

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)	GTA DOCKET 11-05
)	
GTA TELECOM LLC, GENERAL EXCHANGE TARIFF NO. 1, TARIFF TRANSMITTAL NO. 17)	SUPPLEMENTAL PUC COUNSEL REPORT
)	

INTRODUCTION

1. This matter came before the Guam Public Utilities Commission [PUC] upon GTA Telecom LLC's ["GTA"] filing of Tariff Transmittal No. 17 [Promotional Offering, Vertical Calling Services].¹
2. On June 17, 2011, PUC Counsel issued his report herein, which report detailed the background of this docket and recommended PUC approval of GTA's Promotional Offering to Business Customers for the bundling of their telephone services with free Vertical Calling Services.²
3. PUC received public comments on this docket at its regular business meeting of June 20, 2011, and received additional comments relative to issues in this Docket. ³
4. Upon the recommendation of PUC Counsel, at its June 20, 2011 meeting, the PUC deferred action on this matter pending review of the additional filed comments.

ADDITIONAL COMMENTS/PROCEEDINGS

5. On June 20, 2011, Pacific Data Systems [PDS] filed Public Comments re: GTA Telecom LLC Tariff Transmittal #17.⁴
6. In its comments PDS raises arguments that: (1) applicant GTA Telecom LLC has never filed a tariff with the GPUC; the PUC should not approve tariff changes to the TeleGuam Holdings LLC tariff that are meant for GTA Telecom LLC. (2) the proposed tariff change would have the effect of allowing a regulated company,

¹ GTA Tariff Transmittal No. 17, GTA Docket 11-05, filed May 13, 2011.

² PUC Counsel Report, GTA Docket 11-05, filed June 17, 2011.

³ Tape of PUC Regular Business Meeting on June 20, 2011.

⁴ PDS Public Comments re: GTA Telecom LLC Tariff Transmittal #17, GTA Docket 11-05, filed June 20, 2011.

GTA Telecom LLC, to “cross-subsidize” unregulated affiliated companies (i.e. GTA Services and Pulse Mobile) through the provision of free regulated services [Vertical Calling Services]. Such cost subsidization violates PUC Affiliated Transaction Rule #5.

7. As a third argument, PDS contends that GTA Telecom proposes to offer free regulated services (Vertical Calling Services) when customers purchase unregulated services from GTA Telecom affiliated companies. The proposed tariff violates 12 GCA §12105(c) since the rates proposed by GTA for bundled Vertical Calling Services are less than GTA Telecom LLC’s cost to provide these services. The offering of services below cost is anti-competitive and a violation of GPUC and FCC rules.
8. PDS, through the testimony of its President John Day, expanded upon these written public comments at the PUC meeting of June 20, 2011. PDS claimed that GTA is not complying with law because it has failed to file a tariff with the PUC. Because GTA is taking regulated services (vertical calling services), and discounting them to zero to entice customers to buy unregulated services, it would violate Affiliate Transaction Rule #5 (which forbids cross-subsidization between affiliated companies). Finally, providing “free” regulated services is unreasonable pursuant to 12 GCA §12105(c) and is anti-competitive.⁵
9. On July 1, 2011, GTA Telecom LLC filed its Reply Comments in Support of Tariff Transmittal #17.⁶
10. GTA argues that General Exchange Tariff No. 1 is applicable to GTA Telecom LLC. While the General Exchange Tariff is in the name of TeleGuam Holdings LLC, the tariff also indicates that it applies to entities d/b/a or doing business as GTA. The tariff was intended to apply to the regulated services provided by GTA. Furthermore, the section on application of the Tariff applies its rules and regulations expressly to “the services and facilities...provided by GTA...in the U.S. Territory of Guam.”⁷
11. GTA contends that it is not violating the prohibition on “cross-subsidization” contained in Affiliate Transaction Rule #5. There has been no revenue that has been transferred from GTA Telecom LLC to any of its affiliates. The discounted vertical

⁵ Transcription of PUC Regular Meeting of June 20, 2011.

⁶ GTA Telecom LLC Reply Comments, Tariff Transmittal #17, GTA Docket 11-05, filed July 1, 2011.

