

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN THE MATTER OF:) GTA DOCKET 18-01
)
THE JOINT PETITION OF TELEGUAM) RECOMMENDATIONS OF THE
HOLDINGS LLC AND PACIFIC DATA) ADMINISTRATIVE LAW JUDGE
SYSTEMS INC FOR ARBITRATION OF)
INTERCONNECTION AGREEMENT)
_____)

INTRODUCTION

On April 28, 2017, pursuant to 27 U.S.C. §§ 251 and 252, TeleGuam Holdings, LLC ("GTA") submitted to Pacific Data Systems, Inc. ("PDS") a request to negotiate the Interconnection Agreement ("ICA") between the Parties. Since 2007, the Parties have entered into a series of ICAs to formalize their obligations under the 1996 Federal Telecommunications Act. The Parties are now in the process of negotiating their fourth ICA.

On October 3, 2017, the Parties submitted to the Guam Public Utilities Commission ("PUC") a Joint Petition for Arbitration of the issues that they were unable to resolve. Status conferences were held before the Administrative Law Judge ("ALJ"), and negotiations between the Parties continued. On November 6, 2017, the ALJ issued a Scheduling Order setting dates for submission of a joint list of issues for arbitration, initial and reply briefs, and a hearing on the merits. On November 22, 2017, GTA and PDS submitted their joint list of remaining issues for arbitration in this matter.

The Parties have submitted these issues to the ALJ in a formal proceeding for dispute resolution pursuant to Rule 4(h) of the Commission's Interconnection Implementation Rules. Out of an original list of over 100 issues concerning the proposed fourth ICA, the Parties successfully narrowed down the number of issues to 18. On December 15, 2017, the remaining issues came before the ALJ for formal arbitration. Both Parties submitted Exhibits into evidence, and the ALJ received testimony and argument from the Parties.¹

The ALJ now issues his Recommendations to the PUC concerning each of the remaining issues pursuant to the Rules for Practice and Procedure before the Commission and Interconnection Implementation Rule 4(h). In his Recommendations, the ALJ refers to each issue by its "Item No.", as indicated on the Updated Schedule of Open Issues for Final Arbitration (GTA Exhibit "1"), attached hereto as Exhibit "1". The Commissioners may review the text of proposed changes in the ICA REDLINE 12-14-17. The ALJ has cited the page numbers in the 12-14-17 ICA REDLINE Version when referring to the proposed changes.

The Commissioners may review any portion of the record upon request to the PUC Administrator.

ISSUES FOR ARBITRATION

¹ The record in this Docket includes the pleadings, Orders, and documents filed of record, briefs and reply briefs of the Parties, and all testimony and exhibits introduced by the Parties at the hearing, including the arguments presented. After the conclusion of the hearing, GTA presented a recording of the proceeding. The ALJ has reviewed and relied upon the recording of the proceeding in preparing his recommendations.

I. SCOPE OF AGREEMENT AND TRAFFIC (Issues 3A, 3B, and 49)

Issues 3A and 3B relate to changes proposed by GTA in the GENERAL TERMS AND CONDITIONS of the ICA (pgs. 1-2). Proposed Section 1.1.1 provides an agreement by the Parties that the rates, terms and conditions of the ICA would comply and conform to each Party's obligations under Sections 251(a) and (b) of the Act. The reference is to 47 U.S.C. §§251 and 252. §45.1 of the 2014 ICA contained an agreement that performance of the terms of the Agreement would satisfy GTA's obligations under §251 of the Act.

The ALJ recommends that proposed Section 1.1.1 be adopted by the Parties and included in the ICA. It is appropriate that the ICA recognize the mutual obligations of both the Incumbent Local Exchange Carrier (ILEC) and the Competitive Local Exchange Carrier (CLEC) in the agreement. It is a factually correct statement that the Interconnection and Procedural obligations of both the ILEC (GTA) and CLEC (PDS) are set forth in Sections 251(a) and (b) of the Act. There is no harm to PDS by inclusion of this provision in the ICA.

Proposed Section 1.1.2 (pgs. 1-2) of the ICA would establish that the ILEC does not have an obligation to establish interconnection service arrangements to enable the CLEC to exchange solely non-telecommunications traffic or to act in any capacity other than a common carrier. The CLEC would further agree that interconnection would be used for the primary purpose of exchanging "Non-Access Telecommunications Traffic". Other traffic, including Information Service traffic or VOIP traffic that is other than

Non-Access Telecommunications Traffic “will be incidental to the Parties exchange of Non-Access Telecommunications Traffic.”

For the purposes of the Agreement, VOIP-PSTN Traffic would have to meet the definition of “Local/EAS Traffic to be treated as such and any traffic outside the definition of Local/EAS shall be treated as Toll Traffic.” GTA indicates that this proposed section correctly indicates that the ICA is limited to what is defined as “Local Call Traffic” within Guam. Interstate traffic (or intrastate within US States) is Toll Traffic and is excluded from the ICA, subject to GTA’s local exchange tariff. GTA’s purpose in proposing this provision is to differentiate between traffic that is included in the Agreement and traffic that is excluded from the Agreement.

Incorporation of this provision in the ICA will help to ensure that there are no conflicts between the ICA, GTA access tariffs, and GTA’s local exchange tariff. GTA’s general duty relates to providing interconnection for “telecommunication services.”

GTA’s proposed provision 1.1.2 appears to be consistent with federal law in terms of what services should be included and excluded from the ICA. Non-Access Telecommunications Traffic is further defined in §2.76 of the GLOSSARY (p. 34 of the ICA). That definition incorporates the same definition contained in 47 C.F.R. §51.701(b)(1)(3). VOIP-PSTN Traffic that originates and terminates within a single mandatory 2-way local calling area, as identified in GTA’s Tariff, is included except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services to such access.

Certain carriers, such as "I VOIP" carriers, have no interconnection rights as they are not "a telecommunications carrier." PDS contends that these provisions don't really apply to it, as it does not terminate long distance toll traffic to the GTA network, and that there have been no issues concerning provision of fraudulent inbound toll fraud traffic by PDS. PDS further believes that these provisions will merely "hard coat" the ICA with unnecessary language, and that the language is highly technical and not fully understood. While GTA indicates that these types of issues have not occurred with PDS, the inclusion of the language will prevent issues from arising in the future and can also be adopted in the ICAs of other Parties in the Guam telecommunications arena.

