

The PUC has the authority to review and approve Interconnection Agreements pursuant to Section 252[e] of the Telecommunications Act of 1996.⁷ The PUC has broad authority with regard to its review of Interconnection Agreements; it can impose terms in such agreements through involuntary arbitration and can disapprove such agreements where their terms are unacceptable.⁸ The PUC has the authority to approve or reject any interconnection agreement. Order, GTA Docket 10-02, filed July 27, 2010, at p. 2.

Analysis

Counsel has reviewed the over 100 page proposed ICA between GTA and PDS. The Agreement is a thorough and comprehensive document which addresses all aspects of the relationship between the parties in detail.⁹ The term of the Agreement will be three years effective upon the approval of the PUC.¹⁰ Most of the Agreement is comprised of terms and conditions which were contained in the previous Agreement approved by the PUC in 2006. However, as a result of the PUC orders in GTA Docket 10-02 and PDS Docket 10-02, GTA and PDS are required to include a number of new provisions in their ICA. In addition, the parties have addressed technical aspects of their relationship that were not fully addressed in the initial Agreement. Counsel has reviewed the proposed ICA to assure that the required provisions have been included.

The liability and attorney fee provisions recommended by the Administrative Law Judge in his Order issued June 8, 2010 have been included in the proposed ICA.¹¹ These same provisions were required in the PUC Order in GTA Docket 10-02.¹²

The PUC Order in PDS Docket 10-02 also requires the parties to include a provision in the ICA for a sixty (60) day dispute resolution period; the ICA was required to provide that the failure of one party to meet with the other party during the dispute resolution period shall constitute *rebuttable* evidence of a failure to negotiate in good faith. Said provision has been included by the parties in par. 14 of the proposed ICA, Dispute Resolution.¹³ Thus, Counsel concludes that the proposed ICA complies with the prior orders of the PUC and the ALJ.

⁷ See 47 U.S.C. §252[e].

⁸ See *E.G. WorldNet Telecommunication Inc. v. Puerto Rico*, 497 F.3d 1, 7(1st Cir. 2007).

⁹ See Draft Interconnection Agreement, filed September 28, 2010.

¹⁰ *Id.* at p. 1-2.

¹¹ ALJ Order, In Re: PDS/GTA Request for Arbitration of ICA, PDS Docket 10-02, issued June 8, 2010.

¹² PUC Order, GTA Docket 10-02 (Financial Incentive Plan), issued July 27, 2010).

¹³ Draft Interconnection Agreement, par. 14, Dispute Resolution, p. 10-11.

The parties submit their Interconnection Agreement to PUC for approval pursuant to 47 USC §252[e] of the Telecommunications Act of 1996, as amended. Pursuant to 47 USC §252[e][2][A], the provisions of the ICA adopted by negotiation may only be rejected by PUC if PUC finds that [i] any such provision discriminates against a telecommunications 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 amendment proposed by GTA and PDS does not violate the standards set forth in 47 USC §252[e][2][A]. The Agreement includes the provisions previously mandated by the PUC; the provisions of the agreement have been vigorously negotiated by the parties and appear to have resulted in a final product which adequately protects the interests of both. The Amendment does not discriminate against a telecommunications carrier not a party to the Interconnection Agreement. The Amendment 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.¹⁴

Recommendation

The Interconnection Agreement of the parties should be approved, as the proposed Amendment to their Interconnection Agreement satisfies the requirements of 47 USC §252[e][2][A]. Counsel has submitted a proposed Order which would approve the adoption by the parties of Amendment 2 to their Interconnection Agreement.

Dated this 19th day of October, 2010.

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¹⁴ See Guam Telecommunications Act of 2004, 12 GCA §12101(2).