⁷ Id. at p. 1.

features revenue will be reflected as a revenue reduction in the books of GTA Telecom LLC and is in compliance of Rule #5.⁸

12. GTA further contends that its tariff does not discriminate in violation of 12 GCA §12105(c) GTA is allowing all similarly situated customers to bundle their business services to receive a discount off vertical features. Furthermore, all other carriers have the ability to offer promotional offerings that include waiving or reducing non-recurring and/or recurring charges.
13. This matter is now fully before the PUC for resolution.

ANALYSIS

14. The PUC has previously rejected the argument that GTA General Exchange Tariff #1 is not applicable to GTA Telecom LLC. In numerous GTA Dockets, including, most recently GTA Docket 11-04 [GTA Telecom LLC Individual Case Basis Filing] the PUC has determined that General Exchange Tariff #1 is applicable to GTA Telecom, and that GTA Telecom LLC is required to fully comply with such Tariff.⁹
15. To put this matter in perspective, the GTA proposal is only for a temporary six month tariff that ends December 31, 2011. As provided in GET#1, it is filed as a “promotional” tariff and is designed to attract new customers, and it specifically references bundling of product offerings.¹⁰
16. PDS claims that GTA, by offering free regulated services (Vertical Calling Services) to customers who purchase unregulated services from GTA Telecom is “cross-subsidizing an unregulated affiliated operating company.” Counsel does not concur that there is cross-subsidization or any violation of PUC Affiliate Transaction Rule #5.
17. Rule #5 of the Affiliate Transaction Rules provides: “A Dominant Carrier shall not use revenues from regulated services to subsidize the services or products of its Affiliates.” As GTA’s Reply Comments point out, GTA will not be using revenue from regulated service to subsidize the services of its affiliates. It is not transferring any revenue from GTA Telecom LLC to any of its affiliates: “The discounted

⁸ Id. at p. 2.

⁹ ALJ Report, GTA Docket 11-04, GTA Telecom LLC Individual Case Basis Filing, filed May 13, 2011; PUC Order Docket 11-04, Order Re: PDS Request for Reconsideration/Re-hearing and IT&E Petition for Re-hearing, adopted May 16, 2011.

¹⁰ GTA Tariff Transmittal No. 17, GTA Docket 11-05, General Exchange Tariff No. 1 at p. 71.

vertical features revenue will be reflected as a revenue reduction in the books of GTA Telecom LLC..."¹¹

18. Finally, PDS argues that GTA, by offering free regulated services (Vertical Calling Services) when customers bundle unregulated services, violates the "reasonableness" test of 12 GCA §12105(c). The provision of services below cost, and particularly for free, is "anti-competitive."
19. Counsel does not find any violation of 12 GCA §12105(c). The "Promotional Offering" provision in GTA General Exchange Tariff #1 specifically provides that promotional offering may "waive or reduce non-recurring and/or recurring charges."
20. What GTA has done here is to temporarily waive certain vertical calling service charges for business customers who bundle various GTA services. Such a promotional offering is expressly provided for, and justified by, General Exchange Tariff No. 1.
21. Previously, the PUC approved certain discounts to residential customers for provision of a CAP line and for subscriber relocation of primary voice service.¹² GET #1 provides that GTA may bundle services under a promotional offering. It may also temporarily reduce or even waive charges to attract new customers or to retain existing customers.

RECOMMENDATIONS

22. The comments filed by the parties on June 20, 2011 and thereafter have not changed Counsel's opinion; he continues to recommend that the PUC should approve Tariff Transmittal No. 17, GTA's Promotional Offering to business customers who bundle their telephone services with free vertical calling services.
23. Tariff Transmittal No. 17 should be effective for the period of June 12, 2011 through December 31, 2011.

¹¹ GTA Reply Comments Re: Pacific Data Systems Public Comments, Tariff Transmittal #17, filed July 1, 2011 at p. 3.

¹² PUC Order Re: Tariff Transmittal No. 16, GTA Docket 11-02, adopted March 21, 2011; PUC Order Re: Tariff Transmittal No. 14, GTA Docket 10-05, adopted July 27, 2010.

24. However, should GTA seek to extend the promotional offering beyond December 31, 2011, it should first obtain the prior approval of the PUC.
25. A draft Order is submitted to the Commission for its consideration.

Dated this 7th day of July, 2011.

Frederick J. Horecky
PUC Legal Counsel