

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

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

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 “DOCOMOGuam”.¹
2. If the transfer is approved, DOCOMO Guam Holdings, Inc. will indirectly acquire all of the ownership interest in Guam Telecom, LLC.
3. In this Report, the Administrative Law Judge [“ALJ”]: (1) sets forth the background in this proceeding and reviews the applicable statutory criteria to guide the PUC in determining whether to approve the transfer of control of Guam Telecom, LLC to DOCOMOGuam Holdings, Inc.; (2) addresses issues raised in this proceeding and makes determinations concerning the appropriateness of the transfer of control; and (3) makes recommendations to the PUC for an appropriate course of action in a proposed Order.²

BACKGROUND AND PROCEDURAL HISTORY

A. THE PARTIES

¹ Joint Application of Guam Telecom, LLC and DOCOMOGuam 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 The “record” in this Docket includes all documents filed of record, the recording of the PUC Public Hearing conducted on October 29, 2012, E-mails and public comments herein, requests for information and responses thereto, recordings of relevant business meetings and applicable agendas and minutes. Various documents filed by Applicants have been filed “under seal” and with a claim of confidentiality. All such documents are not publicly discloseable pursuant to the Commission’s Rules relating to the Protection of Confidential Information in Regulatory Proceedings.

4. GT is a Delaware limited liability company with its principal office located at 497 Harmon Loop Road, Dededo, Guam. It is wholly owned by MCV Guam Investments, LLC ["MCVGI"], a Delaware Limited Liability Company. MCVGI is wholly owned by MCV Guam Holding Corporation ["MCVGH"] a Guam Corporation, which is currently majority owned by MCV Acquisition, LLC ["MCVA"] a Delaware limited liability company.³ Among other services, GT provides high speed data, VoIP, telephone service, and resold wireless services to its customers.
5. GT currently holds two Certificates of Authority issued by the PUC. A telecommunications company is required to hold a Certificate of Authority before it can provide or resell telecommunications services in Guam.⁴ 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.⁵ 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 line service on Guam.⁶
6. DOCOMO Guam Holdings, Inc. [DOCOMO Guam] is a holding company incorporated in Guam with its principal office located at 219 South Marine Corps Drive, Suite 206, Century Plaza, Tamuning, Guam. It provides commercial mobile radio services in Guam and the Northern Marianas Islands through its wholly owned subsidiary DOCOMO Pacific, Inc. ["DOCOMO Pacific"].⁷ DOCOMO Guam Holdings, Inc. is a wholly owned subsidiary of NTT DOCOMO, INC. ["DOCOMO"], a Japanese corporation with its principal office located in Tokyo. DOCOMO is a mobile communications company that provides wireless voice and data communications to 60 million subscribers in Japan. Nippon Telephone and Telegraph Corporation hold in excess of 63% equity and voting interest in DOCOMO and the remaining interests in DOCOMO are diversely publicly owned.⁸

B. DESCRIPTION OF THE TRANSACTION

³ Joint Application at p. 2.

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

⁵ Certificate of Authority, GT Docket 09-01, issued May 28, 2009.

⁶ Order, Docket 06-9, issued November 20, 2006.

⁷ Joint Application at p. 3.

⁸Id. at p. 3.

7. DOCOMO Guam is purchasing from MCVA all of MCVA's stock in MCVGH.⁹
8. MCVGH is the owner of MCV Guam Investments LLC (MCVGI). MCVGI is the owner of Guam Telecom LLC and Guam Cablevision LLC.¹⁰
9. To effectuate the transfer of all of MCVA's stock in MCVGH to DOCOMO, the parties entered into a Purchase and Sale Agreement ["PSA"] on August 29, 2012.¹¹
10. In the Purchase and Sale Agreement, the parties provide for various procedural steps which are to take place before the closing occurs.¹²
11. Both Seller and Buyer make various representations concerning their legal and financial status as business entities, including their duties and responsibilities under the Agreement. The parties further recognize that appropriate filings must be made with the Federal Communications Commission.¹³ 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.¹⁴
12. Subsequent to execution of the Purchase and Sale Agreement, DOCOMO assigned all of its rights to DOCOMO Guam under the PSA, and DOCOMO Guam assumed all of DOCOMO's obligations under the PSA.¹⁵
13. Applicants indicate that, upon consummation of the transaction contemplated under the PSA, GT will become a wholly owned, indirect subsidiary of DOCOMOGuam.¹⁶

⁹Id. at p. 4.

