

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF: )  
 ) **GTA Docket 17-04**  
 )  
 **Formal Complaint of Teleguam** ) **ALJ REPORT**  
 **Holdings, LLC, Regarding Termination** )  
 **of PDS Dark Fiber** )  
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**INTRODUCTION**

This dispute between the parties, TeleGuam Holdings LLC ["GTA"] and Pacific Data Systems Inc. ["PDS"] concerns the provision of certain services by GTA to PDS referred to as "Dark Fiber transport" or Dark Fiber IOF [inter office facility]. In this proceeding, GTA seeks an Order from the Guam Public Utilities Commission ["PUC"] denying PDS' claim that Dark Fiber service must continue until a new Interconnection Agreement becomes effective and a finding that GTA is within its rights under the PUC Order in the Dark Fiber Docket (GTA Docket 15-06) to terminate Dark Fiber services to PDS on August 28, 2017.<sup>1</sup> PDS opposes termination of Dark Fiber services and contends that such service must continue while the parties are negotiating a new Interconnection Agreement pursuant to Section 2 of the current ICA.<sup>2</sup>

**BACKGROUND**

In January of 2015, GTA made certain changes to its network which consolidated GTA end offices and wire centers into one central office/wire center in Hagatna, Guam. This network change had the effect of eliminating transport between GTA offices/wire centers, known as inter-office facilities.<sup>3</sup> A provision of the current ICA between the parties, Network Elements ATT.§8.1, provides that "GTA shall not be required to provide, and PDS shall not request or obtain, Dark Fiber Transport that does not connect a pair of GTA UNE Wire Centers." However, in GTA Docket 15-06, the PUC held that GTA was contractually required to provide Dark Fiber IOF Service to PDS at the rates agreed to under the ICA: "[T]he rates established in the ICA dated August 11,

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<sup>1</sup> Formal Complaint of TeleGuam Holdings, LLC Regarding Termination of PDS Dark Fiber Transport Pursuant to GTA Docket 15-06, GTA Docket 17-04, filed June 9, 2017.

<sup>2</sup> Answer of Pacific Data Systems, Inc., GTA Docket 17-04, filed June 14, 2017.

<sup>3</sup> Formal Complaint of TeleGuam Holdings, LLC Regarding Termination of PDS Dark Fiber Transport Pursuant to GTA Docket 15-06, GTA Docket 17-04, filed June 9, 2017, at p. 2.

2014, will remain in effect until the expiration of the current ICA in August 2017 or unless otherwise changed or altered by the PUC.”<sup>4</sup>

On August 31, 2016, GTA advised PDS that, in accordance with the PUC Dark Fiber Order dated July 28, 2016, Dark Fiber Services would be billed until the expiration of the current Interconnection Agreement on August 28, 2017, and that Dark Fiber services would be terminated on that expiration date.<sup>5</sup> On September 19, 2016, PDS’ response letter contended that GTA’s obligation to provide Dark Fiber to PDS extended beyond August 28, 2017, and continued during the period of negotiation of a new ICA until a new agreement became effective (pursuant to Section 2 of the ICA). Discussions between GTA and PDS were unable to resolve these issues. GTA subsequently filed this Complaint to resolve the dispute with PDS.

### **FINDINGS AND CONCLUSIONS**

In its February 25, 2016, Order, the PUC held that dark fiber rates would remain in effect until the expiration of the current ICA in August 2017 or unless otherwise changed or altered by the PUC. That Order was affirmed by the PUC Order of July 28, 2016. The PUC has not changed or altered that provision to date. The February 25, 2016, Order adopted certain findings and conclusions of the ALJ, including his Conclusion of Law §109. That Conclusion of Law provides that “Dark Fiber IOR, pricing, the current “Interim Rates”, should remain in effect until the present ICA terminates on or about August 11, 2017, unless otherwise changed in accordance with law. Upon the termination of the current ICA, the parties can negotiate such service/pricing arrangements as they desire concerning Dark Fiber Transport in negotiation/arbitration proceedings.”<sup>6</sup> As GTA has indicated in its Complaint, the actual date of termination of the current ICA is August 28, 2017, not August 11, 2017 as had been indicated in the ALJ Recommendations.<sup>7</sup>

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<sup>4</sup> PUC Order, GTA Docket 15-06, dated February 25, 2016, at pgs. 3-4. The Order was affirmed by the PUC in its Final Arbitration Order upon Limited Rehearing, dated July 28, 2016, at p. 2.

<sup>5</sup> Formal Complaint of TeleGuam Holdings, LLC Regarding Termination of PDS Dark Fiber Transport Pursuant to GTA Docket 15-06, GTA Docket 17-04, filed June 9, 2017, Attachment 3.

<sup>6</sup> Recommendations of the Administrative Law Judge, GTA Docket 15-06, dated February 18, 2016, Conclusions of Law §109 at p. 17.

<sup>7</sup> The Effective date of the ICA is the date it was approved by the PUC, not the date it was signed or submitted by the Parties to the PUC. Formal Complaint of TeleGuam Holdings, LLC Regarding Termination of PDS Dark Fiber Transport Pursuant to GTA Docket 15-06, GTA Docket 17-04, filed June 9, 2017, at p. 3.