Having considered the arguments of the Parties, the ALJ believes that inclusion of the language in 1.1.2 is consistent with the requirements of what services are required to be included in the ICA under federal law. The provision will help further define the non-access telecommunications traffic that is included in the ICA, and those non-telecommunications services or traffic which are excluded. It is prudent of GTA to seek to include language that will more precisely define its interconnection obligations and to address specific problem areas.

PDS indicated that it was not particularly concerned about the language but did not wish to "garbage-up the agreement with material that doesn't apply." PDS thought that there was little likelihood of litigation on this language. Since PDS has indicated that it does not believe it will be harmed by this provision, the ALJ recommends that the provision be adopted by the PUC and included in the ICA.

Issue 3B relates to Section 1.1.3 (p. 2 of the ICA). Therein, the CLEC (PDS) would agree that it “seeks interconnection and will use this arrangement for the primary purpose of exchanging Local/EAS Traffic and that the exchange of Toll Traffic will be subject to the appropriate terms and conditions of each Party’s access tariffs.”

Local/EAS Traffic, according to GTA’s JSI consultant Valerie Wimer, is Extended Area Service, which is local call traffic; outside traffic, i.e. interstate or intrastate, is “toll traffic.” For Guam, EAS is local traffic within Guam, and outside traffic would be “toll” traffic. The provisions in Section 1.1.3 appear to comply with the definition of the type of traffic included in interconnection agreements under federal law. The ALJ recommends that Section 1.1.3 be adopted by the PUC and included in the ICA.

Issue 49 has reference to Sections 2.1 through 2.9 of the INTERCONNECTION ATTACHMENT (pgs. 61-2 of the ICA, Section 2, RESPONSIBILITY FOR TRAFFIC). These provisions address, *inter-alia*, the following: (1) PDS is responsible for traffic that it exchanges with GTA over direct or indirect interconnection via a third party, including but not limited to, Voice Traffic, VOIP-PSTN Traffic, ISP-Bound Traffic and Toll Traffic; (2) PDS may not provision services in circumvention of GTA’s applicable Switched Access Service charges by it or a retail provider, and must pay its portion of the interconnection facilities and all compensation and access service charges; (3) “Nomadic Traffic” (traffic originating from an Internet protocol “IP” device) is prohibited under the agreement unless certified in writing in advance by the Party sending the traffic, and is subject to Access Service charges; (4) GTA is not obligated to

pay for transit charges for a retail provider; (5) each Party is responsible for implementing proper Signaling and Signaling Parameters for determining the correct classification of traffic; (6) Signaling or Signaling Parameters may not be altered, and "Misclassified Traffic" is prohibited under the Agreement; (7) a Party which falls below 95% of total call traffic transmitted within Signaling and Signaling Parameters in a given month must pay interstate Switch Access fees ; (8) the Parties have certain obligations if, in any month, traffic delivered by the originating Party is "Misclassified Traffic"; (9) Parties must correct the causes of Misrouted Toll Traffic, Misidentified Traffic, Misclassified Traffic and Unclassified Traffic; (10) Each Party has the right to audit the other Party in the event of a dispute with regard to Misclassified Traffic.

GTA represents that these provisions are necessary because there have been cases where the third-party VOIP carriers or the connecting CLECs uses a third-party arrangement to misrepresent Toll calls as local to avoid paying access charges. GTA head of Engineering Carl Leon Guerrero testified that, in one instance, a company used local phone numbers for interstate calls, for the purpose of avoiding Toll charges. In addition, wireless CMRS Traffic can be disguised as local. There is a further concern that I VOIP carriers could gain access without proper payment.

PDS suggested that the provisions in Sections 2.1-9 were not applicable to PDS and over complicated the ICA. It does not have the traffic profiles that were referred to. Also, these types of long distance services were disappearing with the advent of Face Time and other services, and the services could "go away by the end of the ICA."

Basically, PDS contends that these provisions do not really apply to the service that it provides. PDS does not have any concern with the statement of Signaling Parameters. It originates all traffic sent to GTA.

With these provisions, GTA is attempting to better define the proper services provided for interconnection. It is prudent for GTA to seek to protect itself from practices or procedures designed to avoid payment of proper access charges. PDS has not indicated that the inclusion of these provisions in the ICA will in any matter cause it harm. GTA has established that it is necessary to include language in the ICA which clearly indicates responsibilities on the part of the respective Parties for the treatment of various types of traffic. Without clarification, disputes could arise. The language provides procedures for the handling of disputes and remedies if the procedures are not followed.

GTA further indicates that the changes set forth in Sections 2.1 through 2.9 are needed to address treatment of VOIP-PSTN Traffic, compensation, sharing of compensation and call completion issues. Issues referenced by GTA have been discussed in various Orders of the Federal Communications Commission. See FCC USF/ICC Transformation Order (FCC 11-161 12/2011) and VOIP Symmetry Clarification Order (FCC 15-14 2/2015). These proposed changes address contentious issues that have arisen across the industry with the advent of new services and new players in the industry. The purpose of the provisions is to ensure that third parties

connecting with the CLEC pay appropriate toll calls and do not represent such calls as local to avoid paying access.

If PDS or another CLEC handles traffic for a third party, the CLEC signatory to the ICA should be responsible for such traffic. If PDS or a third party carrier misrepresents the traffic, then PDS would have to pay access charges on any traffic that is ultimately identified as toll traffic. Areas of concern also include “nomadic traffic” where the VOIP end user is able to change the location of their phone/voice device. VOIP carriers should be treated as wholesale customers of the CLEC for the purpose of compensation.² The ALJ believes that these provisions should be approved by the PUC and included in the ICA.

II. ISSUE 12 (NETWORK NOTIFICATIONS)

This issue concerns paragraph 28 of the ICA, Notice of Network Changes (p.20 of ICA). Current paragraph 28 provides that if a Party has implemented a change in its facilities or network that “will materially affect the interoperability of its facilities or network with the other Parties facilities or network, the Party making the change must publish notice of the change at least ninety (90) days in advance of such change” and shall make “reasonable efforts, as commercially practicable, to publish such notice at least one hundred eighty (180) days in advance of the change.” Where a federal regulation or FCC Order require otherwise, notice is required to be given accordingly.

