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8 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

9 **IN RE:**

) **DOCKET NO: 09-04**

10 **GTA TELEGUAM LLC AND GUAM**  
11 **POWER AUTHORITY/ POLE**  
12 **ATTACHMENTS**

) **RESPONSE OF GTA TO**  
13 **COMMENTS FILED IN THIS DOCKET**

14 Two companies, MCV and IT&E, have filed comments in this docket. GTA and GPA had  
15 previously stipulated that the PUC had jurisdiction to settle this matter. MCV and IT&E have  
16 disputed the jurisdiction of the PUC to hear this issue and argue that the Federal Communication  
17 Commission (FCC) is the appropriate forum to resolve the matter. GTA does not agree with this  
18 assertion and this response is primarily focused on that issue.

19 MCV has cited the same federal statute that GTA and GPA cited in their stipulation, 47 USC  
20 §224. A review of that section shows that the FCC has no jurisdiction over the setting of GPA's  
21 pole attachment rates. Therefore, only the Guam PUC has the authority to resolve this matter and it  
22 should do so.

23 Section 224(a)(1) of 47 USC defines a utility as "any person who is ...an electric...utility,  
24 and who owns or controls poles...used, in whole or in part, for any wire communications." The  
25 section goes on to state: "Such term does not include...any person owned by the Federal  
26 Government or any State." As MCV points out in its statement, under this law, Guam is included  
27 under the definition of a State.  
28

1 Section 224(a)(4) of 47 USC defines a “pole attachment” as “any attachment by a cable  
2 television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way  
3 owned or controlled by a utility.”

4 The Guam Power Authority is a public corporation owned by the government of Guam, 12  
5 GCA 8103. See also, Guerrero v Government of Guam, D.C. Guam Civil #80-43A (1981), and  
6 Wood v Guam Power Authority, Government of Guam, 2000 Guam 18 (2000). In the Guerrero case  
7 the Guam District Court Appellate Division held that GPA was a part of the government of Guam.  
8 In the Wood case the Guam Supreme Court held that GPA, as a part of the Government of Guam,  
9 was protected from a suit by the plaintiff because the government had not waived its sovereign  
10 immunity for the cause of action claimed by plaintiff and GPA was protected by the government of  
11 Guam Claims Act.

12 Because GPA is owned by a “State”, it is not a “utility” as defined by §224(a)(1) and it is  
13 completely exempt from pole attachment regulation by the FCC under 47 USC §224.

14 The certification process of 47 USC §224(c), cited by MCV, is inapplicable to the Guam  
15 PUC. This certification process allows a State to remove from the FCC its authority to set rates for  
16 pole attachments for private companies. This provision would only apply in the event the Guam  
17 PUC determined that it desired to exercise jurisdiction over poles owned by private companies.  
18 However, no private companies own poles on Guam so there is no need to make a filing under  
19 §224(c). Because the FCC has never had jurisdiction over GPA with respect to pole attachments,  
20 there is no reason to require the Guam PUC to follow the procedures set forth in §224(c) to remove  
21 that jurisdiction to Guam.

22 The only provision in §224(c) that is relevant to this proceeding is §224(c)(1), which states:

23 Nothing in this section shall be construed to apply to, or to give the  
24 Commission jurisdiction with respect to rates, terms and conditions, or  
25 access to poles, ducts, conduits, and rights-of-way as provided in

1 subsection (f) of this section, for pole attachments in any case where such  
2 matters are regulated by a State.

3 The Guam PUC is the only regulatory entity that has ever had jurisdiction to set rates for  
4 State owned entities like GPA that own poles. That authority, 12 GCA 12015(a), was set forth in  
5 the stipulation signed by GPA and GTA. The FCC does not have any jurisdiction over this matter  
6 and the Guam PUC has no obligation to make a filing to assert jurisdiction over pole attachments  
7 owned by the government of Guam.  
8

9 Regarding other issues set forth in the responses of MCV and IT&E, GTA assumes that the  
10 PUC will comply with Guam law and the stipulation between the parties contemplates the use of a  
11 federal formula as a starting point instead of "reinventing the wheel". GTA, and I believe GPA,  
12 agree that a single formula for attaching wires to poles should be used. As MCV points out, both  
13 GTA and MCV now provide cable television and telecommunications services. The PUC has  
14 always demanded transparency and verified the information provided by a party and GTA does not  
15 believe the PUC would deviate from that process. GTA agrees and has previously requested that the  
16 matter be converted to a rate setting proceeding and that all interested parties be allowed to submit  
17 their views on the appropriate information and data that should go into setting the rate.  
18

19 Respectfully submitted,

20 **GTA TELEGUAM LLC**

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22 Date: 4/8/2010

23 By: 

24 Terrence M. Brooks  
25 GTA General Counsel  
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