

**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 )  
\_\_\_\_\_ )

**ALJ REPORT**

**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. The parties will respectively be referred to as “Telecom” and “TeleGuam”.<sup>1</sup> The consolidated corporate organization, which includes all of the related entities, is sometimes referred to as “GTA.”
  
2. Telecom is currently a wholly owned subsidiary of TeleGuam.<sup>2</sup> On February 28, 2005, the PUC issued to TeleGuam a “Grandfathered Certificate of Authority” (“COA”) to do business within the Territory of Guam.<sup>3</sup> The COA granted TeleGuam authority to provide intrastate facilities based and resold local exchange telecommunications services in Guam, including telecommunications services that previously had been provided by the Guam Telephone Authority.<sup>4</sup>

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<sup>1</sup> 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 [hereinafter “the Joint Application”], GTA Docket 11-14, filed December 19, 2011.

<sup>2</sup> Id. at p. 2.

<sup>3</sup> PUC Order, Docket 05-02, February 28, 2005.

<sup>4</sup> Id. at p. 4.

3. On July 27, 2005, the Commission approved the transfer of TeleGuam's COA to Telecom.<sup>5</sup>
4. In this proceeding, the parties seek to transfer the COA back from Telecom to 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. Applicants have executed an "Assignment and Contribution Agreement" whereby Telecom transfers all assets, liabilities, the COA, and its ETC Certificate back to TeleGuam.<sup>6</sup>
5. After the transfer of the COA and ETC to TeleGuam, Telecom's foreign registration in Guam, and those of all of TeleGuam's wholly owned subsidiaries, will be withdrawn. TeleGuam will become the sole entity providing Telecommunications services under the COA and ETC Certificate issued by the Commission.<sup>7</sup>
6. In this Report, the Administrative Law Judge ["ALJ"]: (1) reviews the applicable statutory criteria which guide the PUC in determining whether to approve the transfer of the COA of Telecom to TeleGuam; (2) addresses the issues raised in this proceeding and makes determinations concerning the appropriateness of the transfer of the COA and ETC; and (3) makes recommendations to the PUC for an appropriate course of action in a proposed Order.<sup>8</sup>

### **BACKGROUND AND PROCEDURAL HISTORY**

7. On September 19, 2011, the Commission addressed, *sua sponte*, the issue of whether or not GTA General Exchange Tariff No. 1 also applied to Telecom. The

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<sup>5</sup> PUC Order, Docket 05-03, July 27, 2005.

<sup>6</sup> Id. at p. 8; Presentation of Applicant's Attorneys, Carlsmith Ball, LLP, at the evidentiary hearing conducted by the ALJ on February 9, 2012.

<sup>7</sup> Id. at p. 8.

<sup>8</sup> The "record" in this Docket includes all documents filed of record, administrative e-mails and public comments, recordings of the PUC Public Hearing conducted on February 9, 2012 and relevant business meetings, applicable agendas and minutes, and testimonies and briefs presented by the parties. Various documents filed by Applicants have been filed "under seal" and with a claim of confidentiality. All such documents are not publicly discloseable pursuant to the Commission's Rules relating to the Protection of Confidential Information in Regulatory Proceedings.

Commission ordered TeleGuam to file an amended general exchange tariff which clearly indicates that its provisions are applicable to Telecom.<sup>9</sup>

8. 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. If the Joint Application herein is approved by the PUC, no further amendment of General Exchange Tariff No. 1 concerning its applicability to Telecom will be required.
9. If the PUC approves the transfer of the COA and ETC to TeleGuam, the proposed organizational structure of the incumbent local exchange carrier on Guam will be as indicated in Exhibit "A" attached hereto.
10. 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.<sup>10</sup>
11. On February 6, 2012, Pacific Data Systems Inc., through its President John Day, filed written comments regarding the Joint Application.<sup>11</sup> The comments raised issues concerning confusion in the nature of the GTA corporate organization, and past alleged violations of GTA Telecom of GPUC Rules, Guam Law, and PDS-GTA Interconnection Agreement. PDS raised further concerns as to how the new GTA corporate structure would comply with the Commission's Affiliated Transaction Rules (adopted on February 1, 2007 under Docket 05-01) or how these rules would now have to be changed to insure proper financial and operational oversight of the new "combined" TeleGuam.<sup>12</sup>

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<sup>9</sup> Joint Application at p. 8.