¹⁰ 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.

¹¹ 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.

¹² 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.

¹³Id.

¹⁴ FILING OF FCC APPLICATIONS, GT Docket 12-03, filed September 27, 2012.

¹⁵ Joint Application at p. 4; Applicants have provided a copy of the Assignment under seal to the PUC.

¹⁶Id. at p. 4.

14. Applicants also state that, in this case, there will be no direct assignment of the Certificates of Authority by GT, but an indirect 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.¹⁷
15. Exhibit A to the Joint Application shows the proposed changes in the ownership of MCVGH at the ownership levels above the holding company. MCVGH is presently owned by MCVA; however, after the sale, MCVGH will be owned by DOCOMO Guam Holdings Inc. There will be no significant changes in corporate structure below the holding company level.¹⁸

C. PUBLIC HEARING

16. On October 3, 2012, October 16, 2012, and October 25, 2012, PUC caused a notice to be published in the Pacific Daily News attesting to: (1) the filing of the Joint Application; (2) the opportunity for interested parties to file comments of record regarding the Joint Application; and (3) the holding of a public hearing to receive public comment and testimony on the Joint Application.¹⁹
17. No written public Comments were filed in response to the Joint Application. However, on October 6, 2012, NTT DOCOMO, INC., DOCOMO Guam Holdings, Inc., DOCOMO Pacific Inc. and Guam Telecom LLC filed their responses to the PUC First Requests for Information.²⁰
18. On October 29, 2012, the ALJ conducted a Public Hearing at the PUC Conference Room. DOCOMOGuam, through its representatives, presented argument supporting the Joint Application. The representatives indicated that, after the consummation of the sale, GT would continue to have sufficient technical,

¹⁷Id. at p. 5.

¹⁸Exhibit A to the Joint Application.

¹⁹ PUC Public Notice of Joint Application of Guam Telecom LLC and DOCOMOGuam Holdings, Inc. for Approval by the Guam Public Utilities Commission of the Transfer of Control of Guam Telecom LLC to DOCOMOGuam Holdings, Inc., published in the Pacific Daily News on October 3, 2012, October 16, 2012, and October 25, 2012.

²⁰NTT 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; Response of Guam Telecom to Portion of Question No. 3 of PUC First Request for Information, GT Docket 12-03, filed October 26, 2012 under seal.

managerial, and financial resources to provide telecommunications services to the people of Guam. GT would continue to be led by the current management team. Furthermore, it was contended that the sale was in the public interest and would result in benefit to customers. GT operations could also benefit from the expertise of the DOCOMO organization.

19. There was no other public testimony, and no objection of any nature to the Joint Application. Thus, at the present time, there is nothing in the record before the PUC which suggests that Applicants fail to meet the statutory requirements for transfer of control of GT, or that such transfer would be contrary to the public interest.

D. THE ROLE OF THE PUC AND THE APPLICABLE LEGAL STANDARDS

20. In the present case, Guam Telecom LLC and DOCOMO Guam 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.²¹
21. The duties of the PUC relative to the transfer of control of a telecommunications company and the sale of a Certificate of Authority are set forth in 12 GCA §12103 [the Guam Telecommunications Act of 2004].²²
22. 12 GCA §12103(g), provides as follows in pertinent part:

A telecommunications company shall not sell, assign, or transfer a certificate of authority, or any portion thereof, issued under this Article, or transfer control of a telecommunications company holding a certificate of authority issued under this Article, without the prior approval of the Commission and a determination by the Commission that the proposed sale, assignment or transfer satisfies the requirements for granting a certificate of authority under Subsection (c)..... (emphasis added).²³

²¹Joint Application at p.5.

²²12 GCA §12103(a).

²³12 GCA §12103(g).

23. Under the applicable statutory provisions, control of a company holding a certificate of authority may not be transferred without the prior approval of the Commission and a determination by the Commission that the proposed transfer satisfies the requirements for granting a certificate of authority.²⁴
24. Before the sale or transfer of control 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).²⁵
25. 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.²⁶

ANALYSIS

A. APPLICANTS WILL CONTINUE TO HAVE SUFFICIENT FINANCIAL RESOURCES TO PROVIDE TELECOMMUNICATION SERVICES IN GUAM UNDER THE EXISTING CERTIFICATES OF AUTHORITY AFTER THE TRANSFER OF CONTROL OF GT

26. 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.²⁷
27. 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

²⁴ Id.

