

ICA and federal notice requirements for the network changes which it had identified.⁶ Prior to September 2015, the monthly billings which GTA submitted to PDS for Dark Fiber Inter-Office Facilities ["DF-IOF"] [17 routes] had been \$8,409.19 per month; GTA was now intending to charge PDS \$54,539.44 per month as commercial rates for "analogous service."⁷

PDS thereafter refused to pay any invoices regarding the disputed services. After discussions between the parties and an exchange of emails did not lead to a resolution, GTA filed its Formal Complaint on December 9, 2015. The main relief sought by GTA was that PDS make "Interim Payments" to GTA for DF Services during the pendency of these proceedings until the billing dispute was resolved.⁸ The PDS' Answer, filed on January 5, 2015, disputed that "Interim Payments" were due, and requested that the PUC address the "core issue in this dispute, namely GTA's unilateral decision to discontinue ICA Dark Fiber services."⁹

PDS contended that the discontinuance of DF Services, and the steep increase in rates billed, threatened its ability to provide competitive services to new and existing services on Guam.¹⁰ On January 20, 2016, the parties entered into a Stipulation which provided that, until this proceeding was resolved, PDS would make monthly payments ["Interim Payments"] to GTA for Dark Fiber Invoices in the same amount (\$8,409.19) as charged for those services in invoices issued by GTA prior to September 2015.¹¹

On February 2nd and 3rd 2016, the ALJ conducted a hearing of the matter on the merits and received testimony, evidence and argument from the parties. The parties stipulated to all of the Exhibits. On January 10, 2016, the parties submitted proposed Findings of Fact and Conclusions of Law. The ALJ issued his Recommendation to the PUC pursuant to the Rules for Practice and Procedure before the Commission and Inter-Connection Implementation Rule 4(h).¹²

FINDINGS OF FACT

The PUC hereby adopts the Findings of Fact set forth in the ALJ Recommendation as the PUC Findings of Fact. Said Findings of Fact are incorporated herein by reference.

CONCLUSIONS OF LAW

The PUC hereby adopts the Conclusions of Law set forth in the ALJ Recommendation as the PUC Conclusions of Law. Said Conclusions of Law are incorporated herein by reference.

⁶ PDS Exhibit 11, Email from John Day to Andrew M. Gayle dated July 2, 2015.

⁷ PDS Exhibit 18, Dark Fiber Inter-Office Transport (DF/IOF) Worksheet, GTA Docket 15-06, prepared January 29, 2016.

⁸ GTA Formal Complaint, GTA Docket 15-06, filed December 9, 2015, at p. 3.

⁹ PDS Answer to GTA Complaint of December 9, 2015, GTA Docket 15-06, filed January 5, 2016.

¹⁰ Id. at p. 3.

¹¹ Stipulation between Teleguam Holdings, LLC and Pacific Data Systems Inc., GTA Docket 15-06, filed January 20, 2016.

¹² The record in this Docket includes all documents filed of record, exhibits attached thereto, emails between the parties and/or the ALJ, testimony and exhibits introduced by the parties at the hearing, and argument presented by the parties at the hearing.

GTA has a continuing contractual obligation under the ICA to provide Dark Fiber IOF to PDS. Exhibit A to the ICA, in the column “**Dark Fiber IOF Strands**,” indicates that there are “2 Fiber Strands Per Route” for 19 routes. Exhibit A establishes that there are 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 19 GTA facilities. PDS-GTA ICA Exhibit A, PDS Hearing Exhibit 5.

In the ICA Pricing Attachment. GTA expressly agreed that it would provide Dark Fiber IOF Service to PDS. , Dark Fiber IOF Strands are listed as one of the “**Requirements**” for PDS Collocation. The Pricing Attachment indicates that Dark Fiber IOF is a service that GTA provides to PDS. It states the nonrecurring and monthly recurring charges for Dark Fiber IOF. GTA indicated a per mile charge for Dark Fiber IOF Service.¹³

ORDERING PROVISIONS

PUC is required to issue a final order accepting or rejecting, in whole or in part, the recommendation of the arbitrator [ALJ] within ten (10) days after the recommendation has been filed. Having considered the record of the proceedings herein, the pleadings of the parties, and the ALJ Recommendation, and good cause appearing, the Guam Public Utilities Commission hereby **ORDERS** as follows:

1. The Findings of Fact and Conclusions of Law in the ALJ Recommendation are adopted.
2. GTA was authorized under ICA §42 to make the network upgrades it undertook in January 2015;
3. GTA provided adequate notice under ICA §28 to PDS and the public of the proposed network changes;
4. The Federal CFR notice requirements are not applicable to the Notice provided herein pursuant to ICA §28.
5. The Remote Switching Centers (RSCs) are not “wire centers”.
6. GTA retired the Tumon and Dededo end offices/wire centers in January 2015; at present there is only one central office/wire center, the Agana Central Office.
7. GTA has a contractual obligation under the ICA, Exhibit A, and the Pricing Attachment thereof, to provide Dark Fiber IOF Service to PDS at the rates agreed upon under the ICA.
8. GTA, both before and after the network changes, provided Dark Fiber IOF to seventeen routes involving Remote Switching Centers, even though such routes were not between a pair of wire centers.
9. The “analogous” commercial rates” which GTA sought to impose upon PDS for Dark Fiber Transport are not valid and effective, as they have not been reviewed or approved by the PUC pursuant to the Guam Telecommunications Act of 2004.

¹³ PUC Order Approving Interconnection Agreement, PDS Docket 14-01, dated August 28, 2014 at p. 4.

10. GTA should be required to bill PDS for Dark Fiber Transport at the rates established in the ICA dated August 11, 2014.
11. The rates established in the ICA dated August 11, 2014, will remain in effect until the expiration of the current ICA in August 2017 or unless otherwise changed or altered by the PUC.
12. GTA and PDS shall equally share the regulatory fees and expenses incurred in the Docket, including without limitation, consulting and counsel fees and expenses, and the fees and expenses for conducting the hearing/arbitration process. GTA should be responsible for the fees incurred on its Motion for Reconsideration. Each party prevailed on some issues in this proceeding, and neither acted in "bad faith".
13. Each party shall bear its own attorney's fees.

SO ORDERED this 25th day of February, 2016.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Peter Montinola
Commissioner

Michael A. Pangelinan
Commissioner

Andrew L. Niven
Commissioner

Filomena M. Cantoria
Commissioner