² Opening Brief of TeleGuam Holdings LLC, GTA Docket 18-01, pgs. 28-29.

The Parties have agreed to a revision of this provision which will require that Notice be provided directly to the company contact listed in Section 29, Notices, of the Agreement. Provision of direct notice to the CLEC, rather than solely having publication of notice in the Federal Register or otherwise, will insure that the party affected will have actual notice. The ALJ recommends that such change be approved by the PUC and included in paragraph 28 of the ICA.

However, PDS would go further and require that GTA provide one hundred and eighty (180) days for any change in its network or facilities that falls within paragraph 28. For all such changes, there would be an absolute requirement of 180 days' notice, instead of the minimum 90 days' notice currently required.

PDS believes that 180 days' notice is necessary to ensure that PDS receives sufficient notice of changes to GTA's network. With regard to GTA's prior network change in 2015 from 19 wire centers to one wire center, PDS indicates that it did not receive adequate notice of such change. The lack of notice is alleged to have resulted in technical deficiencies in the subsequent TELRIC Study, and further disputes in the dark fiber and other proceedings before the PUC. PDS believes that it needs adequate time to plan for and address the transformational changes which GTA is undertaking to its network.

While GTA has agreed to provide direct notice to PDS of network changes, which is not required by the FCC, it contends that 90 day notice is sufficient unless otherwise required by federal regulation or FCC Order. It believes that a requirement

for 6 months' notice would be a "red flag" to competitors, potentially enabling them to quickly react to such changes and mobilize to take customers from GTA. GTA submits that the FCC provides lesser notice provisions than 180 days and that the short-term notice procedure calls for 90-days' notice. If a party such as PDS believes that it needs additional notice, it may apply to the FCC to extend the notice period.

In a recent Order (FCC 17-154, WC Docket No. 17-84), the Federal Communications Commission addressed issues concerning copper retirement and the notice process. The Commission reduced the standard waiting period for copper retirements from 180 days to 90 days after the Commission issues its public notice. The Commission found that this change would "ease the regulatory burdens on the incumbent LEC's in transitioning to next-generation networks, affording them greater flexibility and eliminating the delays in additional costs imposed..." PDS, while recognizing that the FCC is now shortening notice requirements, believes that Guam should be differentiated with the United States mainland, as Guam did not implement the 1996 Federal Telecommunications Act until 2005. Based on the current state of development of telecommunications in Guam, PDS contends that the PUC should not follow the FCC trend of reducing notice.

Based upon the record presented, the ALJ recommends that the PUC not adopt the 180 notice period requested by PDS. To the extent feasible, the PUC should follow applicable FCC precedent regarding notice and other matters. While PDS contends that GTA did not give adequate notice concerning its elimination of wire centers and the

switch collapse project, which resulted in only one wire center in Agana, this issue was litigated in GTA Docket 15-06, regarding PDS' Dark Fiber complaint. There the Commission found that GTA provided adequate 90 days' notice in accordance with the Code of Federal Regulations. Both Parties recognize that the FCC does authorize less than 180 days of notice for network changes in many circumstances.

Furthermore, notice of network changes is only required where it "will materially affect the interoperability "of a Party's facilities or network. Here, consistent with prior PUC and FCC precedent, the PUC should concur with GTA's position that a minimum of ninety (90) days' notice of network changes is sufficient under Paragraph 28. If federal regulations or FCC Order require a longer notice period, then such will apply under paragraph 28. In addition, PDS has the remedy to request a longer notice period where authorized by the FCC. The 90 day notice provision has existed in three prior ICAs and should not be altered.

III. ISSUES 21, 28, 77, AND 78 (GLOSSARY DEFINITIONS OF LOOP AND REMOTE EQUIPMENT CENTER, AND WHETHER THE COLLOCATION ATTACHMENT, EXHIBIT A, SHOULD BE INCLUDED IN THE ICA).

Issues 21 and 28 concern GLOSSARY TERMS "Loop" and "Main Distribution Frame (MDF)", at Sections 2.64 and 2.66 (page 33 of ICA). These relate to the primary issue of whether the "COLLOCATION ATTACHMENT", Exhibit "A", should continue to remain as part of the ICA. GTA defines "Remote Equipment Center ("REC"), in

Section 2.94 of the GLOSSARY, as the “18 locations that the TELRIC Study used in addition to Agana as the basis of developing the UNE rates...” (p. 36 of the ICA).

Exhibit A to the current ICA refers to “PDS Initial Collocation Requirements.”

Exhibit A has been included in the previous three ICAs, dating back to 2007. It defines the 19 GTA facilities where PDS was determined by the PUC to be able to co-locate, and describes various aspects of the facilities including: facility type, collo type, space, power amps, cooling, Dark Fiber, and Entrance Facilities.

As indicated, GTA has added a new section to the GLOSSARY, 2.94, which defines Remote Equipment Center (“REC”). In accordance with GTA’s description of its current network configuration, as set forth in PDS Docket 14-01 and subsequent dockets, GTA now has only one “wire center”, Agana. The rest of the 18 locations, which were previously wire centers, are now defined as “RECs.” The RECs were used in PDS Docket 14-01 for determination of various UNE loop rates.

GTA’s position is that, since PDS has already collocated its facilities at 16 GTA facilities, there is no further reason to include the Collocation Attachment, Exhibit A “, in the ICA. In its view, Exhibit A is no longer necessary, as PDS has already exercised its collocation rights. It is no longer necessary to set forth the “initial collocation” requirements. This new ICA should implement the TELRIC Study, which is accomplished by identification of the Remote Equipment Centers in Section 2.94 of the GLOSSARY. There is only one wire center, Agana, and the RECs are locations other than the one wire center. All of these locations are still eligible for collocation.