<sup>10</sup> 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.

<sup>11</sup> Public Comments of PDS, GTA Docket 11-14, filed February 6, 2012.

<sup>12</sup> Id.

12. 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. The ALJ questioned the respective parties concerning their testimonies.

### DESCRIPTION OF THE TRANSACTION

13. In their supporting documents, applicants filed a “Draft 2011 Assignment and Contribution Agreement.”<sup>13</sup>
14. At the public hearing conducted by the PUC on February 9, 2012, the Applicants stated for the record that, prior to PUC action on this matter, TeleGuam and its subsidiaries, including GTA Services LLC [hereinafter “Services”], Telecom, and Pulse Mobile LLC [“Pulse”] would all execute the Assignment and Contribution Agreement.
15. On March 16, 2012, Applicants submitted an executed copy of the Assignment and Contribution Agreement to the Commission.<sup>14</sup> Thereunder, Services, Pulse 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.<sup>15</sup>
16. Among the assets which Telecom transfers and assigns to TeleGuam are the Certificate of Authority and the Eligible Telecommunications Carrier Certificate.<sup>16</sup> TeleGuam also assumes various liabilities of Telecom, including accounts payable, employee accruals, and all other liabilities and obligations.<sup>17</sup>
17. As indicated, after this Assignment and Contribution Agreement is fully effective, and if the transaction is approved by the PUC, TeleGuam will withdraw the foreign registrations in Guam for all TeleGuam’s wholly owned subsidiaries, including Telecom. TeleGuam will become the sole entity providing

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<sup>13</sup> Applicants’ Confidential and Proprietary Exhibits, Draft 2011 Assignment and Contribution Agreement, Exhibit A, “GTA Docket 11-14, filed December 19, 2011.

<sup>14</sup> Assignment and Contribution Agreement, GTA Docket 11-14, submitted under seal, March 16, 2012.

<sup>15</sup> Id. at pgs. 1-7.

<sup>16</sup> Id. at p. 4.

<sup>17</sup> Id. at p. 5.

Telecommunications services under the COA and ETC Certificate issued by the Commission.<sup>18</sup>

### **THE ROLE OF THE PUC AND THE APPLICABLE LEGAL STANDARDS**

18. The duties of the PUC relative to issuance of Certificates of Authority for Telecommunications companies are set forth in 12 GCA §12103 [the Guam Telecommunications Act of 2004]. Pursuant thereto, a person is not authorized to provide or sell telecommunications services in Guam [with the exception of commercial mobile service] without a certificate of authority issued by the PUC.<sup>19</sup>
19. 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.<sup>20</sup>
20. 12 GCA §12103(g), provides as follows in pertinent part:

A telecommunications company shall not sell, assign, or transfer a certificate of authority, or any portion thereof, issued under this Article, or transfer control of a telecommunications company holding a certificate of authority issued under this Article, without the prior approval of the Commission and a determination by the Commission that the proposed sale, assignment or transfer satisfies the requirements for granting a certificate of authority under Subsection (c)..... (emphasis added).

21. Under the applicable statutory provisions, a company holding a certificate of authority may not be transfer said certificate without the prior approval of the Commission and a determination by the Commission that the proposed transfer satisfies the requirements for granting a certificate of authority.

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<sup>18</sup> Joint Application, GTA Docket 11-14, filed December 19, 2011, at p. 8.

<sup>19</sup> 12 GCA §12103(a)

<sup>20</sup> See PUC Certificate of Authority, Docket 05-02 [Exhibit "B" to Joint Application], issued February 28, 2005.

22. Before the sale or transfer of control can be effective, the Commission must make a determination that the proposed sale or transfer satisfies the requirements for granting a certificate of authority as set forth in 12 GCA §12103(c).

