

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)	
)	GTA DOCKET 15-05
)	
Formal Complaint of Teleguam Holdings, LLC, Regarding PDS Informal Complaint of June 22, 2015 Disputing UNE Loop Invoices)	ORDER

INTRODUCTION

This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Recommendation issued by Administrative Law Judge [“ALJ”] Frederick J. Horecky on January 14, 2016, and as amended on January 20, 2016¹, which is made *Attachment A* hereto. The Formal Complaint of Teleguam Holdings, LLC [“GTA”] alleges the refusal of Pacific Data Systems [“PDS”] to pay certain Unbundled Network Element [“UNE”] Loop Invoices. The Complaint alleges that PDS has ignored GTA’s repeated requests to pay undisputed invoices related to Agana Local Loops and refused to withdraw the billing dispute in light of the ALJ’s Order of August 17, 2015, in PDS Docket 14-01.² On October 12, 2015, PDS filed its Answer, which denied that PDS had violated the payment provisions of Section 6.3 of the PDS-GTA Interconnection Agreement [“ICA”]. PDS alleges that, in January of 2015, GTA changed the characterization of the loop services that it was providing to PDS from “local loops” to “sub-loops”.³ Since the current PDS-GTA ICA does not include any interim pricing for sub-loops, PDS believes that it is therefore entitled to withhold any payment for such sub-loop services until payment rates are established in PDS Docket 14-01.⁴

On December 30, 2015, the ALJ conducted a hearing on this matter and received

¹ Recommendation of the Administrative Law Judge, GTA Docket 15-05, filed January 14, 2016; Amended Recommendation of the Administrative Law Judge, GTA Docket 15-05, filed January 20, 2016.

² GTA Formal Complaint, GTA Docket 15-05, filed September 18, 2015, at p. 1.

³ PDS Answer to GTA Formal Complaint, GTA Docket 15-05, filed October 12, 2015, at p. 2; the underlying issues between the parties relate to a long standing dispute in PDS Docket 14-01 concerning the appropriate network infrastructure for GTA’s telecommunications system. GTA submits that its TELRIC (total element long-run cost) study and rates should be based upon the existence of only one “wire center”, the Agana Central Office. Only UNE “loops” from the central office would be “loops”; loops from all other locations would be “sub-loops.” PDS, however, contends that there should be as many as 19 wire centers, and that loops from each of these locations would be “loops” and not “sub-loops.” A “local loop” is the physical link or circuit that connects from the demarcation point of the customer premises to the edge of the service provider’s network. The local loop terminates in a circuit switch housed in an incumbent local exchange carrier’s central office facility. See definition of “local loop” in [Wikipedia](#).

⁴ Id. at p. 3.

testimony, evidence and argument from the parties. On January 6, 2016, both Parties submitted briefs.⁵ On January 14, 2016, and January 20, 2016, respectively, the ALJ issued his Recommendation and Amended Recommendation [hereinafter referred to as “ALJ Recommendation”] to the PUC pursuant to the Rules for Practice and Procedure before the Commission and Interconnection Implementation Rule 4 (h).

FINDINGS OF FACT

The PUC hereby adopts the STATEMENT OF THE FACTS set forth in the ALJ Recommendation as the PUC findings of fact. Said STATEMENT OF FACTS is incorporated herein by reference.

DETERMINATIONS

The PUC makes the following determinations:

1. There are no rates established for “Sub-loops” under the ICA and to date the parties have not agreed to any rates for “Sub-loops”. There is not now, nor has there ever been, any service for “Sub-loops” approved by the PUC. During Phase I of the Arbitration in PDS Docket 14-01, the parties agreed that they would arbitrate rates for 10 UNE Loop services and 2 “Sub-loop” services in Phase II of the Arbitration.⁶
2. PDS stated during Phase I that there was no present need to arbitrate the two UNE’s for sub-loops, that sub-loops did not exist at present, and that PDS would not be using sub-loops in the near future.⁷ In their Pricing Attachment, submitted to the PUC along with their negotiated ICA, on August 11, 2014, the parties agreed that the two sub-loop service rates to be arbitrated in Phase II were for services for which no interim rates have been established.
3. PDS and GTA further agreed to suspend any orders for these sub-loop services until permanent rates are established pursuant to GPUC Order in Docket 14-01.⁸ The Pricing Attachment indicated that there would be no sub-loop services until permanent rates were established by the PUC in PDS Docket 14-01. No interim rates had been established for any sub-loop services, and no sub-loop services would be available until permanent rates were established pursuant to PUC Order in Docket 14-01.
4. On January 7, 2015, GTA and PDS signed a Stipulation regarding permanent pricing negotiations for UNE rates. PDS agreed that rates for two sub-loop services would be

