

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF:	)	GTA DOCKET 11-04
	)	
GTA TELECOM LLC INDIVIDUAL	)	ALJ REPORT
CASE BASIS FILING	)	
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**INTRODUCTION**

1. This matter comes before the Guam Public Utilities Commission [PUC] pursuant to the Order issued by the PUC on April 18, 2011, which approved the filing of GTA Telecom LLC [GTA] to establish an Individual Case Basis arrangement with the Guam Department of Education [DOE] pursuant to GTA's ICB Tariff.<sup>1</sup>
2. GTA's proposed tariff for ICB arrangements was previously approved by the PUC in Docket 05-03. The Individual Case Basis Tariff, originally filed by GTA as Tariff Transmittal No. 11 on December 1, 2008, contains three conditions: a] ICB's will be offered only to business or government customers having or ordering more than 10 access lines; b] Rates for services provided under competitive bids shall not exceed the tariff prices where specific charges are provided in the tariff; c] The ICB prices contained in any contract should be available to any similarly situation customer.<sup>2</sup>

**BACKGROUND**

3. In its April 18, 2011 Order, the PUC determined that GTA's proposed ICB arrangement with DOE satisfied the three conditions of the ICB tariff.<sup>3</sup>
4. The PUC issued findings that GTA's ICB arrangement with DOE: (a) offered more than ten access lines to a government customer, DOE; (b) offered a per-line cost to DOE that did not exceed the tariff prices provided in GTA's General Exchange Tariff No. 1;<sup>4</sup> and (c) contained a certification by GTA that the ICB prices contained

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<sup>1</sup> PUC Order, GTA Docket 11-04 [GTA Telecom LLC Individual Case Basis Filing], issued April 18, 2011.

<sup>2</sup> GTA Telecom LLC Filing of Individual Case Basis Tariff, filed December 1, 2008.

<sup>3</sup> PUC Order, GTA Docket 11-04, issued April 18, 2011, at p. 2.

<sup>4</sup> Id.

in the arrangement with DOE would be available to any similarly situated customer.

5. In addition, in compliance with the PUC Order issued October 3, 2008, GTA had filed an analysis which established that the DOE contract prices exceed GTA's incremental cost as determined using the long-run incremental cost [LRIC] standard.
6. The "LRIC-like" filed by GTA demonstrated that the average cost per loop offered by GTA to DOE is above the average cost per line developed in its LRIC study. The offered contract price to DOE exceeded the incremental cost as determined using the LRIC-like Georgetown criteria and standards.<sup>5</sup>
7. The Commission, finding that all of the requirements for the tariff as set forth in the GCG Report of March 10, 2008 had been satisfied, approved GTA's Individual Case Basis Filing with DOE.<sup>6</sup>
8. On April 28, 2011, Pacific Data Systems ["PDS"] filed a Request for Reconsideration and/or Rehearing.<sup>7</sup> On the same date, PTI Pacifica Inc. dba IT&E ["ITE"] filed its Petition for Re-Hearing.<sup>8</sup>
9. PDS and IT&E file their requests pursuant to Rules 36 and 37 of the PUC Rules for Practice and Procedure. PDS alleges that PUC "may" have violated its processes in the handling of this filing, and that serious defects exist in the original GTA Telecom filing and the process used by the Commission to review/approve the filing..." PDS seeks rehearing to allow it to bring "additional pertinent facts and necessary considerations" to the attention of the Commission.<sup>9</sup> IT&E also raises notice issues and suggests that GTA's ICB Tariff is not in effect due to an alleged lack of approval by the PUC ALJ.<sup>10</sup>
10. On May 9, 2011, GTA filed its "Position of GTA" in response to the Requests of PDS and IT&E.<sup>11</sup> GTA contends that it has complied with all requirements of the PUC with regard to the ICB Tariff and the ICB Arrangement with DOE.<sup>12</sup> The ALJ now

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<sup>5</sup> GTA Petition for Individual Case Basis Filing, GTA Docket 11-04, Exhibit B and Exhibit 2B.

<sup>6</sup> PUC Order, GTA Docket 11-04, issued April 18, 2011, at p. 3.

<sup>7</sup> PDS Request for Reconsideration and/or Rehearing, GTA Docket 11-04, dated April 28, 2011.

<sup>8</sup> ITE Petition for Re-Hearing, GTA Docket 11-04, filed April 28, 2011.