²⁵ Id.

²⁶ See 12 GCA §12103(c)(1) and (2).

²⁷ PUC Order, Docket No. 06-09, issued November 20, 2006; CERTIFICATE OF AUTHORITY, GT Docket 09-01, issued May 28, 2009.

service and under the same rates, terms and conditions of service as before the transaction. The proposed transaction will not result in any changes inconsistent with the current scope of GT's operating authority in Guam under its Certificates of Authority, and GT's current tariffs will remain in effect.²⁸

28. 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.²⁹ Applicant DOCOMO Guam Holdings, Inc. has filed its confidential Financial Reporting Records for 4Q of FY2010 and 4Q of FY2011.³⁰
29. Applicant DOCOMO Guam has also filed confidential Financial Statements.³¹
30. 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 PurchaserDOCOMOGuam.
31. In addition, the parent company, DOCOMO, is a large and financially secure company with the market capitalization of approximately \$73 Billion U.S. Dollars.³²
32. GT will continue to own assets, including property, plant and equipment, which constitute its telecommunications system and enable it to provide telecommunications services.³³

B. APPLICANTS ALSO HAVE SUFFICIENT TECHNICAL AND MANAGERIAL RESOURCES TO PROVIDE TELECOMMUNICATIONS SERVICES IN GUAM

33. The ALJ adopts the position of Applicants that "GT's existing senior management team has through time demonstrated the requisite technical and managerial

²⁸Joint Application at p. 6; see also NTT DOCOMO, INC., DOCOMO Guam Holdings, Inc. and DOCOMO Pacific Inc. Responses to PUC First Request for Information, GT Docket 12-03, filed under seal on October 26, 2012 at p. 1-2.

²⁹Exhibit D to the Joint Application, GT Docket 12-03, filed under seal on September 21, 2012.

³⁰ NTT DOCOMO, INC., DOCOMO Guam Holdings, Inc., and DOCOMOPacific Inc., Reponses to PUC First Request for Information, Exhibit 5, filed under seal.

³¹Exhibit E to the Joint Application, GT Docket 12-03, filed under seal on September 21, 2012.

³² Joint Application, GT Docket 12-03, filed September 21, 2012, at p. 7; see also Exhibit E of Joint Application, filed under seal.

³³ Exhibit D to the Joint Application, GT Docket 12-03, filed September 21, 2012, filed under seal.

resources necessary to provide telecommunications services in Guam.”³⁴ The biographies of GT’s current senior management team indicate a substantial amount of experience in the telecommunications field.³⁵

34. GT and DOCOMO Guam indicate that they currently have no plans to replace the current members of GT’s senior management team. They believe that there are significant benefits to maintaining continuity in management after a transaction. In prior purchases involving DOCOMO Guam, senior managers of the acquired companies were kept in place.³⁶
35. DOCOMO Guam, 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.³⁷
36. Applicants have also demonstrated that GT is likely to benefit from the technical and managerial resources which DOCOMO Pacific 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 of the officers and directors of DOCOMO Pacific, indicate substantial management experience that should provide useful to GT in its continuing provision of telecommunications services.³⁸
37. Approval of this transaction should allow GT to benefit from the telecommunications expertise, management capabilities and financial stability of DOCOMO Guam and its affiliates. Applicants have made a substantial showing that GT will continue to possess sufficient technical and managerial resources and abilities to provide the telecommunications services to the people of Guam under GT’s Certificates of Authority after the transfer of control of GT to DOCOMO Guam.

C. APPROVAL BY THE PUC OF THE TRANSFER OF CONTROL OF GT IS NOT CONTRARY TO THE PUBLIC INTEREST

³⁴ Joint Application, GT Docket 12-03, filed September 21, 2012, at p. 6.

³⁵ Exhibit B to the Joint Application, GT Docket 12-03, filed September 21, 2012, at p. 6.

³⁶ NTT DOCOMO, INC., Inc., DOCOMO Guam Holdings, Inc., and DOCOMO Pacific Inc., Responses to PUC First Request for Information, filed under seal, Response No. 8.

³⁷ Id., filed under seal, Response No. 9.

³⁸ Id., filed under seal, at Response No. 15, Exhibits 3 & 4.