However, PDS correctly points out that the definition of Remote Equipment Center in Section 2.94 of the GLOSSARY does not adequately define the qualities or characteristics of a Remote Equipment Center. The definition therein includes nothing more than a statement that a REC is the 18 locations that the TELRIC Study used. However, by merely stating what locations constitute a "REC", there is no indication of what a REC is, how it functions, or what its role is in the ICA. Under the current ICA, these RECs were all wire centers. They are now being altered, as a result of the GTA network changes, into something different. The ICA should include clarification and additional information concerning the nature of the RECs.

A further issue between the Parties was whether the Minimum Technical Standards adopted by the PUC in Docket No. 5-01 apply to the RECs. GTA's position is that none of the descriptions in the Collocation Attachment, Exhibit A, have any relationship to the Minimum Technical Standards. PDS asserts that it is unclear whether such standards apply to the RECS.

Concerning the issues herein, the ALJ has the following recommendations. He has no concerns about the definitions contained in Section 2.64, Loop, and Section 2.66 MDF (Main Distribution Frame) in the GLOSSARY. They contain correct definitions concerning the functioning of these elements in the GTA Network. He recommends that such definitions be approved by the PUC and adopted in the ICA.

The ALJ recommends that the definition of Remote Equipment Center (REC) in Section 2.94 of the GLOSSARY be expanded and given additional explanation. There

should be a functional definition of what a REC is, and how it functions in GTA's Network. The characteristics of a REC should be further explained. There is no need for a lengthy or overly technical explanation, but a concise and straightforward description of its role in the GTA network and how it will function under the ICA.

In this regard, the ALJ believes that a revised Collocation Attachment, Exhibit A, should be included in the new ICA to assist in the definition of a REC. PDS has submitted a revised Exhibit A. Numerous revisions still need to be made to its revised Exhibit "A". The new document should not refer to "initial Collocation Requirements." As GTA points out, PDS has already collocated at 16 GTA facilities.

The new Exhibit should be referred to as "Current PDS Collocation at GTA Facilities as of ____, 2018" (the effective date of the ICA). This list will indicate the GTA facility at which PDS currently collocates, the facility and collocation type, and the space, power amps and cooling requirements as are presently provided. If the indicators in Exhibit A are not correct, they should be corrected. Installation status will no longer be required. As discussed during the hearing, the Airport Remote should be changed to indicate "virtual" collo type rather than "cageless." In addition, three sites will be dropped from Exhibit A, the Orote Remote, AAFB Remote, and the UOG Remote. However, those three facilities will continue to be defined as RECs in Section 2.94 of the Glossary.

The continuing inclusion of Exhibit A in the ICA should be referenced either in Section 2.94 of the Glossary or in the Collocation Attachment, Section 1. Section 1.1 of

the Collocation Attachment (p.96 of the ICA) Issue 78, should continue to include the revised language suggested by GTA. "Collocation" has been a contentious issue since the inception of the first ICA over 10 years ago. In 2006 GTA was required to provide collocation to PDS as a result of the Georgetown Report and PUC Order. As a result of the contentious history, the ALJ can understand the desire of PDS to continue to have a formal recognition in the ICA of the collocation sites and their characteristics.

There is another point of ambiguity that needs to be cleared up. PDS pointed out that Section 5.5 of the Collocation Attachment (p. 103 of the ICA) refers to the Demarcation Point for PDS equipment at the Point of Termination (POT) which "must be connected to the MDF via a cross connect." However, as PDS further indicates, the definition of Main Distribution Frame (MDF) in Section 2.66 of the Glossary only defines the MDF as existing within the Agana Wire Center. There needs to be a further revision to Section 5.5, Demarcation Point, in the Collocation Attachment, to indicate more clearly what the connection is in the REC, if not an "MDF".

In her testimony, Ms. Wimer indicated that the facilities in RECs are not MDFs, but are "FDIs" (i.e. Feeder Distribution Interfaces). Perhaps this can be clarified simply by indicating FDIs are the cross-connect point at the REC. Ms. Wimer indicated that such changes could be made to indicate what facilities exist at the REC. Ms. Wimer further indicates that, under FCC rules, collocation can occur at "any technically feasible point", and that the equipment in the RECs is irrelevant. However, it is not

unreasonable to identify the nature of the equipment and point at which interconnection occurs in the REC.

GTA has not suggested that any harm will result to it from the continued inclusion of Exhibit A in the ICA. The revised Exhibit A will simply indicate the status of the current PDS collocation sites and their characteristics/attributes. It will not “lock GTA in” if its requirements change, or if PDS requirements change, or if technological changes require GTA to use other equipment, assuming proper network notification of changes has been given. Inclusion of Exhibit “A” will give further definition and clarification to the current characteristics of the RECs. The ALJ recommends that a revised Collocation Attachment, Exhibit A, be approved by the PUC and included in the ICA.

IV. ISSUES 14, 21, 31, 59, 60, 65, AND 85 (SUBLOOPS)

These issues involve how the new ICA should address GTA’s current network infrastructure and pricing for loops and sub-loops. At the time of the original Order of the PUC approving the third ICA, it was understood that a TELRIC Study would be conducted to price 12 Unbundled Network Element Services, which consisted of 10 loops and two “sub-loops.”³ The understanding of the Parties, as well as the PUC, was that, at that time, GTA had 19 “wire centers.”⁴ However, once Phase II of the Arbitration proceedings commenced, GTA took the position that it only had a single

³ PUC Order approving interconnection agreement, PDS Docket 14-01, dated August 28, 2014.

⁴ Id.

wire center, and that none of the other 18 locations (which included "Remote Equipment Centers") were now wire centers.

For various reasons, including the fact that GTA had already agreed to conduct a TELRIC Study for 10 loops and 2 sub-loops, and that the ordered "true-up" would require pricing for those 12 UNEs, the ALJ ordered that GTA continue to conduct a TELRIC Study which included the 10 loops and 2 sub-loops previously set forth in the Orders and agreed to by the Parties. However, the ALJ also authorized GTA to develop a TELRIC Study for unbundled loops associated with its new network architecture; upon development of permanent prices, GTA was "free to incorporate the new terminology "sub-loop" in the interconnection agreement and to alter its billing and provisioning terminology as necessary to reflect its network architecture."⁵

Finally, on February 25, 2016, in GTA Docket 15-06, the PUC upheld certain network changes made by GTA and determined that "the Remote Switching Centers (RSCs)" are not "wire centers". It was further determined that GTA only has one wire center, the Agana Central Office.⁶

The essential problem is that the pricing for the 10 loops and 2 sub-loops are currently based upon the assumption that the 18 "Remote Switching Centers", also referred to as "Remote Equipment Centers", are also "wire centers." It has long been recognized by the ALJ and the PUC that subsequent changes would need to be made to

⁵ ALJ Order, PDS Docket 14-01, dated August 17, 2015, at pg. 7.

