

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



In the Matter of

GTA Docket 10-04

Joint Petition of GTA Telecom, LLC and Pulse Mobile, LLC for approval of the Wireless Interconnection and Reciprocal Compensation Agreement pursuant to Section 252(e) of the Telecommunications Act of 1996

PUC COUNSEL REPORT

Statement of the Facts

On March 15, 2010, GTA Telecom, LLC [GTA] and Pulse Mobile, LLC [MPULSE] filed a Joint Petition with the Guam Public Utilities Commission [PUC] for approval of their Wireless Interconnection and Reciprocal Compensation Agreement for the Territory of Guam pursuant to Section 252(e) of the Telecommunications Act of 1996.¹ The Commission previously approved the Wireless Interconnection and Reciprocal Compensation Agreement between GTA and GTA Wireless LLC by Order dated October 27, 2005.² Subsequently, "GTA Wireless, LLC" was renamed as "Pulse Mobile, LLC"; on February 1, 2007, the Commission approved Pulse Mobile, LLC as an "eligible telecommunications carrier" under the Federal Communications Act "...eligible to receive high-cost universal services support...".³

GTA and MPULSE now wish to enter into a new Wireless Interconnection and Reciprocal Compensation Agreement that will supersede the Agreement previously entered into by GTA and GTA Wireless, LLC. In their Petition, the parties indicate that their proposed Agreement was reached through voluntary negotiations without resort to mediation or arbitration and is submitted for approval pursuant to Section 252(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.⁴ The agreement indicates that GTA is the incumbent Local Exchange Carrier in Guam, as defined by the Federal Communications Commission; MPULSE is a Commercial Mobile Radio Service provider of two-way mobile communications operating in Guam.

¹ GTA & MPULSE Joint Petition for Approval of the Wireless Interconnection and Reciprocal Compensation Agreement, GTA Docket 10-04, filed March 15, 2010.

² PUC Order Approving Wireless Interconnection and Reciprocal Compensation Agreement between GTA Telecom, LLC and GTA Wireless, LLC, Docket 05-08, filed October 27, 2005.

³ Application of Pulse Mobile, LLC for Designation as an Eligible Telecommunications Carrier, Docket No. 06-8, ORDER APPROVING DESIGNATION, filed February 1, 2007.

⁴ Joint Petition of GTA & MPULSE, Id., at p. 1.

The parties desire to exchange calls between their networks and to establish Interconnection and Compensation arrangements for these calls.⁵

The Agreement sets forth the terms, conditions and rates under which MPULSE's wireless network and GTA's landline network will continue to be interconnected for the purpose of exchanging IntraMTA Traffic, provided that the service provided by MPULSE to its customers is two-way CMRS.⁶ The agreement provides for the routing of landline to wireless and wireless to landline local service area calls. A two-way trunk group is provided and provisioned between GTA's Agana Tandem Office Switch and MPULSE's point of presence in the Agana Exchange, with the Point of Interconnection designated at GTA's Agana Tandem Office Switch.⁷

With regard to "Compensation", the parties agree to bill each other for Local Traffic as described in the Agreement unless the local traffic exchanged between the parties is balanced and falls within an agreed upon threshold ("Traffic Balance Threshold"). Traffic Balance Threshold is reached when the Local Traffic exchanged, both directly and indirectly, falls within 55%/45% in either the wireless to landline or landline to wireless direction. The rate for Reciprocal Compensation is \$0.002863 per minute of use.⁸ For traffic subject to transit compensation, the rate for transiting compensation is \$0.0025 per minute of use.⁹

The Agreement has numerous standard commercial terms and conditions. The term of the agreement is for three years, which commences on the effective date.¹⁰ The agreement provides for interest due upon unpaid billing amounts and for certain other indemnification remedies. However, neither party is liable to the other for "Consequential Damages".¹¹ Liability is limited except in the case of "gross negligence or willful misconduct" for any loss, defect or equipment failure caused by the conduct of either party.¹² The parties provide for a dispute resolution procedure in accordance with the remedies available at law.¹³

A meeting was conducted between PUC Counsel and GTA representatives Eric Votaw and Dan Tydingco on April 8, 2010. The meeting was convened to address certain

⁵ Wireless Interconnection and Reciprocal Compensation Agreement between GTA & MPULSE, Article 1, par. 2.

⁶ Id. at Article 3, par. 3.2.

⁷ Id. at Article 4, par. 4.1.

⁸ Id. at Article 5, par. 5.1.

⁹ Id. at Article 5, par. 5.2.

¹⁰ Id. at Article 8, par. 8.1.

¹¹ Id. at Article 11, par. 11.1.

¹² Id. at Article 12, par. 12.1, 12.2, and 12.3.

¹³ Id. at Article 17, par. 17.2.

written questions sent by PUC Counsel to GTA on April 5, 2010.¹⁴ Counsel inquired as to whether the same reciprocal and transiting compensation rates between GTA and MPULSE were equally applicable to all CMRS carriers. At the meeting, GTA indicated that the rates applicable to GTA and MPULSE were the same rates applicable to all CMRS carriers. As proof thereof, GTA points to the Wireless Interconnection and Reciprocal Compensation Agreement between GTA Telecom, LLC and Guam Cellular & Paging Inc. dba Guamcell, dated June 12, 2008.