<sup>9</sup> PDS Request for Reconsideration and/or Rehearing, GTA Docket 11-04, dated April 28, 2011, at p. 1.

<sup>10</sup> ITE Petition for Re-Hearing, GTA Docket 11-04, filed April 28, 2011.

<sup>11</sup> GTA Telecom LLC "Position of GTA, GTA Docket 11-04, filed May 9, 2011.

<sup>12</sup> Id. at p. 1.

issues this Report to address the issues raised in PDS' and IT&E's Requests for Reconsideration and/or Rehearing.

### DISCUSSION

11. The ALJ shall address each of the issues raised in the PDS and IT&E Requests for Reconsideration/Re-Hearing.

#### 1. Defective Filing

12. PDS claims in its Request that "upon its face the GTA Telecom LLC filing with the GPUC is defective since it requests approval for an ICB arrangement that was proposed by and awarded to TeleGuam Holdings, LLC by Guam Department of Education not GTA Telecom LLC."<sup>13</sup>
13. On April 9, 2011, PDS was provided with a copy of the Agenda for the PUC Meeting of April 18, 2011. The Agenda, which PDS received, advised it that GTA Docket 11-04, GTA Petition for Approval of Individual Case Basis/DOE, would be on the Agenda and considered at the PUC meeting of April 18, 2011. The Agenda also indicated that GTA Telecom LLC was the moving party for the Petition for Approval of Individual Case Basis Arrangement with DOE.
14. If the Petition was defective "on its face", PDS knew of such defect before the PUC meeting on April 18<sup>th</sup> and could have raised such issue to the PUC prior to the hearing. If PDS believed that it needed further information concerning the Petition, it could have requested that the PUC continue the consideration of this matter.
15. PDS claims a "notice" violation in that notice of the ICB Filing was not provided to interested parties, nor "did the Commission solicit public comment" on the filing. PDS does not explain in its Request what interest it claims in GTA's ICB arrangement, how it is affected by such filing, or why it should be entitled to notice. Furthermore, PDS does not cite any specific statute, rule, or regulation which entitles it to notice. PUC did publish notice in the Pacific Daily News of the April 18 meeting in accordance with the Open Government Law.<sup>14</sup>
16. GTA's Filing herein is not a Tariff filing, but a compliance filing to demonstrate that it complies with the requirements of the ICB Tariff. There is no statute which gives

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<sup>13</sup> PDS Request for Reconsideration and/or Rehearing, GTA Docket 11-04, dated April 28, 2011, at p.2.

<sup>14</sup> The Agenda, which included specific reference to the GTA Telecom ICB filing, was published in the Pacific Daily News on April 11 and 14, 2011.

PDS the right to any particular manner of notice. Even with regard to tariff filings, no statutory notice is required to any party except the party filing the tariff.<sup>15</sup> There is no constitutional right to notice and hearing in rate-related matters if no statutory right to a hearing exists. Ohio Consumers' Counsel v. Public Utilities Commission, 111 Ohio St. 32 300, 856 N.E. 2d 213, 222 (Supreme Court of Ohio 2006).

17. PDS' allegation that it was deprived of notice and opportunity to respond is incorrect; PDS sent numerous email correspondences to the PUC prior to the hearing raising issues in opposition to the GTA Petition. On April 12, PDS sent an email to the PUC complaining that GTA did not adhere to the language of the ICB Order in failing to obtain approval for the ICB tariff, and that "GTA does not yet have authority to provide ICB pricing to any customer until this has been done."<sup>16</sup>
18. IT&E also claims a lack of notice in that "[It] does not appear that either a copy of the proposed tariff request and/or counsel report were available for inspection prior to the hearing which prevented effective public comment."<sup>17</sup> However, IT&E never requested that the PUC provide it with copies of GTA's ICB Arrangement or the PUC Counsel Report. Portions of GTA's filing and the PUC Counsel were available to IT&E prior to the April 18 hearing, had it so requested.<sup>18</sup> IT&E has not pointed to any statute which entitles it to notice of the GTA filing or to public comment.
19. In addition, a representative of PDS, Cork Vanderford, attended the PUC meeting on April 18, 2011. PDS raised no objection during the PUC meeting nor did it request any continuance. It did not raise any complaint alleging that GTA's petition was defective. On a Request for Reconsideration, it is not appropriate for a party to raise issues that could have been raised in a timely fashion. Even where a party is entitled to notice by statute, such notice is waived by such party appearing and participating in the proceedings, without objection to the sufficiency of the notice given. Consumers' Gas Co. v. Corporation Commission, City of Miami, 95 Okla. 57, 219 P. 126, 129 (Supreme Court of Oklahoma 1923). The method of issuing notice of hearing is generally discretionary, and will not be reversed unless exercised in "clear abuse of discretion." Eckre v. Public Service Commission, 247 N.W.2d 646, 664 (Supreme Court of North Dakota 1976).

