report herein.¹⁰

DETERMINATIONS

13. In the present case, Telecom seeks to assign and transfer its Certificate of Authority to TeleGuam Holdings, LLC. TeleGuam was previously the duly authorized holder of a Certificate of Authority which enabled it to provide intrastate facilities based and resold local exchange telecommunications services in Guam.¹¹
14. Before the transfer of a COA can be effective, the Commission must make a determination that the proposed transfer satisfies the requirements for granting a certificate of authority as set forth in 12 GCA §12103(c).
15. The two findings required by the Commission in subsection (c) are:
 - (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the telecommunications services in Guam for which it seeks a certificate of authority; and
 - (2) the granting of a certificate of authority to the applicant would not be contrary to the public interest.¹²

⁷ Id. at pgs. 1-7.

⁸ Id. at p. 4.

⁹ Joint Application, GTA Docket 11-14, filed December 19, 2011, at p. 8.

¹⁰ ALJ Report, GTA Docket 11-14, issued March 21, 2012.

¹¹ See PUC Certificate of Authority, Docket 05-02 [Exhibit “B” to Joint Application], issued February 28, 2005.

¹² See 12 GCA §12103(c)(1) and (2).

16. A review of the record herein establishes that TeleGuam Holdings LLC possesses sufficient technical, financial and managerial resources and abilities to provide telecommunications services for which it seeks a certificate of authority.

a) The Commission previously determined that the Applicants met the requirements of 12 GCA §12103(c)(1) in its July 27, 2005 Order when it approved the transfer of TeleGuam's COA to Telecom.¹³

b) The issue of whether TeleGuam possess sufficient technical, financial and managerial resources and abilities to provide telecommunications services in Guam was recently addressed in GTA Docket 11-09. The Commission, in adopting the findings of the ALJ, found that TeleGuam does have sufficient technical, financial and managerial resources and abilities to provide telecommunications services in Guam.¹⁴

c) Applicants have supported the adequacy of their financial resources by submitting Financial Statements for 2008-2011¹⁵ and their Operating Budget with Revenue and Expense Projections.¹⁶

d) As to Technical and Managerial Resources, TeleGuam will retain and utilize all of Telecom's technical and managerial resources. The Applicants have provided a detailed description of the Management and Technical Team that will lead TeleGuam; such team will continue to provide the qualified management previously provided to Telecom.¹⁷

e) At the public hearing of February 9, 2012, all parties agreed that TeleGuam does possess sufficient technical, managerial, and financial resources to provide telecommunications services in Guam.

17. Approval of the transfer of the Certificate of Authority from Telecom to TeleGuam is not "contrary to the public interest."

¹³ PUC Order, Docket No. 05-03, issued July 27, 2005.

¹⁴ PUC Order, GTA Docket 10-09, issued February 21, 2011, ¶ 22 through 25; Ordering Provisions ¶2.

¹⁵ Exhibit "F" to Confidential and Proprietary Exhibits, GTA Docket 11-14, filed December 19, 2011.

¹⁶ Exhibit "G" to Confidential and Proprietary Exhibits, GTA Docket 11-14, filed December 19, 2011.

¹⁷ Joint Application, Exhibit "E", GTA Docket 11-14, filed December 19, 2011.

- a) Applicants have clarified the nature of the proposed GTA Corporate organization, the companies involved, and the changes which GTA seeks to make in its corporate structure.
- b) PDS correctly points out that the Commission did find, in Dockets 08-11 and 09-3, that Telecom had violated certain rules and orders of the Commission. However, in both Dockets, Telecom took remedial measures to address violations found by the PUC. PDS has not subsequently reported any concern to the Commission that there continue to be violations of the rules, statutes, or the interconnection agreement in those dockets.¹⁸
- c) While TeleGuam did not amend its General Exchange Tariff to clarify its applicability, the Commission, in its Order issued February 11, 2012 in Docket 05-01, found that GTA's filing of its application to transfer its COA to TeleGuam was a good faith effort to resolve the issue of which entities its tariffs apply to.¹⁹
- d) In both its public and written comments, PDS raises a legitimate concern as to how the new GTA corporate structure will comply with the Commission's Affiliate Transaction Rules:

