

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)
) GT DOCKET 12-03
)
JOINT APPLICATION OF GUAM)
TELECOM, LLC AND DOCOMO GUAM)
HOLDINGS, INC. FOR APPROVAL OF)
THE TRANSFER OF CONTROL OF)
GUAM TELECOM, LLC TO DOCOMO)
GUAM HOLDINGS, INC.)
_____)

**ORDER APPROVING SALE/TRANSFER OF OWNERSHIP
AND CONTROL OF GUAM TELECOM, LLC (SUBJECT TO CONDITIONS)**

INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission [“PUC” or “Commission”] upon the Joint Application of Guam Telecom LLC and DOCOMO Guam Holdings, Inc., for approval of the transfer of control of Guam Telecom, LLC, to DOCOMO Guam Holdings, Inc. The parties will respectively be referred to as “GT” and “DOCOMO Guam”.¹
2. If the transfer is approved, DOCOMO Guam Holdings, Inc. will indirectly acquire all of the ownership interest in Guam Telecom, LLC.

BACKGROUND AND PROCEDURAL HISTORY

3. A telecommunications company is required to hold a Certificate of Authority before it can provide or resell telecommunications services in Guam.² On May 28, 2009, in GT Docket 09-01, PUC issued to GT a Certificate of Authority to provide resold and facilities based local exchange services within the Territory of Guam.³ On November 20, 2006, in Docket 06-9, the PUC issued a Certificate of Authority to GT to provide facilities-based and resold special access service in the form of private

¹Joint Application of Guam Telecom, LLC and DOCOMO Guam Holdings, Inc., for Approval of the Transfer of Control of Guam Telecom, LLC, to DOCOMO Guam Holdings, Inc. [hereinafter “the Joint Application”], GT Docket 12-03, filed September 21, 2012.

² 12 GCA §12103(a); a Certificate of Authority is not required for any person to provide commercial mobile service.

³ Certificate of Authority, GT Docket 09-01, issued May 28, 2009.

line service on Guam.⁴ Among other services, GT provides high speed data, VoIP, telephone service, and resold wireless services to its customers.

4. DOCOMO Guam is a holding company incorporated in Guam. It is seeking to purchase from MCV Acquisition, LLC ["MCVA"] all of MCVA's stock in MCV Guam Holding Corporation ["MCVGH"].⁵ DOCOMO Guam presently provides commercial mobile radio services in Guam and the Northern Marianas Islands through its wholly owned subsidiary DOCOMO Pacific Inc.⁶
5. MCVGH is the owner of MCV Guam Investments LLC (MCVGI). MCVGI is the owner of Guam Telecom LLC and Guam Cablevision LLC.⁷
6. To effectuate the transfer of all of MCVA's stock in MCVGH to NTT DOCOMO, INC. ["DOCOMO"], a Japanese Corporation which owns DOCOMOGuam, the parties entered into a Purchase and Sale Agreement ["PSA"] on August 29, 2012.⁸
7. The parties recognize therein that appropriate filings must be made with the Federal Communications Commission.⁹ In fact, proof has been filed with the PUC that the parties have filed numerous Applications with the FCC for transfer of control of various licenses from GT and its sister companies to DOCOMOGuam.¹⁰
8. Subsequent to execution of the Purchase and Sale Agreement, DOCOMO assigned all of its rights under the PSA to DOCOMO Guam, and DOCOMO Guam assumed all of DOCOMO's obligations under the PSA.¹¹
9. Upon consummation of the transaction contemplated under the PSA, GT will become a wholly owned, indirect subsidiary of DOCOMOGuam.¹²

⁴ Order, Docket 06-9, issued November 20, 2006.

⁵ Id. at p. 4.

⁶ Id. At p.3.

⁷ See Exhibit "A" to Joint Application; this transaction also involves the purchase of telecom entities of the Commonwealth of the Northern Mariana Islands. However, since said transfers are not within the jurisdiction of the Guam Public Utilities Commission, they will not be addressed in this Report.

⁸ Joint Application at p. 4; the Applicants have submitted a copy of the August 29, 2012 Purchase and Sale Agreement to the PUC under seal.

⁹ Purchase and Sale Agreement among MCV Guam Holdings Corp., MCV Acquisitions, LLC, and NTT DOCOMO Inc., Seaport Partners II, L.P. and Project Magellan Equity Holders' Representative LLC, dated August 29, 2012. The Purchase and Sale Agreement is filed under a claim of confidentiality.

¹⁰ FILING OF FCC APPLICATIONS, GT Docket 12-03, filed September 27, 2012.

¹¹ Joint Application at p. 4; Applicants have provided a copy of the Assignment to the PUC.