23. The two findings required by the Commission in subsection (c) are as follows:

(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.<sup>21</sup>

**TELEGUAM POSSESSES SUFFICIENT TECHNICAL, FINANCIAL AND  
MANAGERIAL RESOURCES AND ABILITIES TO PROVIDE  
TELECOMMUNICATIONS SERVICES IN GUAM FOR WHICH IT  
SEEKS A CERTIFICATE OF AUTHORITY**

24. The PUC has previously determined that the Applicants do possess sufficient technical, financial, and managerial resources and abilities to provide the telecommunications services in Guam for which a certificate of authority is sought. The Commission 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.<sup>22</sup>

25. Furthermore, the issue of whether TeleGuam possess sufficient technical, financial and managerial resources and abilities to provide telecommunications services in Guam was recently, and exhaustively, addressed in GTA Docket 11-09; there the Administrative Law Judge issued a Report analyzing the technical, financial and managerial resources of TeleGuam in detail, finding that TeleGuam did have sufficient financial and managerial resources to provide telecommunications services in Guam.<sup>23</sup>

26. The ALJ found that "by previously granting Certificates of Authority to TeleGuam Holdings LLC and Telecom [the Commission] determined that Applicants do

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<sup>21</sup> See 12 GCA §12103(c)(1) and (2).

<sup>22</sup> PUC Order, Docket No. 05-03, issued July 27, 2005.

<sup>23</sup> ALJ Report, GTA Docket 10-09, issued February 18, 2011, pgs. 9-11 and 15-17.

possess sufficient financial resources to provide the telecommunications services covered by the COA.<sup>24</sup> The Commission adopted the findings of the ALJ.<sup>25</sup>

27. Applicants have supported the adequacy of their financial resources by submitting Financial Statements for 2008-2011 along with their Application.<sup>26</sup>
28. In addition, Applicants have submitted their Operating Budget with Revenue and Expense Projections.<sup>27</sup> The financial records submitted by Applicants indicate that they possess the necessary financial resources to provide telecommunications services in Guam.
29. 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.<sup>28</sup> 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.
30. The ALJ is satisfied that Applicants have made a sufficient showing that TeleGuam will continue to possess sufficient technical, managerial, and financial resources to provide the telecommunications services to the people of Guam under the Certificate of Authority after its transfer from Telecom to TeleGuam.

**APPROVAL BY THE PUC OF THE TRANSFER OF THE CERTIFICATE OF  
AUTHORITY FROM TELECOM TO TELEGUAM IS NOT CONTRARY TO  
THE PUBLIC INTEREST**

31. Under the applicable statutory standards, the PUC must determine whether the transfer of the Certificate of Authority to TeleGuam is "not contrary to the Public Interest."

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<sup>24</sup> Id. at p. 11, ¶50(i).

<sup>25</sup> PUC Order, GTA Docket 10-09, issued February 21, 2011, Ordering Provisions ¶2.

<sup>26</sup> Exhibit "F" to Confidential and Proprietary Exhibits, GTA Docket 11-14, filed December 19, 2011.

<sup>27</sup> Exhibit "G" to Confidential and Proprietary Exhibits, GTA Docket 11-14, filed December 19, 2011.

<sup>28</sup> Joint Application, Exhibit "E", GTA Docket 11-14, filed December 19, 2011.

32. In written comments submitted on February 6, 2012, Pacific Data Systems Inc. [PDS] raised numerous concerns regarding the operations of Applicants. Concerns involve: (1) the “confusing nature of the GTA Corporate organization”; (2) past violations by Telecom of GPUC rules, Guam law, and the PDS – GTA Interconnection Agreement; and (3) failure by Applicants to indicate how the new GTA corporate structure will comply with the Commission’s Affiliate Transaction Rules (adopted on February 1, 2007 in Docket 05-01).<sup>29</sup>
33. In addition, John Day, the President of PDS, proffered testimony at the public hearing conducted by the PUC on February 9, 2012, further explaining the foregoing contentions.
34. 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.
35. PDS is correct that Telecom’s statement at pages 6 and 11 of the Joint Application [that the Commission has “not found a single violation of any law, rule, regulation or regulatory order by Telecom”] is not technically correct. The Commission did find certain violations by Telecom in Docket 08-11 and 09-3. 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.<sup>30</sup>
36. At the public hearing, PDS raised other concerns about GTA’s alleged violation of tariff filing requirements and filings of annual certifications; the Commission has sought to address tariff issues in Docket 05-01. In the Order issued February 11, 2012, the Commission 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.<sup>31</sup> The issues raised by PDS do not establish that approval of the transfer of the COA to TeleGuam would be contrary to the public interest.