A comparison of the reciprocal compensation and transit service compensation rates in the GTA/MPULSE and GTA/Guamcell Agreements establishes that such rates and charges are identical.

On February 1, 2007, the Commission ordered the adoption of the "Affiliate Transaction Rules".¹⁵ The Affiliate Transaction Rules (Rules Relating to Cost Allocation and Affiliate Transaction for Incumbent Local Exchange Carriers and other carriers) apply to GTA as the Incumbent Local Exchange Carrier. Counsel raised the issue of whether MPULSE is an "affiliate" pursuant to the Affiliate Transaction Rules. GTA's representative Mr. Votaw indicated that MPULSE was such an affiliate. In seeking to ensure that GTA is in compliance with its obligations under the Affiliate Transaction rules, Counsel requested that GTA file all appropriate affiliate transaction certifications indicating that it is in compliance with rules relating to cost allocation and affiliate transactions. On April 8, 2010, GTA filed its Affiliate Transaction Certifications in Docket 05-01 for 2008 and 2009.¹⁶ GTA has also filed its latest copy of the GTA Cost allocation manual, which was completed by its cost consultant JSI.¹⁷

Analysis

As PUC Counsel's preliminary concerns have been satisfied, it is necessary to determine whether the Agreement of the parties complies with the terms of 47 USC §252(e) of the Telecommunications Act of 1996, as amended. Pursuant to 47 USC §252[e][2][A], an Interconnection Agreement adopted by negotiation may only be rejected by PUC if PUC finds that [i] any such provision discriminates against a telecommunications

¹⁴ Email from PUC Counsel Frederick Horecky to Lucia Perez dated April 5, 2010.

¹⁵ PUC Order, 05-1 adopting the Affiliate Transaction Rules, filed February 1, 2007.

¹⁶ Letters to the GPUC dated April 8, 2010 certifying GTA Telecom LLC's compliance with the rules relating to cost allocation and affiliate transactions for 2008 and 2009, Docket 05-01.

¹⁷ See GTA Telecom Cost Allocation Manual, filed April 8, 2010, in Docket 05-01.

carrier not a party to the agreement or [ii] the implementation of any such provision is not consistent with the public interest, convenience and necessity.

The Wireless Interconnection and Reciprocal Compensation Agreement proposed by GTA and MPULSE does not violate the standards set forth in 47 USC §252[e][2][A]. Since the present Agreement is terminating, the parties need to place a new Wireless Interconnection Agreement into effect. They have proposed such an agreement for a three year term. The agreement does not discriminate against a telecommunications carrier that is not a party to the agreement. As previously indicated, the terms and conditions of the Wireless Interconnection Agreement, as well as the rates for reciprocal compensation and transiting compensation between GTA and MPULSE, are the same as those between GTA and other CMRS carriers such as Guamcell [i.e. Docomo].

In addition, each of the Agreements between GTA Telecom, LLC and Wireless CMRS providers, such as MPULSE or Docomo, contains a "Most Favored Nation Provision." Such provision entitles every CMRS provider to adopt from GTA any entire Interconnection/Compensation Agreement provided by GTA to any other CMRS provider that has been filed and approved by the Commission, for services described in such agreement, on the same terms and conditions.¹⁸ As a result of the Agreement entered into by GTA and MPULSE, CMRS services will be more broadly available to the public. The Wireless Interconnection Agreement is consistent with the public interest, convenience and necessity. It is in the public interest to provide the people of Guam with modern, innovative, accessible, and affordable telecommunications services and products.¹⁹

Recommendation

The Joint Petition of the parties should be approved, as the Wireless Interconnection Agreement and Reciprocal Compensation Agreement satisfies the requirements of 47 USC §252[e][2][A]. However, in GTA Docket 10-02, the Administrative Law Judge is currently considering the sufficiency of the remedy provisions in existing Interconnection Agreements. Should the ALJ recommend any changes to the existing remedy provisions in Interconnection Agreements between Telecommunications parties, the PUC should reserve jurisdiction and the right to require GTA Telecom, LLC, and Pulse Mobile, LLC, to adopt any such changes to the existing remedy provisions as may be approved by the PUC. Counsel has submitted a proposed Order which would

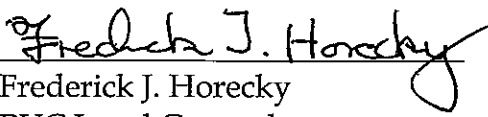
¹⁸ See Articles 16 of the Wireless Interconnection Agreements adopted by GTA Telecom LLC with both MPULSE and Docomo.

¹⁹ See Guam Telecommunications Act of 2004, 12 GCA §12101(2).

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approve the adoption by the parties of their Wireless and Reciprocal Compensation Agreement.

Dated this 15th day of April, 2010.


Frederick J. Horecky
PUC Legal Counsel