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<sup>15</sup> 12 GCA §12106

<sup>16</sup> Email from John Day, PDS, to PDS Counsel dated April 12, 2011.

<sup>17</sup> ITE Petition for Re-Hearing, GTA Docket 11-04, filed April 28, 2011, at p. 1.

<sup>18</sup> PUC Counsel Report was filed with the Commission on April 14, 2011.

20. The Petition filed by GTA Telecom LLC was not defective. In its Order in Docket 05-3 [In the Matter of GTA Telecom General Tariff #1, Transmittal #11], issued February 15, 2008, the PUC indicated that GTA Telecom LLC had filed notice with the PUC on November 30, 2007 to implement new tariff provisions for individual case basis [ICB] arrangements. The PUC approved GTA Telecom LLC's proposed tariff for ICB arrangements.<sup>19</sup> In the prior proceeding, Docket No. 05-3, PUC expressly held that the ICB tariff was approved and applicable to GTA Telecom LLC.<sup>20</sup>
21. PDS is free to raise whatever arguments it desires in the procurement process that "the original offer made by Teleguam Holdings LLC to the Guam Department of Education" is not a legitimate bid. PUC is not a procurement appeals board and does not resolve such issues.
22. PDS seeks to make a technical distinction between TeleGuam Holdings LLC and GTA Telecom LLC. As the PUC has previously determined, GTA Telecom is "a wholly-owned subsidiary of TeleGuam..."<sup>21</sup> On July 27, 2005, the PUC approved the application of TeleGuam Holdings LLC to transfer its certificate of authority to GTA Telecom LLC.<sup>22</sup>
23. There is an applicable tariff for services provided for GTA Telecom LLC filed with the Commission. GTA General Exchange Tariff #1 is applicable to GTA Telecom. The PUC has already determined that the ICB Tariff is applicable to GTA Telecom. The PUC, in approving the transfer of TeleGuam's Certificate of Authority to GTA Telecom, required GTA Telecom LLC to fully comply with its contractual, statutory and regulatory duties.<sup>23</sup>
24. Pursuant to 12 GCA §12106, a telecommunication company cannot provide or resell telecommunications services without tariffs relating to such telecommunications services having been filed.<sup>24</sup> In providing telecommunications services pursuant to a certificate of authority, GTA Telecom LLC must comply with the tariffs in General Exchange Tariff #1. In various dockets before the PUC, GTA Telecom LLC has

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<sup>19</sup> PUC Order, Docket 05-3 [In the Matter of GTA Telecom General Tariff #1, Transmittal #11], issued February 15, 2008 at p. 1.

<sup>20</sup> Id.

<sup>21</sup> PUC Order, Docket 05-03 [In the Matter of Application of TeleGuam Holdings LLC and GTA Telecom LLC to Transfer Certificate of Authority], issued July 27, 2005, at p. 2.

<sup>22</sup> Id. at p.2.

<sup>23</sup> Id. at p. 4.

<sup>24</sup> 12 GCA §12106(c)

proposed tariff revisions to GTA General Exchange Tariff #1, which revisions have been approved by the PUC.<sup>25</sup>