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<sup>29</sup> PDS Public Comments, GTA Docket 11-14, filed February 6, 2012.

<sup>30</sup> 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.”

<sup>31</sup> PUC Order, Docket 05-01 [GTA General Regulatory Docket, filed January 11, 2012].



37. In both its public and written comments, PDS raises a concern as to how the new GTA corporate structure will comply with the Commission's Affiliate Transaction Rules, or how those Rules must now be changed "to insure proper financial and operational oversight of the new "combined" TeleGuam":

"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 interest and to the primary goal of the Commission which is to promote competition."<sup>32</sup>

38. 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. PDS does, however, raise a legitimate concern as to whether the current Affiliate Transaction Rules are adequate to address the planned GPA corporate reorganization.
39. On February 21, 2012, Applicants filed herein their Supplemental Brief in Support of the Joint Application.<sup>33</sup> Therein, Applicants present a convincing argument that, even after their 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

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<sup>32</sup> PDS Public Comments, GTA Docket 11-14, filed February 6, 2012.

<sup>33</sup> Applicants' Supplemental Brief in Support of 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, GTA Docket 11-14, filed February 21, 2012.

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.<sup>34</sup>

40. 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.<sup>35</sup>
41. 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.”

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.<sup>36</sup>

42. 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.
43. 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

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<sup>34</sup> Id. at p. 4.

<sup>35</sup> See Rules 2, 4(d) and 7 of the Affiliate Transaction Rules.

<sup>36</sup> Id. at Rules 5 and 6.

and non-regulated activities in accordance with 47 C.F.R. Part 32 and 47 C.F.R. Part 64.

44. 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.<sup>37</sup> TeleGuam will still be required to utilize cost allocation standards for apportioning costs between regulated and non-regulated activities. 47 U.S.C. §32.23(c) provides that when a non-regulated activity does involve the joint or common use of assets and resources in the provision of regulated and non-regulated products and services, carriers shall account for those activities within accounts prescribed in this system for telephone company operations..." TeleGuam does indicate that it will "need to revise its CAM Cost Apportionment Table to add the additional pools associated with each of the unincorporated non-regulated division for accounts." However, the underlying method of compliance with the FDC (fully distributed cost) does not change.<sup>38</sup>
45. TeleGuam indicates that, to effect the migration of valuation at FDC under Rule 8 of the GPUC Joint Cost Rules to FDC under Rule 7 of cost allocation rules for services currently provided by Telecom to what are now its affiliates but will become unincorporated non-regulated divisions of TeleGuam after the consolidation, TeleGuam will revise the Telecom CAM to reflect the changes discussed and submit the TeleGuam CAM to the Commission for review.<sup>39</sup>
46. TeleGuam further requests that, since it annually closes its books at the end of February for the preceding year, that the PUC permit TeleGuam to file its updates to the CAM in the month of March following the reporting year.<sup>40</sup>
47. Along with its Supplemental Brief in Support of the Joint Application, Telecom has also submitted exhibits K and L (under seal).<sup>41</sup> Therein, Telecom indicates that it 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

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<sup>37</sup> Supplemental Briefing in Support of the Joint Application, p. 7.

<sup>38</sup> Id. at p. 10.

<sup>39</sup> Id. at p. 11.

<sup>40</sup> Id. at p. 13.

<sup>41</sup> Submission under Seal of Exhibit K and L in support of Joint Application, GTA Docket 11-14, filed February 21, 2012.