"The new combined corporate structure is especially challenging from a regulatory perspective since the new Teleguam operation will encompass three separate regulatory operations; the Incumbent Local Exchange Carrier (ILEC), and Inter-Exchange Carrier (IXC), and a Commercial Mobile Radio Service carrier (CMRS), not to mention unregulated operations offering Internet Access, Video Services, and IP services. Federal rules forbid cross-subsidizations between all of these various regulated and unregulated operations. Failure to address this issue could allow the new combined GTA to use its market power to engage in anti-competitive activities in order to suppress competition and to dominate the Guam market. This would run counter to the public

¹⁸ The ALJ is not convinced that the prior violations referenced constitute evidence that the transfer of the COA requested herein is "contrary to the public interest."

¹⁹ PUC Order, Docket 05-01 [GTA General Regulatory Docket, filed January 11, 2012].

interest and to the primary goal of the Commission which is to promote competition.”²⁰

e) To date, no evidence has been presented that GTA has used its market power to engage in anti-competitive activities in order to suppress competition or to dominate the Guam market.

f) Even after GTA carries out its corporate reorganization, the Affiliate Transaction Rules will be adequate to regulate the new corporate organization. Under the reorganization, the services that Telecom, GTA Services and Pulse Mobile currently provide will be consolidated under and performed solely by TeleGuam. TeleGuam will no longer have “affiliates.” Transactions previously conducted between “affiliates”, as said term is defined under GPUC Joint Cost Rule 4, will no longer exist. Since only transactions between affiliates are subject to Rule 8, the regulation of TeleGuam’s “Joint costs” will transition from Rule 8 to GPUC Joint Cost Rule 7, Allocation of Costs.²¹

g) In accordance with Rule 7(a), “Each Dominant Carrier that provides both regulated and nonregulated intrastate service shall allocate intrastate investments, expenses and revenues between regulated activities and nonregulated activities according to the principles, procedures and accounting requirements in Part 32 and Part 64.” GTA is the “incumbent local exchange carrier in the Territory of Guam”; as such, the Affiliate Transaction Rules, including Rule 7, Allocation of Costs, apply to GTA/TeleGuam.²²

h) In addition, Rule 5, Prohibition Against Cross-Subsidization, provides:

“A Dominant Carrier shall not use revenues from services that are not competitive to subsidize services subject to competition. A Dominant Carrier shall not use revenues from regulated services to subsidize the services or products of its Affiliates.”²³

²⁰ PDS Public Comments, GTA Docket 11-14, filed February 6, 2012.

²¹ Supplemental Briefing in Support of the Joint Application, at p. 4.

²² See Rules 2, 4(d) and 7 of the Affiliate Transaction Rules.

²³ Rule 5 of the Affiliate Transaction Rules.

Furthermore, Rule 6, Uniform System of Accounts, requires all Dominant Carriers to comply with the Uniform System of Accounts adopted by the FCC in Part 32.²⁴

i) Thus, even though TeleGuam will no longer have “affiliates” subject to Rule 8, there are sufficient safeguards under Affiliate Transaction Rules 5, 6, and 7 to prohibit TeleGuam from engaging in “cross-subsidization.” The present Affiliate Transaction Rules of the PUC have sufficient safeguards and no further amendments appear to be necessary at the present time.

j) There are also additional safeguards in federal law applicable to TeleGuam which prevent cross-subsidization. 47 U.S.C. §254(k) prevents a telecommunication carrier from using services that are not competitive to subsidize services that are subject to competition. TeleGuam will be required to follow the rules of the Federal Communications Commission for Allocation of Costs between regulated and non-regulated activities in accordance with 47 C.F.R. Part 32 and 47 C.F.R. Part 64.

k) Even after consolidation, affiliate transactions presently covered under Telecom’s Cost Allocation Manual, Section V will henceforth be covered by CAM Section II, Non-Regulated Activities.²⁵ TeleGuam will still be required to utilize cost allocation standards for apportioning costs between regulated and non-regulated activities.²⁶ TeleGuam will revise its CAM Cost Apportionment Table to add the additional pools associated with each of the unincorporated non-regulated division for accounts. Its underlying method of compliance with the FDC (fully distributed cost) does not change.²⁷

l) TeleGuam will revise the Telecom CAM to reflect the changes discussed and submit the TeleGuam CAM to the Commission for review.”²⁸

m) TeleGuam shall file its updates to the CAM in the month of March following the reporting year.²⁹

²⁴ Id. at Rule 6 of the Affiliate Transaction Rules.

