

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF:	)	GTA Docket 15-06
	)	
Formal Complaint of Teleguam Holdings, LLC, Regarding PDS Dark Fiber Informal Complaint of October 23, 2015	)	ORDER OF THE ADMINISTRATIVE LAW JUDGE ON TELEGUAM HOLDINGS LLC'S MOTION FOR RECONSIDERATION

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This matter comes before the Administrative Law Judge ("ALJ") upon the motion of Teleguam Holdings LLC for Reconsideration, which was filed on February 22, 2016.<sup>1</sup> GTA requests that the ALJ "reconsider" his "Recommendation" to the PUC filed on February 18, 2016. The ALJ finds that there is no legal basis for the Motion for Reconsideration under the applicable rules, and that it is premature. Alternatively, the ALJ determines there is no justification or a sufficient basis stated in the Motion for the ALJ to change or alter the original recommendation that he filed with the Commission.

**I. THERE IS NO LEGAL BASIS FOR GTA'S MOTION UNDER THE APPLICABLE RULES; THE MOTION IS PREMATURE.**

The ALJ filed his RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE herein with the PUC on February 18, 2016. There is no authorized procedure under the applicable rules wherein a party may request that the ALJ reconsider his RECOMMENDATION. Additionally, although GTA requests "reconsideration", GTA has not cited any legal authority under which such a motion is authorized. Rule 4(h)(9) and (10) of the Interconnection Implementation Rules ("IIRs") provide as follows:

The written recommendation of the arbitrator shall be filed with the Commission within fifteen (15) days after the close of the hearing and shall be distributed to all parties of record in the dispute resolution proceeding. The recommendation of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The recommendation shall include a narrative report explaining the arbitrator's rationale for each of the rulings included in the final decision.

The Commission shall issue a final order accepting or rejecting, in whole or in part, the recommendation of the arbitrator within ten (10) days after the recommendation has been filed.

The ALJ has already filed his Recommendation with the Commission, and it has been distributed to the parties of record as well as to the Commissioners of the PUC. The ALJ had to file his Recommendation with the PUC and distribute it to the parties within a deadline of fifteen days. At the PUC meeting on February 25, 2016 (this Thursday), in accordance with the requirements of the IIRs, the PUC will issue a final Order

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<sup>1</sup> Teleguam Holdings LLC's Motion for Reconsideration, GTA Docket No. 15-06, filed February 22, 2016.

accepting or rejecting, in whole or in part, the recommendation of the arbitrator [ALJ]. There is no rule or procedure in the IIRs which provides for a "reconsideration" by the ALJ. The ALJ only makes a "Recommendation" to the PUC. The ALJ Recommendation is not a final decision or order, nor is it a final adjudication of this matter.

Under the PUC Rules for Practice and Procedure, there is a procedure for "Rehearing" a matter, but only "after a decision or order of the Commission..." Rule 37 of the Rules for Practice and Procedure for the Commission. GTA will likely be presented with an opportunity to present any applicable argument to the Commission on this matter at its meeting on February 25, 2016; alternatively, GTA could pursue its remedy for Rehearing under Rule 37 Rules for Practice and Procedure if the Commission enters an Order with which GTA does not concur. Thus, GTA's Motion is premature.

## II. **GTA DOES NOT STATE A JUSTIFICATION OR SUFFICIENT BASIS UPON WHICH THE ALJ SHOULD RECONSIDER HIS RECOMMENDATION.**

### A. GTA has a contractual obligation to provide Dark Fiber IOF to PDS.

GTA contests the finding of the ALJ that it has a contractual obligation to provide Dark Fiber IOF to PDS. Its argument is that "Exhibit A does not pertain to Dark Fiber IOF." GTA further claims that Exhibit A is not an agreement to provide Dark Fiber IOF, but identifies what PDS' is requiring for collocation at GTA facilities. However, GTA has not referred to the column heading on Exhibit A which refers to the column heading w "**Dark Fiber IOF Strands.**"

In Exhibit A, Dark Fiber IOF Strands are listed as one of the "**Requirements**" for PDS Collocation. Under the column Dark Fiber IOF Strands, it is indicated that there are "2 Fiber Strands Per Route" for 19 routes. Exhibit A specifically indicates that there will be 2 Dark Fiber IOF Strands per route for each of the 19 GTA facilities. This is a representation and Agreement by GTA that there will be Dark Fiber IOF Strands for the 19 GTA facilities. PDS Hearing Exhibit No. 5, PDS-GTA ICA Exhibit A.

In addition, GTA agreed to provide Dark Fiber IOF to GTA in the in the Pricing Attachment to the Interconnection Agreement entered into on August 10, 2014. See attached hereto, PDS Exhibit C, submitted in GTA Docket 15-05, the ICA Pricing Attachment. The Pricing Attachment indicates that a "**Service**" which GTA provides to PDS is **Dark Fiber IOF**. The Pricing Attachment indicates the nonrecurring and monthly recurring charges for Dark Fiber IOF. GTA also agreed to a per mile charge for the Dark Fiber IOF.

Both of these Exhibits establish that GTA agreed to provide Dark Fiber IOF to 19 specific facilities and agreed to provide the service and pricing for such Dark Fiber IOF. GTA has a contractual obligation to provide Dark Fiber IOF to PDS. Furthermore, PDS's hearing Exhibit 18 indicates that for a period of approximately 10 years, or during the terms of 3 ICAs including the current ICA, GTA provided Dark Fiber Inter-Office Transport to PDS at an agreed upon pricing.