⁶ PUC Order, GTA Docket 15-06, dated February 25, 2016, at p. 3.

the ICA to reflect the current GTA network infrastructure. That is precisely why the ALJ, in his Order dated August 17, 2015, expressly authorized GTA to incorporate the new billing terminology “sub-loop” in the interconnection agreement and to alter its billing provisioning terminology as necessary to reflect its network architecture.

As GTA has explained in this arbitration proceeding, the only “loops” in the present network are those from the Agana wire center; what had previously been denominated as “loops” from the RECs, or RWCs, are now “sub-loops”. This comports with the long recognized definitions of “loop” and “sub-loop” in the ICA. The term “loop” in the ICA has always defined as the transmission path from the MDF in the “serving end office”, i.e. a wire center. Since there is only now one wire center, the only “loops” in the current network are those at the Agana wire center. Section 2.61 of the Glossary of the current ICA. “Sub-loop” Distribution facilities were those distribution facilities between an FDI and the Demarcation Point or NID. Thus, sub-loops are those not from a wire center that has an MDF. Section 2.92 of the Glossary of the current ICA.

Therefore, it is necessary to correct, for these RECs, the description of what had previously been denominated as “loops” under the TELRIC Order, and convert those to sub-loops. Such conversion is necessary due to the change in the GTA Network Infrastructure. GTA submits that there are now two basic categories of sub-loops, those from the REC and those “Non-REC” sub-loops which start from a place in the field that has a cross-connect to the customer premises (NID). What was previously described in the TELRIC ORDER as loops from the RECs will now be denominated as “sub-loops”;

the pricing is the same. The Non-REC sub-loops, as indicated in the TELRIC Order, will continue to be priced at the same rates. All that has changed is the conversion of REC loops to sub-loops, but the service provided, nature of the equipment, and pricing all remain the same.⁷

As Exhibit "5", GTA has submitted a new pricing Attachment to the ICA which would expand the number of types of sub-loops from two to seven. However, these sub-loops from the REC "exactly match the TELRIC Study."⁸ It is also the case that the closer the loop or sub-loop is to the wire center or REC, the cost goes up. This results from the need for conventional trenching, rather than micro-trenching, and the cost of asphalt for such trenching. Overall, the sub-loop rates included in the Pricing Attachment from the REC are "equal to loop rates that were in the Final TELRIC Order—Non-REC sub-loop rates also match the rates that were in the Final TELRIC Order for 2 and 4 wire."⁹

PDS has a quite different view of the GTA changes and network infrastructure. It contends that the TELRIC Study only examined 2 and 4 wire HDSL loops, which are limited to up to 10,000 feet (the distance between the REC and the NID, customer premises). PDS claims that GTA, by converting 10 local loops into sub-loops, has basically invalidated the TELRIC Study. Through its picture representation in PDS Exhibit A-5, PDS indicates that the sub-loop connection in the REC to PDS is now from

⁷ Testimony of Valerie Wimer.

⁸ Id.

⁹ Id.

a Feeder Distribution Interface ("FDI") rather than a "Main Distribution Frame" which was previously used in a serving wire center. PDS recommends that only the pricing for the two sub-loop rates established in the TELRIC Order should be applied to all sub-loop prices. In this configuration, sub-loops greater than 10,000 square feet no longer exist, and PDS will "discontinue" use of such sub-loops. Such would be "dropped". GTA cannot undertake a wholesale conversion of "local loops" into "sub-loops."

The ALJ, having reviewed the positions of the Parties, determines that GTA's position concerning sub-loops more correctly reflects the current network architecture as well as the prior orders of the PUC and the TELRIC Study. The ALJ believes that the Parties have always understood the definition of "loops" and "sub-loops would change once GTA's new network infrastructure, with one wire center, was implemented.

At a practical level, PDS' position could require that a new TELRIC Study be undertaken. Based upon cost and resource considerations, a restudy is not feasible. The TELRIC Order indicated that the two sub-loops which were priced were "a Non-REC FDI to NID." PDS' proposal to apply Non REC pricing for sub-loops less than 10,000 feet to sub-loops longer than 10,000 feet would be contrary to the TELRIC Order. It would not make sense to apply pricing for Non-REC sub-loops to REC Sub-loops, which is what would result if PDS' position were adopted. GTA has demonstrated that pricing for REC sub-loops is more expensive; GTA has simply converted what were previously REC loops under the TELRIC Order to REC sub-loops, at the same pricing.

While PDS indicates that it could “discontinue” all sub-loops of greater than 10,000 feet, it still has the same option if the Pricing Attachment of GTA is adopted.

PDS has not convinced the ALJ that any of the changes implemented by GTA to its network will have a harmful effect, or change the nature of services, provided to PDS. It is correct that service to PDS from the REC will now be provided from an FDI rather than an MDF. This is, at most, only a change in name of the facility. There is no indication that GTA has or will change the actual transmission facilities or equipment in the REC. There is also no indication in the record that such change has had any impact whatsoever upon the nature of the actual service provided to PDS. There is no suggestion that PDS’ service has worsened in any manner, or that such service is in any manner “inferior.” Other than a change of name in the distribution facility, PDS is being provided exactly the same service that it previously received.

Under GTA’s proposed Pricing Attachment, PDS will not be paying any more for sub-loops from the RECs than it was paying when such were denominated as loops from the REC. There was some dispute between the Parties as to how many sub-loops PDS currently has that would be longer than 10,000 feet. PDS indicates that the number is 20-30; Glen Leon Guerrero of GTA believes that the total number of such loops could be far more than 30, perhaps as many as 80. However, whatever the number, it would not be fair or equitable to price such REC sub-loops at the same price established for Non-REC sub-loops.