38. Under applicable statutory standards, the PUC must determine whether the sale/transfer of control of GT to ownership of DOCOMO Guam is “not contrary to the Public Interest.”
39. 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.³⁹
40. 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.⁴⁰
41. 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.
42. On a going forward basis, DOCOMO Guam expects to make substantial annual capital investments in Guam Telecom for at least two years after the consummation of the transaction.⁴¹
43. Pursuant to the transaction, DOCOMO Guam has promised to continue efforts to provide attractive prices and enhanced service options for telecommunications services.⁴²
44. 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.⁴³
45. 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

³⁹12 GCA §12101(a) (2).

⁴⁰ Joint Application, GT Docket 12-03, filed September 21, 2012, at p. 8.

⁴¹ NTT DOCOMO, INC., DOCOMO Guam Holdings, Inc., and DOCOMO Pacific Inc., Responses to PUC First Request for Information, filed under seal, Response No. 28.

⁴² Joint Application, GT Docket 12-03, filed September 21, 2012, at p. 9.

⁴³ PUC First Request for Information, GT Docket 12-03, issued October 11, 2012.

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.⁴⁴

- (b) There are presently four mobile service providers serving the territory of Guam.⁴⁵
- (c) Once in indirect control, DOCOMO Guam intends to abide by the terms of GT's existing facilities and service contracts.⁴⁶
- (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, 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 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.

46. It also appears that GT and its affiliates and DOCOMO Guam and its affiliates provide distinct service offerings in Guam. DOCOMO Pacific provides facilities-based wireless services, while GT provides cable television, high speed data, and VoIP services. Neither DOCOMO Guam nor DOCOMO Pacific competes

⁴⁴NTT DOCOMO, INC., DOCOMO Guam Holdings, Inc., and DOCOMO Pacific Inc., responses to PUC First Request for Information, filed under seal, Response No. 6.

⁴⁵Id., filed under seal, Response No. 12.

⁴⁶Id., filed under seal, Response No. 6.

in Guam against GT under the Certificates of Authority, the control of which is sought to be transferred pursuant to the Joint Application.⁴⁷

RECOMMENDATIONS

47. The ALJ recommends that the PUC authorize Applicants Guam Telecom LLC, and DOCOMO Guam Holdings, Inc., to proceed with and complete a transaction whereby Purchaser DOCOMO Guam Holdings, Inc. will acquire control of Guam Telecom and control of Guam Telecom will be transferred to DOCOMOGuam Holdings, Inc.
48. PUC should determine that Applicants satisfy the requirements of 12 GCA §§12103(c) and (g): Applicants will continue to have sufficient financial resources to provide telecommunication services in Guam under the existing Certificates of Authority of GT after the transfer of control of GT.
49. Applicants also will possess sufficient technical and managerial resources and abilities to provide the telecommunications services authorized by the present Certificates of Authority after the sale of GT.
50. Purchaser DOCOMOGuam appears to have sufficient financial resources to fund the sale transaction and to assist GT in continuing to provide telecommunication services in Guam under the existing Certificates of Authority.
51. The sale or transfer of control of Guam Telecom LLC to DOCOMOGuam Holdings Inc. is not contrary to the public interest.
52. The sale and/or transfer of control of Guam Telecom, LLC from MCVA to DOCOMOGuam will not affect the abilities of Guam Telecom LLC to continue to provide telecommunications services under its Certificates of Authority.
53. Authorization for Applicants to complete the sale or transfer of control must be subject to certain conditions (approval is conditioned upon satisfaction of certain additional requirements): (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) all terms and conditions of the Purchase and Sale Agreement must be materially complied with, and the transaction completed in all material respects; (3)

⁴⁷ Joint Application, GT Docket 12-03, filed September 21, 2012, at p. 7.

once the proposed transaction is completed in all 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) NTT DOCOMO, INC., DOCOMO Guam Holdings, Inc., and DOCOMOPacific Inc. must comply with all terms and conditions of the Certificates of Authority presently held by Guam Telecom LLC.

54. The ALJ has prepared an Order for the Commissioners' consideration which would approve the Joint Application of Applicants, the proposed transaction, and the sale/transfer of control of Guam Telecom LLC, subject to the conditions set forth herein.

Dated this 5th day of December, 2012.

Frederick J. Horecky
Administrative Law Judge