GTA cannot negate its contractual obligation to provide Dark Fiber IOF merely by making unilateral changes in its Network Infrastructure. Changes in the contractual obligations of the parties in the ICA can only be made upon agreed amendment thereof

by the parties and/or approval by the PUC. Finally, after GTA made changes to its network in January 2015, it continued to provide PDS with Dark Fiber IOF through September 2015. Even when it sought to change the amount of the billing in September 2015, it continued to send bills to PDS after September 2015 indicating the service as "PACIFIC DATA SYS INTER OFF TRANSPORT." PDS Hearing Exhibit 16. GTA has always indicated in the billings that PDS was being billed for Dark Fiber Inter-Office Transport .

The PUC has recognized that GTA has provided Dark Fiber IOF to PDS and continued to agree do so in the Interconnection Agreement entered into on August 10, 2014. On August 28, 2014, the PUC approved the ICA of GTA and PDS, including Exhibit A and the Pricing Attachment (referenced above), which states that GTA will provide Dark Fiber IOF service to PDS.<sup>2</sup>

GTA continues to assert that it is not "required to provide" access to a Dark Fiber facility that does not meet the definition of Dark Fiber Transport. The ALJ Recommendation points out that for approximately 10 years over the history of three ICAs, GTA agreed to provide and provided Dark Fiber IOF to PDS for fifteen routes that were not technically DF-IOF under the ICA and were not between two wire centers. The salient point is that if GTA was entitled to choose to provide Dark Fiber IOF to PDS even though it had no obligation to do so or it could not "be required" to do so under the ICA Network Elements Attachment §8.1. GTA agreed to provide DF-IOF in its current ICA with PDS. See RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE, Findings Of Fact ¶¶41-¶47; and Conclusions of Law ¶87-¶97.

If GTA could unilaterally change services in a contract which it provides to PDS, or change pricing for the agreed upon services without PUC review or approval, there would be no purpose in having an Interconnection Agreement between the parties. The purpose of a contract is to establish the services and prices that one party will provide to the other. §1 of the ICA indicates that the Agreement sets forth the Tariffs applicable to the Services that are offered for sale by the parties.

- B. GTA's Pricing Change for Dark Fiber IOF Services to PDS has not been approved by the PUC. Rates based upon "Estimated" Capacity charges are not "just and reasonable."

GTA claims that it is now providing "lit" service to PDS, which is a commercial service, and not Dark Fiber IOF. GTA could have made the same argument at any point in time over the last 10 years going back to the first ICA. 15 of the routes for which GTA provided Dark Fiber IOF service to PDS were not in fact Dark Fiber routes under the ICA as they were not between two wire centers. They could have been classified as "lit" services but were not. Instead, GTA agreed in prior ICAs and the most recent ICA on August 10, 2014, that it would continue to provide Dark Fiber IOF service to PDS to 19 GTA facilities, and it agreed in the Pricing Attachment to provide such service with a cost for Dark Fiber IOF based upon a per mile charge and not "capacity" charges. GTA cannot unilaterally change the pricing and service that was agreed to in the ICA.

GTA further contends that PUC already approved the commercial rates which it seeks to charge PDS in the General Exchange Service. However, PUC never authorized GTA

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<sup>2</sup> PUC Order Approving Interconnection Agreement, PDS Docket 14-01, dated August 28, 2014 at p. 4.

to charge “analogous” commercial rates to PDS for Dark Fiber Transport services. GTA cannot apply rates to PDS for other services which PDS is not receiving. GTA suggests that it is now providing Dark Fiber Transport to PDS as defined under the ICA, but not Dark Fiber IOF service. However, it agreed in the ICA to provide DARK Fiber IOF to PDS. GTA never received approval or authorization from the PUC to change the Dark Fiber IOF rates that it agreed to in the ICA. GTA claims that it is merely applying the General Exchange Tariff rates that it charges to other commercial carriers for “lit” or “commercial” service. Such service was not what it agreed to provide PDS in the ICA.

This is precisely the type of rate change to a party that anticipates review and approval by the PUC under the Guam Telecommunications Act of 2004, 12GCA§12201 *et seq.* To demonstrate the inappropriateness of the rates charged, GTA admits that they are not based upon any “actual” capacity utilized by PDS, but solely upon an “estimate.” It is not fair to increase the rates of a party such as PDS for six fold, from \$8,409.19 per month to \$54,539.44 per month, and based upon nothing more than a “estimate.” In fact, GTA’s Exhibit 2 indicates that it is attempting to charge PDS a monthly rate based upon services other than Dark Fiber Transport, which is OC 3 and OC 12. There has been no showing that these are appropriate rates to charge to PDS, particularly as GTA admitted that it has not incurred any additional cost to provide Dark Fiber Transport to PDS than it previously did in providing Dark Fiber Interoffice Transport.

The role of the PUC is to determine that rates are “just” and “reasonable.” If GTA desired to change the rates it was charging PDS, it had two possible paths: amend the ICA through agreement with PDS or approval by the PUC, or file a rate petition to change the rates. GTA undertook neither possible course of action.

### CONCLUSION

For the reasons set forth herein, GTA’s Motion for Reconsideration is denied.

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Frederick J. Horecky  
Administrative Law Judge  
Guam Public Utilities Commission