PDS' own Exhibits, Exhibit A-1 and A-2 indicate it would only pay roughly \$2,000 per month more in actual cost if GTA's position is adopted. Even PDS conceded that, although the sub-loop issue was one "of major dispute between the Parties", it was not worth spending a considerable amount of time on these issues based upon the cost differential.¹⁰ Even in PDS' view, it did not make enough difference in terms of cost to undertake another TELRIC Study. Based upon a lack of detriment to PDS, GTA's position is also a preferable solution. The issue is simply one "not worth going to war over."¹¹

Issue 14 concerns the elimination from the GLOSSARY of the ICA the term "Sub-Loop Feeder Facility" (§2.107 at p. 37 of the ICA). This has been eliminated as an issue, as PDS indicated that it has no objection to the elimination of the Sub-Loop Feeder Facility. The ALJ has already made his recommendation on Issue 21 (to adopt Sections 2.64 and 2.65 of the GLOSSARY, p. 33 of the ICA). Section 2.64 correctly states that for a Loop, the transmission path extends from a Main Distribution Frame at a wire center. The MDF is the primary point at which outside plant facilities terminate within the Agana wire center.

Issue 31 involves the addition of Glossary Definitions of "Sub-Loop", "Sub-Loop REC, and Sub-Loop Non-REC" (Sections 2.102, 2.10X, and 2.10Y, pg. 37 of ICA). These definitions define sub-loops in accordance with the network changes that GTA has

¹⁰ Testimony of John Day.

¹¹ Id.

made; the ALJ recommends approval of these definitions. By the agreement of the Parties, the definition of "Sub-Loop" has been revised to refer to a 2-wire or 4-wire copper loop in GTA's network between a GTA FDI at a location other than a wire center or a REC. The definitions of Sub-Loop REC and Sub-Loop Non-REC, which comport with the present GTA network architecture, should be approved by the PUC and included in the ICA.

Issue 59 involves Section 2 of the Network Elements Attachment (p. 79-80 of the ICA). Deleted from this section are certain services which are no longer provided, such as Inside Wire, Dark Fiber Transport, and Dedicated Transport. The PUC previously held that GTA is no longer required to provide Dark Fiber or Dedicated Transport. This section now comports with GTA's Network infrastructure and should be adopted and incorporated into the ICA. In his testimony, Mr. Day of PDS indicated that he concurred with these revisions.¹²

Issue 60 involves as to when certain loop transmission types, 2/4 wire, will be provided. In general, the revisions clarify that such loops will be available "only where Home Run Copper Facilities are available." As GTA has submitted, and PDS has concurred, GTA does not have an obligation to offer Hybrid Loops using IP feeder, nor to offer IP services, to PDS. These Loops are available where Homerun Copper Facilities exist.

¹² Testimony of John Day.

Issue 65 involves Section 4, Sub-Loop, of the Network Elements Attachment (p. 86-87 of the ICA). Section 4.1 states that GTA shall provide PDS with access to a Sub-Loop Distribution Facility in accordance with... "Applicable Law and the Arbitration Order." PDS suggests that the language "Arbitration Order" is not needed. However, PUC Arbitration Orders, including the Order which will be issued in this proceeding, are likely applicable to this issue. The term "Applicable Law" in federal regulations sometimes only refers to federal law, but not necessarily PUC Orders. For further clarity, the term "Arbitration Order" should be retained. The further definition of Sub-Loops in Section 4.1.1 indicates the different types of Sub-Loops that are available under the agreement. These comport with the determinations previously made by the ALJ. All of these definitions of Sub-Loops should be approved by the PUC and included in the ICA.

Issue 85 involves the Pricing Attachment which is set forth as GTA Exhibit 5. As the ALJ previously indicated, the Pricing Attachment should be adopted and included in the ICA. Thus, all of the provisions set forth in this Section IV, as indicated by the ALJ, should be approved by the PUC and included in the ICA.

V. ISSUES 58, 62 AND 100 (UNE OBLIGATIONS, GTA TESTING UPON INSTALLATION OF LOOPS AND DELIVERY LIMITATIONS BASED ON ORDER VOLUMES)

Issue 58 involves Section 1.5 of the Network Elements Attachment (p. 78 of the ICA). A provision proposed by GTA indicates that, if its obligation to provide any UNE or combination offered under the agreement is altered by Applicable Law, GTA may

discontinue provisioning of such UNEs. The provision also establishes the possibility that facilities could continue to be provided to PDS under a commercial arrangement. The ALJ believes that this provision is in accordance with existing law, and that it may help to prevent future conflict by establishing a procedure for discontinuance. This provision should be adopted by the PUC and included in the ICA.

Issue 62 involves Section 3.4.1 of the Network Elements Attachment (p. 84 of the ICA). GTA proposes “pass/fail indications” for testing of loop compatibility and specifications. Apparently GTA seeks to reduce the amount of information which it has provided to PDS over the last 10 years of ICA agreements. The ALJ believes that the current “Cooperative Testing” language has been sufficient over the last 10 years. Insufficient justification has been provided by GTA for changing the existing established testing protocol. Therefore, the ALJ recommends that proposed Section 3.4.1 on Testing not be adopted by the PUC or included in the ICA.

Issue 100 concerns a proposed amendment to Section 4.2.1.5 for the Service Order Attachment (p. 51 of the ICA). GTA proposes that the 5 day interval for provision of UNE loop or sub-loop services would apply when there are no more than 3 UNEs due on any one day and no more than 15 UNEs per week. If the UNEs order exceeds these volumes, GTA would provide an estimated time to complete the UNE installations. GTA has not presented any specific instances where a 5 day installation interval presented a particular or specific problem. The existing Service Standards have been in the ICA since its inception; there are also other provisioning requirements for

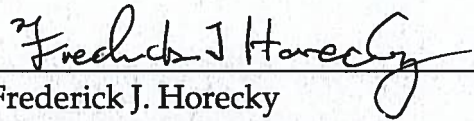
loop and sub-loop installation in the Rule 7 of the Interconnection Implementation Rules.