¹² Joint Application at p. 4.

10. There will be no direct assignment of the Certificates of Authority by GT, but a change of control of the holder of the Certificates of Authority. In addition, since this transaction is a “sale at the holding company level”, the proposed transaction will have no immediate effect on GT’s operations and services delivered to its customers under its Certificates of Authority.¹³
11. Notice of public hearing and the opportunity to comment were issued by the PUC.¹⁴ No written public Comments were filed in response to the Joint Application.
12. On October 29, 2012, the PUC conducted a Public Hearing during which testimony on the Joint Application was taken. DOCOMOGuam, through its representatives, presented argument supporting the Joint Application.
13. There was no other public testimony, and no objection of any nature to the Joint Application.
14. On December 5, 2012, the Administrative Law Judge issued his Report herein.¹⁵ As further set forth herein, the PUC adopts the findings and recommendations in said Report.

DETERMINATIONS

15. Before the sale or transfer of control of GT can be effective, the Commission must make a determination that the proposed sale or transfer satisfies the requirements for granting a Certificate of Authority as set forth in 12 GCA §12103 (c).¹⁶
16. In the present case, Guam Telecom LLC and DOCOMOGuam Holdings Inc. seek to transfer control of Guam Telecom to DOCOMOGuam Holdings Inc. However, there is no direct transfer of Guam Telecom’s Certificates of Authority. Said Certificates shall remain in the name of Guam Telecom. There will be a change of control of the holder of the Certificates of Authority.¹⁷

¹³Id. at p. 5.

¹⁴ PUC Public Notice of Joint Application of Guam Telecom LLC and DOCOMO Guam Holdings, Inc. for Approval by the Guam Public Utilities Commission of the Transfer of Control of Guam Telecom LLC to DOCOMO Guam Holdings, Inc., published in the Pacific Daily News on October 3, 2012, October 16, 2012, and October 25, 2012.

¹⁵ ALJ Report, GT Docket 12-03, issued December 5, 2012.

¹⁶12 GCA §12103(a).

¹⁷Joint Application at p.5.

17. The two findings required by the Commission in subsection (c) are as follows:
- (1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the telecommunications services in Guam for which it seeks a certificate of authority; and (2) the granting of a certificate of authority to the applicant would not be contrary to the public interest.¹⁸
18. The PUC has previously determined that the Applicant Guam Telecom does possess sufficient financial, technical, and managerial resources and abilities to provide telecommunications services in Guam. In issuing two Certificate of Authority to Applicant, the Commission determined that the Applicant met the requirements of 12 GCA §12103(c) (1) and (2) in its November 20, 2006, and May 28, 2009, Orders.¹⁹
19. A review of the record herein regarding the “financial resources” of GT and DOCOMOGuam establishes that Applicants possess sufficient financial resources and will continue to possess sufficient financial resources to provide telecommunications services after the transfer of control of GT:
- a) It appears that, as a sale at the holding company level, the proposed transaction will have no immediate effect on GT’s operations and the services delivered to its customers under its Certificates of Authority. Following the consummation of the proposed transaction, GT’s customers will continue to enjoy high-speed data and VoIP, telephone service without reduction, impairment, or discontinuance of service and under the same rates, terms and conditions of service as before the transaction.²⁰
 - b) There is no proposed change in the financial assets or resources of GT. Applicant GT has supported the adequacy of its financial resources by submitting confidential 2010 and 2011 Financial Statements.²¹ Applicant

¹⁸ See 12 GCA §12103(c)(1) and (2).

¹⁹ PUC Order, Docket No. 06-09, issued November 20, 2006; CERTIFICATE OF AUTHORITY, GT Docket 09-01, issued May 28, 2009.

²⁰ Joint Application at p. 6; see also DOCOMO, Inc., DOCOMO Guam Holdings, Inc. and DOCOMO Pacific Inc. Responses to PUC First Request for Information, GT Docket 12-03, filed under seal and claim of confidentiality on October 26, 2012 at p. 1-2.

²¹ Exhibit D to the Joint Application, GT Docket 12-03, filed under seal on September 21, 2012.