25. There is no basis for PDS' contention that GTA Telecom's Petition herein is defective.

## **2. The Authority of GTA Telecom LLC to Offer ICB Arrangements**

26. PDS claims that there was never a final approval by the ALJ finding that the ICB tariff had been filed with the PUC in a form consistent with the PUC order issued February 15, 2008. IT&E also argues that no finding was ever issued by the ALJ that the ICB tariff filed was consistent with the PUC Order, nor did GTA file the ICB tariff with the proper language. To the contrary, GTA Telecom did properly file its ICB Tariff, and that tariff has been finally approved by the PUC.
27. In its February 15, 2008 Order, the PUC approved GTA Telecom LLC's tariff for ICB arrangements, subject to certain amendments recommended by Georgetown Consulting Group [GCG], and further indicated that the tariff would be effective upon the ALJ's finding that it had been filed with PUC in a form consistent with the Order.<sup>26</sup>
28. However, on October 3, 2008, the PUC issued a subsequent Order in Docket 05-3, an order which is not referenced by PDS or IT&E in their Requests for Reconsideration.<sup>27</sup> In that Order, the PUC recognized the ICB tariff had been approved subject to certain conditions. In its Order, the Commission ordered that: "on or before October 10, 2008, GTA shall file a revised tariff sheet [*Section 2 page 6*] which is consistent with this order." This subsequent Order only required filing of the revised tariff by GTA and no longer included any requirement that the ALJ approve the final form.<sup>28</sup>
29. To confirm the foregoing, there was a subsequent order issued by the ALJ on November 24, 2008.<sup>29</sup> Therein ALJ indicated that the October 3 Order had required that GTA file, on or before October 10, 2008 "a revised tariff sheet... consistent with this Order." The ALJ noted that GTA was not served with a copy of the October 3,

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<sup>25</sup> See GTA Docket 11-01, Tariff Transmittal No. 15 of GTA Telecom LLC; GTA Docket 11-02, Tariff Transmittal No. 16 of GTA Telecom LLC.

<sup>26</sup> PUC Order, Docket 05-3, issued February 15, 2008, at p. 1.

<sup>27</sup> PUC Order, Docket 05-3, issued October 3, 2008.

<sup>28</sup> Id. at p. 3.

<sup>29</sup> ALJ Order, Docket 05-3, issued November 24, 2008.

2008 Order until November 14, 2008; consequently, GTA was ordered to comply with the October 3, 2008 Order “on or before December 1, 2008.”<sup>30</sup>

30. Thus, the only further requirement imposed in regard to the ICB filing was that it be filed with the Commission, consistent with the October 3, 2008 Order. The PUC Orders subsequent to February 15, 2008 did not contain any requirement that there be further review by the ALJ or the PUC of the ICB filing.
31. In compliance with the November 24, 2008 Order, GTA did file Tariff Transmittal No. 11 [the ICB Tariff] with the PUC on December 1, 2008.<sup>31</sup> A copy of the filing was furnished to the ALJ. The ICB tariff filing included all three conditions required in the February 15, 2008 PUC Order.<sup>32</sup> Thereafter, neither the PUC nor the ALJ ever informed GTA that there was any problem or issue involving the ICB tariff, or that the tariff was somehow not in effect. The ALJ was provided with the tariff and did not require GTA to make any further revisions.
32. Even if other action had been contemplated by the PUC on the ICB filing, ICB tariff is now final by operation of law. GTA Telecom LLC is authorized to make a change in a rate or tariff “after thirty (30) days prior notice to the Commission...” At latest, the ICB tariff was fully in effect within 30 days after GTA filed it on December 1, 2008.<sup>33</sup> Furthermore, the Commission took no action to suspend the ICB tariff filed by GTA on December 1, 2008 for a period of four months thereafter.<sup>34</sup> The Individual Case Basis tariff filed by GTA on December 1, 2008 is final, conclusive, and binding.

### **3. PUC Costing Standards for ICB Pricing**

33. In this proceeding, PDS now complains about the ICB pricing criteria and standards that were adopted by the PUC in Docket 05-03. As PDS notes, the Georgetown Consulting Group, on March 10, 2008, provided an extensive memorandum to the PUC re: “Cost Support for Tariff Revisions-Individual Case Basis (ICB) Contract Filings.”<sup>35</sup> GCG filed such report pursuant to the PUC order of February 15, 2008, which authorized and directed the ALJ “to examine the need for specific guidelines

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<sup>30</sup> Id.

<sup>31</sup> GTA filing of Tariff Transmittal No. 11, ICB, dated December 1, 2008.

<sup>32</sup> Id.

<sup>33</sup> 12 GCA §12106(b).

<sup>34</sup> See 12 GCA §12106(e).