Thus, no sufficient justification has been provided for any change in the current rule. Since there is no compelling reason for the change, it should not be adopted by the PUC or included in the ICA. In light of the apparent declining number of UNEs that PDS will utilize or retain, GTA compliance with the existing interval provisions does not appear to be problematic. Should GTA experience any problems in meeting the time intervals in provisioning, it can negotiate those with PDS and/or bring them to the attention of the PUC, if necessary.

CONCLUSION

The Administrative Law Judge recommends that the PUC adopt his recommendations on the eighteen issues discussed herein. A proposed Order is submitted for the consideration of the Commissioners.

Respectfully submitted this 12th day of January, 2018.


Frederick J. Horecky
Administrative Law Judge

GPUC Docket GTA 18-01 - ICA #4 Negotiations **Updated Schedule of Open Issues for Final Arbitration**

Item No.	ICA Module	ICA Sec. Ref	Origin	Major Topic	Description of Specific Issue	GTA Position	PDS Position	Status
03	General Terms & Conditions	1.1.1 - 1.1.4	GTA	FCC Rules	Establishes the purpose of the ICA between the parties	GTA standardizes its ICA language by clearly defining the scope and purpose of the ICA. 1.1.1 states that the ICA, inclusive of Attachments (or modules) comply with each Party's obligations. 1.1.2 states that the ICA does not cover non-telecommunications traffic or instances where either Party is not a common carrier. The ICA is designed to cover Non-Access Telecommunications Traffic. Other traffic exchange will be incidental to this primary purpose. VoIP traffic must meet a Local/EAS definition to exclude VoIP traffic that would be treated under Access Telecommunications. A change to VoIP treatment by FCC will follow the Change in Law provisions of the ICA. 1.1.3 states that Toll Traffic will be subject to access tariffs. 1.1.4 states that if PDS provides services to a third-party Retail Provider, its obligations and responsibilities under the 251 and 252 Sections are not avoided.	This is new language not in the previous ICA's. PDS does not believe the additional language is needed.	Open
03 A								
03 B								
12	General Terms & Conditions	28	PDS	Network Notice	Notice of Network Changes -	GTA will comply with the FCC regulations. Not all notices require a 180-day notice. Most notices provide via FCC Public notice. Only a few notices require direct notice to carrier by the ILEC	Establish 180-day interval for all Network Change Notices. Notices should be sent directly to PDS as well as other FCC publication requirements.	Open
14	Glossary	---	GTA	Architecture	Sub-Loop Feeder Facility	Deleted since it no longer is required	Language needs to be crafted to be compatible with final definitions of UNE Sub-Loops.	Open
21	Glossary	2.64 + 2.66	GTA	Wire Center	Loop	Confirms that a loop is a transmission path from a Wire Center (Agana is the only GTA wire center on Guam) to the NID at a customer location.	Language needs to be crafted to be compatible with final definition related to UNE Loops.	Open
28	Glossary	2.94	GTA	Wire Center	Remote Equipment Center	Confirms that a REC is a specific list of locations, not including Agana, which is the only Wire Center for GTA on Guam.	Modify Exhibit A for this purpose. PDS has proposed a new Exhibit A.	Open

Exhibit "1"

GPUC Docket GTA 18-01 - ICA #4 Negotiations

Updated Schedule of Open Issues for Final Arbitration

Item No.	ICA Module	ICA Sec. Ref	Origin	Major Topic	Description of Specific Issue	GTA Position	PDS/Position	Status
31	Glossary	2.102	GTA	Sub-Loop	Sub-loop Distribution Facility	Loops are only from the Central Office to the Customer Premise. All other loops are sub-loops. Confirms that a sub-loop is a transmission facility as defined in the TELRIC study. Confirms that a REC Sub-Loop is available as well as a Non-REC Sub-Loop is available to PDS.	The Parties disagree on the interpretation of the TELRIC Order related to Sub-Loops.	Open
49	Interconnection Attachment	2.1-2.9	GTA	Traffic	Traffic responsibilities	Add provision for Retail Provider, limit nomadic traffic and include VoIP-PSTN traffic.	New Language added to the Agreement. not in previous ICAs, PDS is not convinced as to the need for this new and additional language.	Open
58	Network Elements Attachment	1.5	GTA	FCC Rules	UNE Obligations regarding discontinuance	Added wording on discontinuance of offering UNEs after FCC rule changes.	PDS does not agree with the text of the language change. Further refinement of the language is required before PDS can accept.	Open
59	Network Elements Attachment	2	GTA	Wire Center	Modified list of GTA obligations.	This is a Major change reflecting GTA's network architecture. GTA modifies list of UNEs to reflect changes to network and law. This architecture change removes several subsections of the proposed ICA. For example, there is no Dark Fiber and no Interoffice Transport under the new architecture. There are REC FDI to NID subloops and non-REC FDI to NID subloops. Loops are exclusively from the Agana Central Office / Wire Center.	PDS does agree with the text of the language proposed by GTA and of the assumptions used by GTA to create a new definition for UNE Subloops.	Open
60	Network Elements Attachment	3.1.01 3.1.2, 3.1.3, 3.1.5, 3.1.6, 3.1.7	GTA	Technology	Add clarifying language to account for home-run copper loops exist.	Added wording to reflect that these loops are available for home run copper only.	New language added to the Agreement not in previous ICAs, PDS is not convinced as to the purpose and need for this new and additional language.	Open
62	Network Elements Attachment	3.4.1	GTA	Operations	Loop compatibility	Added GTA testing upon installation.	This is not the process currently in use or the process that was studied by GTA during the TELRIC study for which the NRC rates are based. No change should be made.	Open

GPUC Docket GTA 18-11 - ICA #4 Negotiations **Updated Schedule of Open Issues for Final Arbitration**