DOCOMOGuam Holdings, Inc. has filed its confidential Financial Reporting Records for 4Q of FY2010 and 4Q of FY2011.²²

- c) Applicant DOCOMO Guam has also filed confidential Financial Statements.²³
 - d) The balance sheets and financial statements indicate that Applicants have substantial and significant financial resources which should enable them to continue to provide telecommunications service in Guam after a transfer of control of GT to Purchaser DOCOMO Guam.
 - e) In addition, the parent company, DOCOMO, is a large and financially secure company with the market capitalization of approximately \$73 Billion U.S. Dollars.²⁴
 - f) GT will continue to own assets, including property, plant and equipment, which constitute its telecommunications system and enable it to provide telecommunications services.²⁵
20. Applicants now have sufficient technical and managerial resources to provide telecommunications services in Guam and will continue to have such resources after the transfer of control of GT.
- a) GT's existing senior management team has through time demonstrated the requisite technical and managerial resources necessary to provide telecommunications services in Guam."²⁶ The biographies of GT's current senior management team indicate a substantial amount of experience in the telecommunications field.²⁷
 - b) GT and DOCOMOGuam indicate that they currently have no plans to replace the current members of GT's senior management team.²⁸

²²DOCOMO, DOCOMO Guam Holdings, Inc., and DOCOMO Pacific Inc., Responses to PUC First Request for Information, Exhibit 5, filed under seal.

²³Exhibit E to the Joint Application, GT Docket 12-03, filed under seal on September 21, 2012.

²⁴ Joint Application, GT Docket 12-03, filed September 21, 2012, at p. 7; see also Exhibit E of Joint Application, filed under seal.

²⁵Exhibit D to the Joint Application, GT Docket 12-03, filed under seal on September 21, 2012.

²⁶ Joint Application, GT Docket 12-03, filed September 21, 2012, at p. 6.

²⁷ Exhibit B to the Joint Application, GT Docket 12-03, filed September 21, 2012, at p. 6.

²⁸DOCOMO, DOCOMO Guam Holdings, Inc., and DOCOMO PACIFIC Inc., Responses to PUC First Request for Information, filed under seal, Response No. 8.

- c) DOCOMOGuam, as purchaser of GT, plans to move forward with local management possessing a considerable degree of latitude in overseeing day-to-day operations and implementing corporate strategies, and achieving business objectives.²⁹
- d) GT is likely to benefit from the technical and managerial resources which DOCOMO PACIFIC Inc. already possesses. The company is a leader in the provision of digital wireless services in Guam. Biographies of the principal officers and directors of DOCOMO Guam, as well as the officers and directors of DOCOMO PACIFIC Inc., indicate substantial management experience that should provide useful to GT in its continuing provision of telecommunications services.³⁰

21. Approval by the PUC of the sale/transfer of control of Guam Telecom LLC is “not contrary to the Public Interest”.

- a) The Guam Telecommunications Act of 2004 provides that it is in the public interest to provide the people of Guam with modern, innovative, accessible, and affordable telecommunications services and products.³¹
- b) Immediately following the consummation of the proposed transaction, GT will continue to offer services with no change in the rates or terms and conditions of service. GT’s current tariffs will remain in effect.³²
- c) The continuity of GT’s rates and services is in the public interest: it insures the delivery of the same level of telecommunications products and services without interruption or confusion.
- d) On a going forward basis, DOCOMOGuam expects to make substantial annual capital investments in Guam Telecom for at least two years after the consummation of the transaction.³³

²⁹Id., filed under seal, Response No. 9.

³⁰Id., filed under seal, Response No. 15, Exhibits 3 & 4.

³¹12 GCA §12101(a) (2).

³²Joint Application, GT Docket 12-03, filed September 21, 2012, at p. 8.

³³DOCOMO, DOCOMO Guam Holdings, Inc., and DOCOMO PACIFIC Inc., Responses to PUC First Request for Information, filed under seal, Response No. 28.

- e) Pursuant to the transaction, DOCOMOGuam has promised to continue efforts to provide attractive prices and enhanced service options for telecommunications services.³⁴
22. In its First Request for Information, PUC *suasponete* raised the issue of whether the transfer of control of GT to DOCOMO Guam would result in any undue concentration of control of telecommunications services in Guam.³⁵ Based upon the information provided by Applicants, there is no evidence that the transfer of control of GT to DOCOMO Guam, or the consummation of the proposed sales transaction, will result in any Competitive Harm:
- a) Although GT presently provides some of its customers with “resold IT&E wireless services”, the transfer of control of GT to DOCOMO Guam will not result in any change in the number of customers in Guam currently being served or the share of the wireless market in Guam currently held by DOCOMO PACIFIC Inc.³⁶
- b) There are presently four mobile service providers serving the territory of Guam.³⁷
- c) Once in indirect control, DOCOMO Guam intends to abide by the terms of GT’s existing facilities and service contracts.³⁸
- d) The consummation of the proposed sale will have no immediate effect on MCV’s operations or the services it currently delivers to its customers. There will continue to be, as there now are, four mobile service providers in the territory of Guam: DOCOMO PACIFIC Inc., IT&E, GTA Teleguam Holdings, and iConnect. This transaction will not alter or affect the number of competitors in the market.
- e) The transfer of control of GT to DOCOMO Guam will not result in any change in the current level of concentration in the wireless market in Guam. Applicants submit that, according to the United States Department of Justice, the presence of four mobile service providers in a relevant geographic market

³⁴ Joint Application, GT Docket 12-03, filed September 21, 2012, at p. 9.