²⁵ Supplemental Briefing in Support of the Joint Application, p. 7.

²⁶ 47 U.S.C. §32.23(c).

²⁷ Supplemental Briefing in Support of the Joint Application at p. 10.

²⁸ Id. at p. 11.

²⁹ Id. at p. 13.

- n) Telecom is subject to a rigorous auditing process whereby an independent auditor appointed by the FCC Office of the Inspector General closely reviews GTA's compliance with various federal regulations and laws concerning provision of Universal Service Support to GTA by the FCC and Universal Service Administrative Company.³⁰ Such audit also seeks to ensure compliance by GTA with proper accounting procedures.
- o) The protections provided by Rule 7 of the GPUC Joint Cost Rules and expansion of the non-regulated subaccounts/revisions to the CAM Cost Apportionment Table will preserve the safeguards intended to protect ratepayers from cross-subsidization of competing ventures as contemplated by Section 254(k) of the Communications Act.³¹
18. In the Joint Application, the Applicants request that the PUC transfer the Eligible Telecommunications Carrier Certificate from Telecom to TeleGuam. On September 19, 2011, the Chairman of the PUC issued a "Use Certification" to the FCC and the Universal Service Administration Company certifying that GTA Telecom LLC will use federal high cost support funds 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.³²
19. Under federal law, the PUC does have the authority to designate a common carrier that meets applicable requirements as an eligible telecommunications carrier, and to approve of a carrier relinquishing its designation as an ETC.³³ Given the broad authority of the PUC to designate Eligible Telecommunications Carriers, it is appropriate for the PUC, upon compliance by Applicants with all terms and conditions of a PUC Order herein, to authorize the transfer of the ETC Certificate from Telecom to TeleGuam.
20. All such terms and conditions applicable to the ETC Certificate for Telecom shall continue to bind TeleGuam, and all federal law requirements applicable to such

³⁰ Id.

³¹ Supplemental Brief, GTA Docket 11-14 at p. 11.

³² PUC "Use Certification", GTA Docket 11-10, issued by Chairman Jeffrey C. Johnson on September 19, 2011.

³³ 47 U.S.C. §§214(e)(1) and (e)(4).

certificate shall continue to apply to TeleGuam. In this Docket, TeleGuam has represented that it will continue to provide the nine core services currently provided by Telecom with regard to its ETC designation.

21. An issue was raised in the public hearing as to whether TeleGuam has complied with a requirement in the Asset Purchase Agreement between Guam Telephone Authority and TeleGuam Holdings LLC (the agreement that led to the privatization of GTA). Therein TeleGuam agreed to use “commercially reasonable efforts” to implement certain infrastructure enhancements set forth in Schedule 6.10(e), which implementation was conditional and subject to variables such as changes in market conditions, receptivity of customers of the business to new products, and the financial condition of the business.³⁴
22. Schedule 6.10(e)(8) indicates that over a period of five years following the closing of the GTA - TeleGuam transaction, TeleGuam agreed to “deploy WiFi technology in public schools and libraries.”
23. This issue was previously addressed in the ALJ Report in GTA Docket 10-09 regarding the request for PUC Approval of the transfer of control of TeleGuam and GTA Telecom to AP TeleGuam Holdings. There TeleGuam indicated that it could deploy WiFi technology to the schools and libraries, but at present MCV and PDS are currently contracted by the government to provide telecom and broadband services to the public schools and libraries.³⁵
24. Other considerations remain as to whether the deployment of Wi-Fi technology is “commercially reasonable”, within the receptivity of customers, or within the financial condition of GTA. These matters have not been established in the record herein. At the present time, there is no showing that TeleGuam is in non-compliance with any requirements under the Asset Purchase Agreement to deploy Wi-Fi technology. In any event, even a showing of non-compliance with such a requirement would not necessarily support a conclusion that the transfer of the COA from Telecom to TeleGuam is “contrary to the public interest.”