Item No.	ICA Module	ICA Sec. Ref.	Origin	Major Topic	Description of Specific Issue	GTA Position	PDS Position	Status
65	Network Elements Attachment	4.1.1	GTA	Sub-loop	List Subloop types	Identifies subloops from REC and Non-REC sites.	PDS does agree with the text of the language proposed by GTA and of the assumptions used by GTA to create a new definition for UNE Subloops.	Open
77	Collocation Attachment	---	GTA	Exhibit A		Collocation Lists is over 10 years old. Changes should be made using existing processes	GTA proposes to eliminate the Exhibit, PDS has proposed to reformat the Exhibit and to continue to include in the ICA.	Open
78	Collocation Attachment	1.1	GTA	Wire Center	Scope	GTA listed all current collocations areas. Excludes landing station which is an international facility and beyond the scope of the local interconnection arrangement.	PDS believes this text should include a reference to the reformatted Exhibit A.	Open
85	Pricing Attachment	2. UNE Pricing	GTA	Rates	TELRIC Implementation	Subloops from REC are Priced as full Loops	PDS does not agree with creation by GTA of additional UNE Subloops or how GTA has defined these Subloops and applied the TELRIC Rates.	Open
100	Ordering Attachment	4.2.1.5	GTA	Ordering Intervals	Ordering	GTA has proposed limiting delivery based on order volumes.	PDS does not agree with new limitations that GTA has proposed.	Open

GPUC Docket GTA 18-12 - ICA #4 Negotiations

Schedule of CLOSED Issues

Item No.	ICA Module	ICA Sec. Ref	Origin	Major Topic	Description of Specific Issue	GTA Position	PDS Position	Status
6	General Terms & Conditions	9.2	PDS	Deposits	Assurance of Payment	GTA's position on the PDS suggestion to add one year prior language is to be determined.	Proposed change regarding limiting deposit requirement and allowing for re-evaluation of the requirement consistent with GPUC policy on service deposits.	Resolved, adopt PDS language
7	General Terms & Conditions	9.8	PDS	Deposits	Assurance of Payment	GTA believes that interest is not required under a previous Commission order	Proposed change to requirement payment of interest on any cash deposits.	Resolved, develop text for interest on cash deposits and text to replace standby letter of credit with cash or bond
27	Glossary	—	GTA		Sub-Loop Feeder Facility	Removed because no longer required	Language needs to be crafted to be compatible with final definitions of UNE Sub-Loops.	DELETE (dup with #14)
52	Network Elements Attachment	—	GTA	Dedicated Transport	Architecture	GTA no longer has Dedicated Interoffice transport in its network	PDS has proposed language that provides an explanation of the change in the obligation by GTA to provide these services and the point that if the GTA Network changes again that this InterOffice Transport requirement will still apply.	Closed DELETE
53	Network Elements Attachment	—	GTA	Dark Fiber	Architecture	GTA no longer has Dedicated Interoffice transport in its network	PDS has proposed language that provides an explanation of the change in the obligation by GTA to provide these services and the point that if the GTA Network changes again that this InterOffice Transport requirement will still apply.	Closed DELETE
55	Network Elements Attachment	—	GTA	Combinations	Architecture	GTA is not required under FCC rules and single switch Architecture	PDS does not agree with the text of the language change. Further refinement of the language is required.	Resolved, adopt modified language

GPUC Docket GTA 18-01 - ICA #4 Negotiations

Schedule of CLOSED Issues

Item No.	ICA Module	ICA Sec. Ref	Origin	Major Topic	Description of Specific Issue	GTA Position	PDS Position	Status
56	Network Elements Attachment	1.2	GTA	Wire Center	General provision adding language to recognize GTA has one central office switch / wire center. And that GTA does not have a Dark Fiber obligation.	Change reflects GTA current network architecture.	PDS does not agree with language of change, GTA does not know reason for PDS disagreement?	Resolved, adopt modified language
57	Network Elements Attachment	1.4.2	GTA	FCC Rules	UNE Obligations for IP services	Added wording excluding IP services that are not required under FCC rules.	PDS does not agree with language of change. GTA has never provided notice of this change to the GTA Network.	Resolved, adopt modified language
64	Network Elements Attachment	3.6.0	GTA	FCC Rules	Hybrid Loop	Add certification that all hybrid loops use IP and are not available for UNE loops.	PDS has an issue with the new and additional language that GTA has added related to this type of UNE service configuration.	Resolved, adopt modified language
66	Network Elements Attachment	4.1.3		Sub-loop	Sub-loop connection	Defines the process for connecting a sub-loop at a Non-REC FDI.	PDS does not agree to the text used in this section since the definition of the UNE Subloop has not been settled and this definition will have an impact on the connection language.	Closed DELETE
67	Network Elements Attachment	4.1.x	GTA	Sub-Loop	Sub-Loop Ordering?			Closed DELETE
74	Resale Attachment	4.2	GTA	Responsibility for charges	SLC and ARC charges apply to resold line	Charges apply	PDS does not agree that these End-User charges would apply to PDS as a reseller of the service.	Resolved, PDS accepts GTA's position
81	Collocation Attachment	3.6	GTA	Sub-loop	Remote collocation	Added the option for remote collocation at a non-REC FDI on an ICB basis.	PDS has proposed language modification to GTA text.	Closed DELETE
82	Collocation Attachment	5.5	GTA	Collocation	Demarcation Point	Added wording to separate POT bay v. MDF.	This language is not included in the existing ICA and this POT bay is not currently in use for the existing interconnections. PDS does not believe this new and additional language is needed or required.	Resolved, PDS accepts GTA's position
83	Collocation Attachment	6.1	GTA	Collocation	Requirement to reserve space	GTA is not required to reserve space in the 18 REC locations indefinitely. The application should expire and the process start over when PDS actually needs collocation space.	Relates to Exhibit A locations that have been approved for collocation but have not yet been built out (only effects two of the 18 sites). PDS has proposed to allow this authorization to expire on 9-30-2018.	Resolved, PDS accepts GTA's position

GPUC Docket GTA 18 - ICA #4 Negotiations

Schedule of CLOSED Issues

Item No.	ICA Module	ICA Sec. Ref	Origin	Major Topic	Description of Specific Issue	GTA Position	PDS Position	Status
84	Collocation Attachment	9.0 Exhibit A		Exhibit A		Delete. Collocations can change and don't want to update agreement with new order(s)	PDS has proposed a revised Exhibit A that still is applicable to this Attachment.	DELETE (dup with #77)

Changes to issues list as of 12-01-2017

Changes to issues list as of 12-13-2017