<sup>35</sup> GCG Report Re: Cost Support for Tariff Revisions-Individual Case Basis (ICB) Contract Filings, Docket 05-03, filed March 10, 2008.

to establish the level of analysis which will be required under GCG conditions #2.”<sup>36</sup> GCG Condition #2 was that GTA should, consistent with PUC’s Confidentiality Rules, file with PUC each ICB contract upon execution together with an analysis, which establishes that the contract prices exceed incremental cost [as determined using the LRIC (long run incremental cost) standard].<sup>37</sup>

34. Contrary to PDS’ contention, the type of LRIC model proposed by GCG was fully adopted by the PUC on October 3, 2008. The ICB pricing and the standards adopted by the Commission are already final and conclusive, and not subject to further review upon this Request for Reconsideration. As noted in the PUC Order in Docket 05-3, issued October 3, 2008:

“In its February 15, 2008 order, PUC also directed that its ALJ examine the need for specific guidelines to establish the level of analysis, which will be required to satisfy condition [b] above. On March 10, 2008, Georgetown issued a report, which recommended costing guidelines and the data, which GTA should provide to PUC for each ICB contract. The report is attached to this order. GTA has agreed to this Georgetown recommendation.”<sup>38</sup>

35. In its October 3, 2008 Order, the PUC expressly approved the guidelines set forth in the Georgetown Report issued March 10, 2008: “... GTA shall file with each ICB contract analysis, which is consistent with the guidelines set forth in the attached Georgetown Report.”<sup>39</sup> The PUC Order approved the criteria and analysis set forth in the Georgetown Report for all ICB filings.
36. The PUC did adopt the standards for ICB pricing, as set forth in the GCG Report, and those cost standards and pricing were final as of October 3, 2008. The ICB cost standards and pricings are not subject to any further review in this Docket, GTA Docket 11-04. ICB cost standards and pricing have already been finally established by virtue of the October 3, 2008 PUC Order. PDS cannot be permitted to relitigate ICB cost standards that were adopted in a final PUC Order over two and a half years ago.

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<sup>36</sup> PUC Order, Docket 05-3 [In the Matter of GTA Telecom General Tariff #1, Transmittal #11], filed February 15, 2008, at p. 1.

<sup>37</sup> ALJ Report, Docket 05-3, [In the matter of GTA Telecom General Tariff #1, Transmittal #11], filed February 15, 2008 at p. 2.

<sup>38</sup> PUC Order, Docket 05-3, issued October 3, 2008 at p. 2.

<sup>39</sup> Id. at p. 3.

37. PDS now claims that it was somehow “denied notice” because the March 10, 2008 GCG cost memorandum was not “forwarded to it” nor was there a formal rulemaking processes undertaking by the Commission. With regard to adoption of a tariff, there is no rule, law, or regulation which requires that there be a “formal rulemaking process” to be undertaken by the Commission. PDS has not established that any such legal requirement exists. The statutory process for adoption of tariffs is set forth in 12 GCA §12106.
38. PDS claims that had it “been aware of the suggested LRIC alternative model proposed by GCG in its memo of March 10, 2008,” it would have objected to the proposed formula.<sup>40</sup> Notwithstanding its protestations, PDS was fully aware of the proceedings conducted by the PUC in Docket 05-03. PDS had actual knowledge of the proceedings and submitted public comment to the PUC on GTA Tariff Transmittal No. 11 on January 25, 2008. Therein it responded to the tariff filing by GTA for ICB and the report and recommendations made by GCG dated January 7, 2008. It has specifically raised concerns about cost factors and pricing for the ICB.<sup>41</sup>
39. Furthermore, on January 28, 2008, PDS, through its attorneys, filed extensive Public Comment regarding GTA Tariff Transmittal No. 11.<sup>42</sup> Therein, PDS specifically raised concerns regarding the GCG recommendation that no LRIC cost study with regulatory approval be conducted by the Commission to approve ICB pricing. PDS further claimed that PUC approval of GTA’s ICB pricing without a cost study would be an abdication of the PUC duty to prevent any competitive pricing.
40. PDS raised numerous other concerns about ICB tariff pricing, including the argument that the cost study of baseline incremental costs for services should be required, ICB tariff pricing allegedly violated the Telecommunications Act, and that the PUC had a duty to determine whether ICB tariff pricing was appropriate.<sup>43</sup>
41. In his ALJ Report dated February 14, 2008, the ALJ addressed comments raised by PDS on January 25 and 28, 2008.<sup>44</sup>

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<sup>40</sup> PDS Request for Reconsideration and/or Rehearing, GTA Docket 11-04, filed April 28, 2011, at p. 3.

<sup>41</sup> PDS Letter to PUC, dated January 25, 2008, Re: Public Comment Regarding GTA Tariff Transmittal No. 11 to GTA GET #1.