⁵ PDS Brief, GTA Docket 15-05, filed January 6, 2016; GTA Brief, GTA Docket 15-05, filed January 6, 2016.

⁶ Id.

⁷ PUC Order Approving Interconnection Agreement, PDS Docket 14-01, dated August 28, 2014, at p. 4.

⁸ See PDS Hearing Exhibit C, ICA Pricing Attachment p. 1.

based upon Permanent Rates established through the TELRIC Study and the PUC Rate Arbitration.⁹

5. The parties agreed and stipulated that “sub-loops were off the table until permanent rates were established. “Statements” by GTA or “positions taken in dockets” were ineffective to create any new “sub-loops” or to implement a new network infrastructure which includes sub-loops. PDS has represented in this proceeding that GTA was precluded from requiring PDS to accept sub-loop service, and that such service would not exist until permanent rates were established for sub-loop services.

6. Based upon the precedent of the PUC as set forth in its prior holdings, there was no basis upon which PDS could reasonably have concluded that GTA had established new sub-loop service or rates. The PUC had already established that there was no sub-loop service. The PUC held that there would be no sub-loops until permanent rates for such services were established in Phase II of the Arbitration Proceedings.

7. A review of all of the applicable billings from GTA to PDS indicates that the billings themselves do not in any manner indicate that PDS was being billed for “sub-loop” service. PDS submitted all of the GTA billings through August 2015.¹⁰ PDS admits that: “Our review of the GTA UNE Billings (See Exhibit C) that have been made to PDS since January 2015 show that GTA has been billing all UNE circuits as local loops consistent with past GTA billings.”¹¹ PDS’ brief submitted on January 6, 2016, also indicates that “GTA had continued billing PDS at the local loop rate...”¹²

8. During the hearing, Mr. John Day, the President of PDS, testified that PDS had continued to receive the disputed services without interruption (with a possible exception of a two week period in October where GTA would not process orders). All the services which GTA had previously provided to PDS and its customers, continued to be provided.

9. PDS’ alleged justification for non-payment to GTA is without merit or basis. PDS’ position that it should derive the benefit of the loop service provided by GTA, without making any payment, is unpersuasive. A “Maxim of Jurisprudence” is that “the law

⁹ See PDS Hearing Exhibit D, PDS-GTA Stipulation regarding Permanent Pricing Negotiations from PDS Answer to GTA Complaint.

¹⁰ Exhibit C to PDS Answer, GTA Docket 15-05, filed October 12, 2015.

¹¹ PDS Answer, GTA Docket 15-05 filed October 12, 2015, at p. 2.

¹² PDS Brief, GTA Docket 15-05, filed January 6, 2016.

respects form less than substance.”¹³ The primary substantive point is that PDS has continued to receive services from GTA. PDS cannot be allowed to refuse to make any payment upon a formalistic or technical basis.

10. PDS should also be required to make payment under what has been referred to as the “constructive order doctrine.” Under such doctrine, a party receiving services is deemed to have ordered the services “when the receiver of services (1) is interconnected in such a manner that it can expect to receive access services; (2) fails to take reasonable steps to prevent the receipt of services; and (3) does in fact receive such services.”¹⁴ As in the Alliance Communications case, PDS was interconnected to receive the services, it took no steps to prevent the receipt of such loop services, and it did in fact receive such services. It is required to pay for such services.¹⁵ Also, here PDS did order all of the services that GTA was providing to it.