³⁵ PUC First Request for Information, GT Docket 12-03, issued October 11, 2012.

³⁶ DOCOMO, DOCOMO Guam Holdings, Inc., and DOCOMO PACIFIC Inc., responses to PUC First Request for Information, filed under seal, Response No. 6.

³⁷ Id., filed under seal, Response No. 12.

³⁸ Id., filed under seal, Response No. 6.

does not constitute a level of concentration that would tend to lessen competition. See *United States v. AT&T Inc., T-Mobile USA, Inc.*, Case: 1: 11-CV-01S60 (D.D.C. filed August 31, 2011).

- f) Based upon the current number of resold wireless customers to whom GT provides service, it is not likely that the transaction will upset the balance in the competitive wireless services market in Guam.
- g) It also appears that GT and its affiliates and DOCOMO Guam and its affiliates provide distinct service offerings in Guam. DOCOMO PACIFIC Inc. provides facilities-based wireless services, while GT provides cable television, high speed data, and VoIP services. Neither DOCOMO Guam nor DOCOMO PACIFIC Inc. competes in Guam against GT under the Certificates of Authority, the control of which is sought to be transferred pursuant to the Joint Application.³⁹

ORDERING PROVISIONS

After review of the Joint Application, with supporting materials, the Responses of GT and DOCOMOGuam to PUC Information Requests, the comments of the parties at the public hearing, the Administrative Law Judge Report, and the record in this docket, and for good cause shown, the Guam Public Utilities Commission **HEREBY ORDERS** that:

1. The Report issued by the ALJ on December 5, 2012, is hereby adopted and approved. The PUC concurs with the determinations and findings therein.
2. Applicants Guam Telecom LLC and DOCOMO Guam Holdings Inc. are authorized to proceed with and complete a transaction whereby Purchaser DOCOMO Guam Holdings Inc. will indirectly acquire all of the ownership interest in Guam Telecom LLC. The transaction shall be completed in accordance with the Application submitted and the Purchase and Sale Agreement.
3. Applicants have satisfied the requirements of 12 GCA §12103(c) and (g): Applicants now possess and will continue to possess sufficient financial resources to provide telecommunications services in Guam under the existing Certificates of Authority of GT after the transfer of control of GT.

³⁹ Joint Application, GT Docket 12-03, filed September 21, 2012, at p. 7.

4. Applicants also possess sufficient technical and managerial resources and abilities to provide the telecommunications services authorized by the present Certificates of Authority after the transfer of control of GT.
5. DOCOMOGuam appears to have sufficient financial resources to fund the sale transaction and to assist GT in continuing to provide telecommunications services in Guam under the existing Certificates of Authority.
6. The sale or transfer of ownership of Guam Telecom LLC to DOCOMOGuam Holdings Inc. is not contrary to the public interest.
7. There is no evidence that the transfer of control of GT to DOCOMOGuam will result in any Competitive Harm to the telecommunications market in Guam.
8. Authorization for Applicants to complete the sale and transfer of ownership and control, as granted herein, is subject to satisfaction by Applicants of certain conditions: (1) Applicants must satisfy all requirements of the Federal Communications Commission with regard to this transaction, complete all necessary proceedings required by the FCC, and obtain all necessary FCC approvals; (2) there must be material compliance with the terms and conditions of the Purchase and Sale Agreement, and the transaction completed in all material respects; (3) once the proposed transaction is completed in all material respects, Applicants shall continue to be subject to the terms, conditions and requirements of 12 GCA §12103, and all PUC rules, regulations and orders; (4) DOCOMO, DOCOMO Guam Holdings Inc., and DOCOMO PACIFICInc. shall comply with all terms and conditions of the Certificates of Authority presently held by Guam Telecom.
9. PUC approval of the sale and transfer of ownership and control, as granted herein, shall be final upon satisfaction by Applicants of all conditions in paragraph 8 above, and submission to the PUC of proof of satisfactory to it that all such conditions have been satisfied.
10. Guam Telecom, LLC, and DOCOMOGuam Inc. are ordered and directed to pay the PUC's regulatory expenses and fees in this docket.

Order
Joint Application of GT
And DOCOMOGuam
GT Docket 12-03
December 18, 2012

Dated this 18th day of December, 2012.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Filomena M. Cantoria
Commissioner

Michael A. Pangelinan
Commissioner

Peter Montinola
Commissioner