

4. Subsequently, the Administrative Law Judge ["ALJ"] scheduled various scheduling conferences and preliminary proceedings between the parties. In March and April, the parties filed briefs concerning the jurisdiction of the PUC to address this matter and other issues.
5. On July 9, 2010, the ALJ issued an Order holding that the PUC has jurisdiction over the rates and charges charged by the Guam Power Authority for pole attachments; the ALJ determined that GPA pole attachments are not subject to regulation by the Federal Communications Commission pursuant to 47 U.S.C. §224(a)(1). In accordance with 12 GCA §121004, the PUC is authorized to investigate and examine any rates and charges charged by a utility such as GPA; no rate, charge or assessment can be established by a public utility without the prior approval of the PUC. 12 GCA§12015(a).⁴
6. In the Order, the ALJ requested that the parties meet and negotiate concerning an appropriate formula to determine the allowable rates to be charged by GPA for pole attachments that provide telecommunications services.⁵
7. The parties subsequently raised issues concerning charges for attachments on poles owned by the U.S. military and for privately owned poles; however, the ALJ determined that the PUC does not appear to have jurisdiction over pole attachments on poles owned by the U.S. military nor were there a sufficient number of privately owned pole sufficient to delay the determination of appropriate charges for pole attachments on GPA poles.⁶
8. The parties also filed numerous materials including Reports and Orders from the Federal Communications Commission, which indicate the FCC methodology for determining a formula for pole attachment charges. While the parties were able to agree upon a basic formula to determine the maximum pole attachment rate, they could not agree upon a percentage that GPA desired to use as its "carrying charge" or "cost of capital".⁷

⁴ ALJ Decision and Scheduling Order, GTA Docket 09-04, GPA Pole Attachments, issued July 9, 2010.

⁵ Id. at pgs. 2-3.

⁶ ALJ Third Scheduling Order, GTA Docket 09-04, issued August 6, 2010.

⁷ Joint Status Report of MCV and GTA regarding Negotiations on Pole Attachment Rates with GPA, GTA Docket 09-04, filed September 7, 2010, at. p. 1.

9. While the parties have been unable to agree to any permanent pole attachment rates or charges, they have now agreed, in the Stipulation entered into on January 7, 2011, that an interim rate of Six Dollars (\$6.00) per pole per year shall be charged by GPA for pole attachments that provide cable or telecommunications services. They further agreed that a status hearing to reconsider the interim rate shall be scheduled in this matter after the Federal Communications Commission has revised its pole attachment rate formulas in the pending proceeding, or 1 year from the date of this stipulation (i.e. January 6, 2012), whichever is sooner.
10. The rate of \$6.00 per pole per year is an increase from the current rate of \$3.42 that MCV is paying to GPA.

ANALYSIS

11. The Commission does have the authority, *sua sponte*, to investigate, examine, establish and modify rates and charges for utility services. 12 GCA §12004. Given that there is presently a wide disparity in the pole attachment rates and charges paid by different cable and telecommunications companies on Guam, it is appropriate that the PUC use its authority to establish interim rates and charges for pole attachments.
12. The parties have expended considerable time and effort to negotiate a reasonable interim solution to proper charge for pole attachment rates. The proposed interim pole attachment rate of \$6.00 per pole per year appears to be reasonable, as it is within the range of existing national pole attachment rates. Such pole attachment rates vary between an average of \$7.00 per foot of pole space per year for cable companies to an average of \$20.00 per foot of pole space per year for ILEC's.⁸ Rates vary widely for cable companies, telecommunications companies, and ILEC's.


⁸ Federal Communications Commission, the National Broadband Plan, Chapter 6 (Infrastructure) at p. 110.

13. Sample Pole Attachment Rates provided by the Federal Communications Commission indicate variances between \$1.71 per attachment per year to \$19.81 per attachment per year (estimates based upon ARMIS data and FERC).⁹
14. Rulemaking and establishment of permanent pole attachment rate formulas or rules has not yet been completed by the Federal Communications Commission. The FCC rulemaking proceeding may provide helpful, although not mandatory, guidance for the PUC to later follow in establishing permanent rates.
15. Further proceedings and status hearing in this matter should be set upon the FCC's revision of its pole attachment rate formulas or on January 6, 2012, whichever is sooner.

RECOMMENDATION

16. There is a present need to establish interim pole attachment rate. No such rate has previously been set by the Commission, as required by 12 GCA §12015(a).
17. The interim pole attachment rate proposed by the parties, \$6.00 per pole per year, appears to be reasonable and prudent, and within the range of existing rates set nationally. Once the FCC proceeding is completed, the PUC will be in a better position to establish permanent rates for attachments on GPA poles.
18. The Stipulation and the pole attachment rates set forth therein should be binding upon the parties to the Stipulation and to all other companies which presently have, or subsequently have, attachments on GPA poles, until such time as a permanent pole attachment rate is set by the PUC.
19. The ALJ recommends that the Stipulation be approved by the PUC. Any outstanding PUC expenses or costs related to the hearing of this matter should be shared equally by the parties to the Stipulation. An order is submitted herewith for the consideration of the Commissioners.

Dated this 26th day of January, 2011.


FREDERICK J. HORECKY
Administrative Law Judge

⁹ Before the Federal Communications Commission, In the Matter of Implementation of Section 224 of the Act, WC Docket No. 07-245, and a National Broadband Plan for Our Future, GN Docket No. 09-51, Order and Further Notice of Proposed Rule Making, adopted May 20, 2010 at p. 67.