11. Any issue concerning “sub-loops” was resolved in the ALJ Order on Issues Involving TELRIC Study, issued on August 17, 2015.¹⁶ The ALJ held that when permanent prices were developed and implemented, only then could GTA incorporate the “sub-loop” terminology into the interconnection agreement and alter its billing. The ALJ held that GTA was required to utilize the network infrastructure that was in effect when the PUC adopted the ICA on August 28, 2014. This holding rendered PDS’ argument that GTA had implemented “sub-loops” as “moot.” PDS should have withdrawn its dispute and immediately commenced repayment of invoices for all loop services provided by GTA.

12. PDS argued in its Answer, during the hearing, and in its brief that the ALJ Order on Issues Involving the TELRIC Study “was limited to the GPUC Docket 14-01 Phase II Proceedings.....”¹⁷ To the contrary, the Order applied broadly to the issue of when GTA could lawfully implement rates for sub-loops. Any doubt about GTA’s position concerning the provisioning of loops was resolved by GTA’s August 26, 2015 letter. GPA indicated that it had continued to provide services to existing PDS UNE loops and that, consistent with the ALJ’s Order, PDS should resume payments for UNE loops and withdraw its present dispute.¹⁸

¹³ §3528 of the Civil Code of the Territory of Guam (1970)

¹⁴ Alliance Communications Cooperative, Inc. v. Global Crossing Telecommunications, Inc. et al., 2007 WL 1964271 (2007).

¹⁵ *Id.* at p. 4.

¹⁶ ALJ Order on Issues Involving TELRIC, PDS Docket 14-01, issued August 17, 2015.

¹⁷ PDS Answer at p. 3.

¹⁸ *Id.*

13. From the commencement of PDS' Dispute in June 2015, there was no basis for PDS to refuse to pay for loop services out of the Agana Central Office. There was never a reasonable basis for contending that such services were "sub-loop" services and not "loop" services. PDS' failure to pay for the undisputed Agana UNE loops since June 2015 was a violation of ICA General Terms and Conditions Section 6.3, which requires payment of undisputed billing amounts. Even where a party receiving a bill disputes the amount purportedly due, the ICA does not permit that party to refuse to pay anything at all for the billed services. Rather, the party remains obligated to "pay all **undisputed** amounts."¹⁹

14. At a practical level, it is not fair or equitable that PDS should continue to receive UNE loop services from GTA, and even order new loop services, without making any payment. The actual UNE service provided to PDS and its customers was the same. GTA should not be obligated to provide free services to PDS. GTA should not be required to wait to be paid for the services that it has provided since January 2015 until "permanent rates" are determined at some point in the future.

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.²⁰ 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 ALJ Recommendation, which is incorporated herein by reference, is hereby adopted and approved.
2. PDS shall immediately pay to GTA all arrears and unpaid amounts owed for UNE loop services outside of Agana with interest at the rate of one and one half percent (1-1/2%) per month from the date each such amounts were due until the date upon which they are paid in full.
3. PDS shall immediately pay to GTA interest at the rate of one and one half percent (1-1/2%) per month on all arrears and unpaid amounts on the Agana UNE loops from June through October 2015.
4. If PDS fails to pay any amounts due hereunder within 30 days from January 25, 2016, GTA may request authorization from the PUC, on an expedited basis, to

¹⁹ Cortel Virginia LLC v. Verizon LLC et al., 2015 WL 7075479, p. 10.

²⁰ IIR 4(h)(10).

terminate UNE loop services for PDS and to decline to accept any new orders from PDS in accordance with the procedures of Section 6.2.1 of the ICA .

5. All payments by PDS hereunder are subject to true-up in accordance with applicable FCC Rules and Regulations, the ICA, PUC Orders and Guam law.
6. GTA may request an assurance of payment in accordance of Section 9 of the ICA if payments by PDS are not made within thirty days of this Order.
7. In accordance with Amendment Rule 1.B.III (RULES GOVERNING REGULATORY FEES FOR TELECOMMUNICATIONS COMPANIES), the PUC's regulatory expenses may be allocated against each party as the PUC deems appropriate. All of the regulatory expenses in this proceeding are allocated to PDS. In this case GTA was required to bring its formal complaint against PDS due to PDS' failure to pay for services actually rendered by GTA.
8. GTA is awarded attorney's fees in the amount of \$1,850.00

SO ORDERED this 25th day of January, 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