In its February 25, 2017, Order, the PUC indicated that Dark Fiber Service to PDS would terminate on August 28, 2017. The PUC specified a date certain for termination of Dark Fiber Service. The plain language of the Order intended that the Dark Fiber Service terminate at a specific time, August 28, 2017. However, PDS' argument is that the term of the ICA has been extended by virtue of Section 2 of the current ICA, which provides:

## **"2. Term and Termination**

The initial term of this Agreement shall be three (3) years ("Initial Term") beginning on the Effective Date and shall apply to the territory of Guam. If, as of the expiration of this Agreement, a subsequent agreement has not been executed by the Parties, this Agreement shall automatically renew for successive one-year periods, unless, not less than one hundred twenty (120) days prior to the end of the Initial Term or any renewal term, either Party notifies the other Party of its intent to renegotiate a new agreement. In the event of such renegotiation, this Agreement shall remain in effect until such time that a subsequent agreement becomes effective..." (emphasis added).

On April 28, 2017, GTA issued a request to negotiate the Interconnection Agreement pursuant to Section 2 of the GTA-PDS Interconnection Agreement approved by the PUC on August 28, 2014.<sup>8</sup> In accordance with Section 2 of the ICA, the parties are now in a renegotiation period and the ICA remains in effect until a subsequent agreement becomes effective. However, when the PUC indicated that Dark Fiber Service would terminate on August 28, 2017, no automatic renewal of the agreement had occurred, and neither party had yet notified the other of intent to renegotiate a new agreement. The PUC made its determination pursuant to the first sentence of Section 2 of the ICA, which indicated that the term of the ICA was three years and would terminate on August 28, 2017. By specifying a date for termination of Dark Fiber Service, August 2017, the PUC intended Dark Fiber Service to terminate at that time.

Even though PUC indicated a specific date for termination of Dark Fiber Services, PDS contends that renegotiation of the ICA by GTA extends the period during which GTA must continue to provide Dark Fiber to PDS. The fact that other ICA services in the Agreement will continue, because the current Agreement is in effect until a subsequent agreement becomes effective, does not mean that Dark Fiber will continue in effect. The PUC Dark Fiber Order recognized that the network changes by GTA in January 2014 effectively eliminated DFIOF and that GTA was no longer required to provide such

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<sup>8</sup> Formal Complaint of TeleGuam Holdings, LLC Regarding Termination of PDS Dark Fiber Transport Pursuant to GTA Docket 15-06, GTA Docket 17-04, filed June 9, 2017, Attachment 5.

service pursuant to §8.1 of the ICA; the holding was that GTA had a contractual obligation to continue the service until the end of the contract.<sup>9</sup>

The PUC Order clarifies that Dark Fiber Services will not continue beyond the expiration of the ICA. The rates in the ICA for Dark Fiber were only to remain in effect until the expiration of the current ICA in August 2017.<sup>10</sup> There is no apparent purpose for extending the expiration of the ICA for a service that will not be continued under the next ICA. During the renegotiation period for the next ICA, GTA has no obligation to negotiate for Dark Fiber Service. It also has no obligation to provide Dark Fiber Service to PDS in the next ICA.

PDS contends that the Final Arbitration Order dated July 28, 2016, required GTA to provide Dark Fiber to PDS “for the remainder of the term”, which also includes the renegotiation period for the subsequent ICA. However, when the PUC made this determination, the term ended on August 28, 2017. Subsequent exercise by a party of renegotiation does not extend the period during which Dark Fiber is required to be in effect. Regardless of a renegotiation of the ICA, the term still remains as three years. PDS did not have the right to rely upon the continuation of Dark Fiber Services beyond August 28, 2017.

If there were any doubt about the foregoing interpretation of the PUC intent, the ALJ wishes to reference the amendment made to the proposed Final Arbitration Order at the PUC Meeting on July 28, 2016. Commissioner McDonald requested the inclusion of a new provision in the proposed Order to the effect that it does not bind ICA 4 or the **negotiations for ICA 4**.<sup>11</sup> Ordering Provision 4 of the Final Arbitration Order provided as follows: “This Order shall not be binding upon the parties in their negotiations concerning the Fourth ICA. Each Party shall be free to take the position of its choice without regard to the determinations in this Order.”<sup>12</sup> The meaning of the Order is that GTA would not have the same contractual obligation to continue to provide Dark Fiber to PDS during the negotiations for the Fourth ICA. Since GTA had no further obligation to provide Dark Fiber during the negotiation period, the right of PDS’ to such service terminates on August 28, 2017.

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<sup>9</sup> PUC Order, GTA Docket 15-06, dated February 25, 2016, Ordering Provision par. 7 at p. 3.

<sup>10</sup> Id. at p. 4.

<sup>11</sup> Depo Resources, Transcript for the PUC Meeting on July 28, 2016, at pgs. 44-45 and 48.

<sup>12</sup> PUC Final Arbitration Order, GTA Docket 15-06, dated July 28, 2016, at Ordering Provision No. 4, pg. 3.

ALJ Report  
GTA Complaint to  
Terminate Dark Fiber  
GTA Docket 17-04  
July 20, 2017

### RECOMMENDATION

The ALJ recommends that the PUC grant the relief requested in GTA's Formal Complaint that GTA is entitled to terminate Dark Fiber Services to PDS on August 28, 2017. As to PUC regulatory fees and expenses in this Docket, the ALJ recommends that they be split equally among the parties. The ALJ does not believe that either parties' position was taken in bad faith or without an arguable position. A Proposed Order is submitted with this Report for the consideration of the Commissioners.

Dated this 20<sup>th</sup> day of July, 2017

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Frederick J. Horecky  
Administrative Law Judge  
Guam Public Utilities Commission