<sup>42</sup> Public Comments filed by PDS attorneys, Shimizu, Canto, & Fisher, dated January 28, 2008, regarding GTA Tariff Transmittal No. 11.

<sup>43</sup> Id.

<sup>44</sup> ALJ Report, Docket 05-3 [In the Matter of GTA Telecom General Tariff #1, Transmittal #11], filed February 14, 2008 at pgs. 3-4.

42. In its February 15, 2008, Order [of which PDS was aware], the Commission specifically notified all parties that the ALJ would be undertaking an examination of the further need for specific guidelines to establish the level of analysis that would be required for ICB filings, including the analysis that establishes that contract prices exceed incremental cost as determined using the LRIC standard.
43. PDS was fully aware that the Commission intended to address the adjusting standards and the appropriate pricing model for the ICB tariff in Docket 05-03. PDS had actual knowledge that those issues were before the PUC and was required to take any steps it deemed necessary to protect its interest. On April 15, 2008, PDS representative John Day requested that the PUC Administrator provide him with a copy of the ALJ Report dated February 14, 2008, in Docket 05-03.<sup>45</sup> On April 18, the PUC Administrator provided Mr. Day with the ALJ Report and a copy of the PUC Order dated February 15, 2008. PDS was fully aware that the PUC intended to undertake further analysis of the specific guidelines that would be required for ICB filings. PDS cannot now attack costing standards adopted by the PUC for ICB arrangements in 2008. As GTA suggests, PDS should have taken steps to protect any interest it claimed in Docket 05-03 and intervened therein or filed further objections to the cost pricing standards adopted.<sup>46</sup>
44. Both PDS and its consultant misapprehend the nature of the cost analysis adopted by the PUC for ICB filings. PDS has submitted the statement of its Regulatory Consultant concerning “the need for the Commission to engage in a rulemaking process to clearly articulate the standards and guidelines that should be used in any LRIC model.” There is no issue in this proceeding before the Commission concerning standards or guidelines that should be used in the LRIC model. The issues concerning the appropriate standards and guidelines were fully resolved by the PUC order dated October 8, 2008 in Docket 05-03.
45. The letter from the PDS Consultant is not relevant to the issue of whether GTA satisfied the requirements for an ICB arrangement in GTA Docket 11-04. Particularly, on a motion for reconsideration, matters should not be raised which do not relate to the issues before the administrative body in the proceeding. PDS claims that the Consultant’s testimony gives insights into “the many issues that need to be considered by the Commission related to the LRIC studies and variables that should and should not be included in these types of LRIC models.” As

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<sup>45</sup> Email from John Day, PDS, to PUC Administrator re: ALJ Report on GTA Tariff Filing, dated April 15, 2008.

<sup>46</sup> GTA Telecom “Position of GTA”, GTA Docket 11-04, filed May 9, 2011, at p. 3.

indicated, there is no issue in this proceeding about variables to include in the LRIC model. The Commission has already adopted the proper standards and cost pricing, as set forth in the GCG Report of March 10, 2008, to govern the review of Petitions for ICB arrangements. Issues concerning the appropriate model and the variables to be included have already been resolved and are not now pending before the PUC.

46. It is untimely, after the Commission adopted the appropriate standards for an ICB arrangement, for PDS and IT&E to argue that there should be a formal rulemaking process or a “re-opening” of the proper LRIC model or standards.
47. PDS and its Consultant misapprehend the nature of the standard adopted by the Commission for review of ICB arrangements. Contrary to their assertions, Georgetown did not propose, nor did the Commission adopt, a standard LRIC model. The purpose of GCG’s letter dated March 10, 2008, was “to provide a recommendation on cost and guidelines and the data to be provided by GTA whenever it concludes an ICB contract negotiation.” However, Georgetown specifically indicated that it was not requiring an LRIC study to be done each time GTA applied for an ICB arrangement:

“LRIC studies tend to be relatively costly. They require modeling of the technologically ideal network using the latest equipment prices and most efficient engineering parameters. Companies of the size of GTA usually do not have the resources to perform these studies internally and engage consultants instead. The studies are also time consuming. Our experience is they may take a month or more of effort. Regulatory approval adds more time requirements. On the other hand, a competitive bidding situation such as contemplated in Tariff Transmittal No. 11, normally requires a fast turnaround. GTA simply could not respond in a timely fashion if it had to complete a LRIC study and gain Commission approval before it could bid. Further, GTA’s competitors do not face the same requirement. For these reasons, we recommend that GTA provide a demonstration that prices are above incremental cost to the Commission on request after the competitive bid has been awarded to GTA.”<sup>47</sup>