³⁴ Asset Purchase Agreement between GTA, the Government of Guam and TeleGuam Holdings LLC, dated August 31, 2004, at Section 6.10(e); Schedules for Asset Purchase Agreement, Schedule 6.10(e) Infrastructure Enhancements, dated August 31, 2004.

³⁵ ALJ Report, GTA Docket 10-09, ¶78, dated February 18, 2011.

ORDERING PROVISIONS

After review of the Joint Application, with supporting materials, the Supplemental Brief and filings, the materials and comments submitted by the parties and members of the public, the Administrative Law Judge Report, and the record in this docket, and for good cause shown, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. All rulings and orders of the ALJ in this proceeding are confirmed and ratified. All motions not heretofore granted or denied are denied. No other matters currently require discussion.
2. The Report issued by the ALJ on March 21, 2012, is hereby adopted and approved. The PUC concurs with the determinations and findings therein.
3. The Joint Application of Telecom and TeleGuam to transfer the Certificate of Authority presently held by Telecom to TeleGuam is approved, subject to the terms and conditions set forth herein.
4. TeleGuam satisfies the requirements of 12 GCA §§12103(c) and (g): TeleGuam will have sufficient financial, technical and managerial resources and abilities to provide the telecommunications services provided under the existing Certificate of Authority.
5. The transfer of the Certificate of Authority from Telecom to TeleGuam is not contrary to the public interest.
6. Pursuant to its authority under the Federal Communications Act, the PUC, upon completion of all of the business transactions set forth in the application, approves the transfer of the Eligible Telecommunications Certificate from Telecom to TeleGuam, and shall designate TeleGuam as a common carrier that meets applicable requirements as an eligible telecommunications carrier (if it is in compliance with all applicable requirements).
7. Authorization for Applicants to complete transfer of the COA and ETC Certification is subject to certain conditions (approval is conditioned upon satisfaction of certain additional requirements): (1) Applicants must satisfy all requirements of the Federal Communications Commission with regard to this transaction, complete all necessary proceedings required by the FCC, and obtain

all necessary FCC approvals; (2) all terms and conditions of the Assignment and Contribution Agreement must be materially complied with, and the transaction completed in all material respects; (3) Once the proposed transaction is completed in all respects, TeleGuam Holdings, LLC shall continue to be subject to the terms, conditions and requirements of 12 GCA §12103, and all PUC rules, regulations and orders; (4) TeleGuam must comply with its representation, made of record, in the DECLARATION OF ROBERT HAULBROOK, PRESIDENT AND CEO OF TELEGUAM HOLDINGS, LLC, filed on December 19, 2012, that TeleGuam will comply with all terms and conditions of the Certificate of Authority presently held by GTA Telecom LLC.

8. Approval of the transfer of the COA to TeleGuam is conditioned upon certain other requirements:
 - (a) TeleGuam shall pay all costs and expenses related to any necessary amendments of the interconnection agreements presently in effect between Telecom and other carriers;
 - (b) TeleGuam shall honor all existing agreements between Telecom and other carriers, and receive, and accept liability for, all deposits of other carriers presently held by Telecom;
 - (c) TeleGuam should honor all current and binding agreements between itself and other telecommunications carriers.
9. TeleGuam will revise the Telecom Cost Allocation Manual to reflect the changes proposed and agreed to by TeleGuam in the record herein and submit the TeleGuam CAM to the Commission for review and approval within one hundred and twenty (120) days from the date of this Order.
10. TeleGuam, on a going forward basis, must annually file its Cost Allocation Manual with the Commission, or a statement that no changes were needed or made during the calendar year, no later than the end of March of each year hereafter, in accordance with Rule 9 of the Affiliate Transaction Rules.

Order Approving Assignment
& Transfer of COA and ETC
Certificate to TeleGuam Holdings LLC
GTA Docket 11-14
March 26, 2012

11. TeleGuam Holdings, LLC, is ordered and directed to pay the PUC's regulatory expenses and fees in this docket.

Dated this 26th day of March, 2012.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner

Michael A. Pangelinan
Commissioner