



**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

|                                  |   |                                |
|----------------------------------|---|--------------------------------|
| <b>IN RE:</b>                    | ) | <b>DOCKET NO: 10-02</b>        |
| <b>FINANCIAL INCENTIVE PLAN</b>  | ) |                                |
| <b>FOR INCUMBENT LOCAL</b>       | ) | <b>COMMENTS OF GUAM</b>        |
| <b>EXCHANGE CARRIERS (ILECs)</b> | ) | <b>CABLEVISION LLC DBA MCV</b> |
| <b>AND COMPETITIVE LOCAL</b>     | ) | <b>ON PROPOSED FINANCIAL</b>   |
| <b>EXCHANGE CARRIERS</b>         | ) | <b>INCENTIVE PLAN</b>          |
|                                  | ) |                                |

---

Guam Cablevision LLC (“MCV”) submits these comments in response to the comments of Pacific Data Systems, Inc. (“PDS”) and GTA TeleGuam, LLC (“GTA”) submitted pursuant to the Notice Soliciting Comments and Testimony issued by the Administrative Law Judge (“ALJ”) in the above-referenced docket dated February 17, 2010.

The ALJ issued a Notice to Solicit Comments and Testimony from local telecommunications companies regarding the adoption of financial incentive plans (“FIPs”) or the inclusion of remedy provisions to be mandated by the Guam Public Utilities Commission (“GPUC”) for interconnection agreements (“ICAs”) between the incumbent local exchange carrier (“ILEC”) and competitive local exchange carriers (“CLECs”) seeking GPUC approval. Such incentive plans or remedy provisions will automatically assess fines or fees to be paid by the ILEC to CLECs when service failures occur.

The ALJ has concluded that financial or performance incentive plans, including financial remedies, need to be established to ensure that the ILEC provides services and facilities to wholesale customers that are both adequate and nondiscriminatory. While

**Guam Public Utilities Commission Docket No. 10-02**  
*In Re: Financial Incentive Plan for Incumbent Carriers (ILECs)*  
*and Competitive Local Exchange Carriers (CLECs)*

Comments of Guam Cablevision LLC dba MCV

---

MCV understands the reasons for the proposed FIPs articulated by both the ALJ and PDS and the desire to easily quantify and impose fines and fees owed by the ILEC, MCV believes that a more established solution is to incorporate standard contractual remedy and alternative dispute resolution provisions into the ICAs, which may be enforced at the discretion of the contracting parties.

Notwithstanding the technical aspects of ICAs, which set forth payment schemes and schedules, coordination of routing policies, use policies, performance standards and coordination of network operations, ICAs are fundamentally business contracts drafted for the purpose of allowing CLECs to obtain services from the ILEC. Therefore, the recourse for breach of the ICAs should similarly be contractual in nature and allow the aggrieved party to pursue relief, whether legal or equitable, against the breaching party without involvement of the administrative process.

The adoption of an FIP risks overburdening the ILEC and CLECs with excessive penalty schedules and administrative hurdles. Additionally, the GPUC's time and resources may be consumed by monitoring performance under ICAs and enforcing the administrative procedure necessary to carry out the FIP. Although the ALJ has proposed that FIPs will be "self-executing," mandating the inclusion of such remedy provisions in the ICAs inevitably incorporates an additional cost to determine the appropriate financial incentive by reviewing pertinent documents and records. Further, if such financial incentives are challenged by the ILEC, the ILEC and the affected CLEC must go through

the additional process of petitioning the GPUC for review, clarification or reversal of financial incentives imposed, which carries additional costs.

Alternatively, by incorporating standard contractual remedy and alternative dispute resolution provisions into the ICAs, the ILEC and CLECs will have the benefit of submitting a dispute to binding arbitration and, if necessary, pursuing various remedies as they deem appropriate under well-established law regarding breach of contract. The provisions may be tailored to ensure expeditious resolution of all disputes arising under or breaches of the ICAs by requiring mandatory arbitration that commences within a certain number of days within a demand for arbitration. The ICAs may also require that arbitrators control the scheduling and issue a written opinion or judgment within a certain number of days after the close of arbitration hearings. Judgments upon an arbitrator's award may be entered in the Superior Court of Guam (or in any other court having jurisdiction).

Further, the timing to address the deficiency of the ICAs arising from the lack of recourse provisions is optimal since the ICAs for the local ILEC and CLECs have recently expired or are approaching expiration. Upon renewal of the ICAs, dispute resolution and remedy provisions may be easily incorporated into the agreements. The GPUC should require that such provisions be included in the renewed ICAs.

In closing, the relationship at-issue in the FIPs is a contractual one between two private parties pursuant to the ICAs. Rather than disrupting this contractual relationship and imposing additional costs in the form financial incentives and associated

**Guam Public Utilities Commission Docket No. 10-02**  
*In Re: Financial Incentive Plan for Incumbent Carriers (ILECs)*  
*and Competitive Local Exchange Carriers (CLECs)*

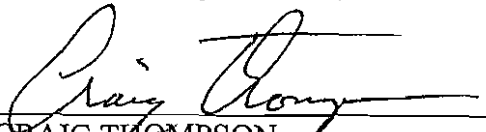
Comments of Guam Cablevision LLC dba MCV

---

administrative fees, MCV proposes that the proper solution for the deficient remedy provisions in the ICAs is to mandate that the local ILEC and CLECs expressly provide for alternative dispute resolution and breach of contract remedies in the ICAs to incentivize the contracting parties to perform thereunder.

Respectfully submitted this 15<sup>th</sup> day of March, 2010.

**GUAM CABLEVISION LLC**

By:   
CRAIG THOMPSON  
President and Chief Executive Officer