48. Furthermore, Georgetown indicated that the Commission could be assured that prices are not anti-competitive if GTA performed a more simple LRIC-like study

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<sup>47</sup> GCG Report, issued March 10, 2008, Re: Cost Support for Tariff Revisions-Individual Case Basis (ICB) Contract Filings, at p. 2.

using historical accounting data. This “rough justice” approach would avoid the need for a complex modeling exercise using the most up-to-date equipment cost inputs.” GCG then proceeds to outline the specific factors that would be included in the calculation for each service being offered as an ICB.<sup>48</sup>

49. PDS’ Consultant’s letter criticizes the statement in the PUC Counsel Report that “the Commission may be assured that prices are not anti-competitive if GTA performed a more simple LRIC-like study using historical accounting data.” The consultant alleges that this statement is “alarming” because historical data is almost by definition excluded from LRIC studies, which are based on forward-looking cost. The statement in Counsel’s Report was taken directly as a quote from GCG March 10, 2008 Report.<sup>49</sup> The PUC never adopted any requirement that GTA conduct a standard LRIC study.
50. The Georgetown standards and cost pricing materials have been adopted by the Commission. The issues which PDS and its consultant seek to raise are not open for review or consideration in this proceeding.
51. Neither PDS nor IT&E were denied due process in Docket 05-03. They had, or could have had, the opportunity to comment publicly. They were fully aware of the proceedings and the scope of the proceedings.

#### **4. Whether ICB pricing arrangements proposed by GTA violate FCC Rules**

52. PDS claims that “the pricing offer made to Guam Department of Education is a matter of public record and closer review of the ICB offer shows that it specifically excluded amounts for surcharges related to Subscriber Line Charges (SLC) and Universal Service Fund (USF). PDS claims that the proposed GTA Telecom ICB arrangement cannot exclude the surcharges unless telecom plans to exclude all other GTA customers from the surcharges.”<sup>50</sup>
53. This was a “matter of public record” contained in GTA’s bid to DOE. PDS could have raised this issue either before or at the PUC hearing of April 18, 2011. It failed to do so.

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<sup>48</sup> Id.

<sup>49</sup> PUC Counsel Report, GTA Docket 11-04, [In the Matter of: GTA Telecom LLC Individual Case Basis Filing], filed April 14, 2011, p. 3 [see par. 10, fn. 13].

<sup>50</sup> PDS Request for Reconsideration and/or Rehearing, GTA Docket 11-04, filed April 28, 2011 at p. 4.

54. In addition, PDS has not pointed to any specific FCC rule or regulation which GTA allegedly violated in its ICB arrangement. PDS claims that this “critical” information does not appear in the record of GTA Docket 11-04. Had PDS properly raised the issue, it would have appeared in the Docket.
55. GTA alleges that it has complied with the FCC requirements. Its proposal for Centrex and POTS line services does indicate placement of Subscriber Line Charges and Universal Service Fund surcharges. GTA does charge SLC and USF charges for Centrex and POTS services as required by FCC Regulations.<sup>51</sup>
56. PUC Counsel did present whatever material was supplied by PDS in his presentation to the PUC Commissioners on April 18, 2011. Counsel expressly presented the concern of PDS that the tariff had allegedly had not been finally approved by the ALJ.<sup>52</sup> Counsel presented that concern, but stated his opinion that the tariff was effective and did comply with the requirements that the Commission had noted. Had PDS brought any concerns to the Commission either before or during the meeting that the ICB pricing arrangements allegedly violated FCC rules, that concern could have been addressed by Counsel and considered by the Commission.

#### **5. Due Diligence by PUC for ICB Filing**

57. PDS contends that since this is the first ICB filing by GTA Telecom LLC, the Commission should hire “outside regulatory expertise” to review the technical filing. It is the Commission, not PDS, who determines which professional services are required by it in the performance of its duties.<sup>53</sup> The Commission has sufficient expertise to address the issues herein.
58. In this Motion for Reconsideration, PDS attempts to relitigate the validity and propriety of GTA’s ICB Tariff. That tariff was fully approved and validated previously by the Commission in Docket 05-03. The scope of inquiry in this docket is whether GTA’s proposed ICB arrangement with DOE complies with the requirements of the tariff. After careful review of the filing and cost pricing requirements established by GCG and approved by the Commission, the ALJ is satisfied that the ICB arrangement proposed by GTA with DOE is in full accordance with the requirements of the ICB tariff.