Universal Service Support to GTA by the FCC and Universal Service Administrative Company. The auditing procedures concern GTA's compliance with the accounting and reporting requirements of 47 C.F.R. Part 32.<sup>42</sup>

48. The ALJ concludes that 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.<sup>43</sup>

#### **REQUEST FOR TRANSFER OF THE ETC CERTIFICATE BY PUC TO TELEGUAM**

49. 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.<sup>44</sup>
50. 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.<sup>45</sup> 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. However, all such terms and conditions applicable to the ETC Certificate for Telecom shall continue to bind TeleGuam, and all applicable federal law requirements to such 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.

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<sup>42</sup> Id.

<sup>43</sup> Supplemental Brief, GTA Docket 11-14 at p. 11.

<sup>44</sup> PUC "Use Certification", GTA Docket 11-10, issued by Chairman Jeffrey C. Johnson on September 19, 2011.

<sup>45</sup> 47 U.S.C. §§214(e)(1) and (e)(4).

## COMPLIANCE WITH ASSET PURCHASE AGREEMENT

51. When the Guam Telephone Authority was privatized, certain requirements were imposed upon TeleGuam Holdings LLC by virtue of the Asset Purchase Agreement between GTA and TeleGuam. 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.”<sup>46</sup>
52. 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.” In its public testimony, PDS raised a concern that TeleGuam has not deployed such WiFi technology in the public schools and libraries.
53. In addition, on February 22, 2012, PUC Counsel received an email inquiry from Vincent Dela Cruz, Data Processing Manger for the Guam Department of Education, as to the status of any requirement, if any, that GTA provide wireless access to GDOE schools.<sup>47</sup> Mr. Dela Cruz subsequently indicated that it was Mr. John Day, President of PDS, that brought this issue to Mr. Dela Cruz’s attention.<sup>48</sup>
54. 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.<sup>49</sup>

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<sup>46</sup> 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.

<sup>47</sup> Email from Vincent Dela Cruz to Frederick J. Horecky dated February 20, 2012, regarding “GDOE Wireless School Needs.”

<sup>48</sup> Email from Vincent Dela Cruz to Frederick J. Horecky dated February 22, 2012, re: “GDOE Wireless School Needs.”

<sup>49</sup> ALJ Report, GTA Docket 10-09, ¶78, dated February 18, 2011.

55. The Asset Purchase Agreement makes any requirement for the deployment of WiFi technology conditional and based on the consideration of many different factors. Whether such deployment is “commercially reasonable”, within the receptivity of customers, or within the financial condition of GTA have not been established in the record herein. At present time, the ALJ does not believe that TeleGuam has been shown to be in non-compliance with any requirements under the Asset Purchase Agreement to deploy WiFi technology, based upon the conditional nature of such duty. In any event, even a showing of non-compliance with such requirement would not necessarily support a conclusion that the transfer of the COA from Telecom to TeleGuam is “contrary to the public interest.”

### **RECOMMENDATIONS**

56. The ALJ recommends that the PUC approve the Joint Application of Telecom and TeleGuam to transfer the Certificate of Authority presently held by Telecom to TeleGuam.
57. PUC should determine that 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.
58. The transfer of the Certificate of Authority from Telecom to TeleGuam is not contrary to the public interest.
59. Pursuant to its authority under the Federal Communications Act, the PUC should, upon completion of all of the business transactions set forth in the application, approve the transfer of the Eligible Telecommunications Certificate from Telecom to TeleGuam, and designate TeleGuam as a common carrier that meets applicable requirements as an eligible telecommunications carrier.
60. Authorization for Applicants to complete transfer of the COA and ETC Certification must be 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.

61. Approval of the transfer of the COA to TeleGuam herein should also be 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.
62. 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.
63. 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, in accordance with Rule 9 of the Affiliate Transaction Rules.

64. The ALJ has prepared an Order for the Commissioners' consideration which would approve the Joint Application of Applicants, and the transfer of the COA and ETC Certification from Telecom to TeleGuam, subject to the conditions set forth herein.

Dated this 21st day of March, 2012.

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Frederick J. Horecky  
Administrative Law Judge