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<sup>51</sup> GTA Telecom “Position of GTA”, GTA Docket 11-04, filed May 9, 2011, at pgs. 3-4.

<sup>52</sup> See Transcript of April 18, 2011, PUC Meeting.

<sup>53</sup> 12 GCA §12002(a).

## **6. PDS Reply Comments to GTA Telecom**

59. On May 12, 2011, PDS filed its Reply Comments to GTA Telecom Response.<sup>54</sup> PDS has reiterated the same issues raised in its motion, and contends that GTA has not responded to those issues.<sup>55</sup>
60. However, as previously stated, PDS' contentions have not been raised in a timely manner. As to the "defective filing" claim, the gist of PDS' argument is that GTA TeleGuam is not a proper bidding entity and cannot provide services to GDOE. As indicated, it is not the role of PUC to determine if parties are proper bidding entities. The contention raised by PDS in no manner demonstrates that the GTA Telecom Petition for ICB arrangement was "defective." PUC has already held that the ICB tariff is applicable to GTA Telecom LLC.
61. Contrary to PDS' contention, no further approval of the GTA Telecom ICB is required. The PUC October 3, 2008 and November 24, 2008 Orders only required filing of the tariff by GTA Telecom; no further "approval" requirement was imposed. Furthermore, by law the ICB tariff was final thirty days after its filing.
62. PDS is barred and estopped from challenging ICB costing standards that were approved by the PUC on October 3, 2008.
63. PDS has not pointed to any specific statute, rule or regulation which entitled it to "notice" of every filing therein. As previously indicated, PDS was aware of April 4, 2008, that the Commission intended to further consider ICB costing standards. PDS took no steps to protect its alleged interest.
64. Contrary to PDS' assertion, GTA does charge a Subscriber Line Charge of \$9.20. See Addendum 1-Bid Form at Exhibit C [to Position of GTA.] If PDS has a complaint that FCC Rules were violated, it should file a complaint with the FCC.

## **CONCLUSION**

65. On April 18, 2011, the Commission issued an Order approving GTA's individual case basis filing dated March 31, 2011, finding that ICB arrangement proposed by GTA with the Department of Education satisfies the three ICB tariff conditions. It found that the GTA ICB filing established, through an LRIC-like study which

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<sup>54</sup> PDS Reply Comments to GTA Telecom LLC Response Comments, GTA Docket 11-04, filed May 12, 2011.

<sup>55</sup> Id.

complied with the requirements set forth in the March 10, 2008 GCG report, that that the prices per line for Centrex services offered to DOE exceeded GTA incremental costs.

66. Whether to rehear a matter is addressed to the discretion of administrative bodies such as the Public Utilities Commission. Only a showing of the clearest abuse of discretion can sustain an exception to that rule. Blas v. Guam Customs & Quarantine Agency, 2000 WL 344327 (Guam Terr.), 2000 Guam 12. Before the administrative power of reconsideration can be exercised, there is a requirement that “good cause” be shown.<sup>56</sup> Rule 39 of the PUC Rules for Procedure and Practice contains a similar requirement. After consideration of an application for rehearing or reconsideration, the Commission “shall determine whether good and sufficient cause has been shown by applicant for rehearing or reopening.”<sup>57</sup>
67. PDS and IT&E have not shown good and sufficient cause for the reconsideration, reopening, or rehearing of the PUC Order of April 18, 2011. The ALJ recommends that the Commission not exercise its discretion to reconsider, rehear, or reopen this matter. Neither PDS nor IT&E have demonstrated the applicability of any ground within Rule 37 to justify a rehearing in this matter. They have not shown that PUC committed any error in approving the ICB filing of GTA, or that any of the findings or conclusions of the PUC were erroneous. No newly discovered evidence has been prone to justify reconsideration. PDS’ Request for Reconsideration/Rehearing and the IT&E Petition for Re-hearing should be denied.

Dated this 13th day of May, 2011.

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Frederick J. Horecky  
Administrative Law Judge

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<sup>56</sup> Blas v. Customs & Quarantine Agency, supra, at p. 8.

<sup>57</sup> Rule 39 of the PUC Rules for Practice and Procedure.