

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

<b>In the Matter of:</b>	)	
	)	<b>CP Docket 11-01</b>
	)	
<b>Choice Phone LLC's Request for</b>	)	
<b>Determination on Jurisdiction to</b>	)	
<b>Designate Eligible Telecommunications</b>	)	
<b>Carrier Status</b>	)	
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**ADMINISTRATIVE LAW JUDGE REPORT**

*Introduction*

By letter dated July 27, 2011, Choice Phone LLC, dba iConnect ("Choice Phone") has requested that the PUC find either that it (a) lacks jurisdiction, or (b) declines to assert jurisdiction to act upon a petition for Eligible Telecommunications Carrier [ETC] designation so that Choice Phone may submit a petition before the FCC.<sup>1</sup> Choice Phone's letter indicates its intent to file a "single petition for designation as an ETC, covering both Guam and the CNMI, before the Federal Communications Commission ("FCC")."<sup>2</sup>

Under Section 214(e)(6) of the Federal Communications Act of 1934, as amended, the FCC may make an ETC designation with respect to a telecommunications carrier that is "not subject to the jurisdiction of a state commission."<sup>3</sup> Given the "important public interest benefits" that would flow to Choice Phone from the extension of ETC status to it, Choice Phone urges that the instant request be addressed on an expedited basis.<sup>4</sup>

A telecommunications carrier that has been designated as an ETC is eligible to receive federal high-cost universal service support under Section 254 of the Federal Communications Act of 1934 (the "Federal Act").

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<sup>1</sup> Letter from Richard C. Yu, Managing Member, Choice Phone LLC, to PUC Administrator Lou Palomo, Re: Choice Phone LLC dba iConnect Request for Determination on Jurisdiction to Designate Eligible Telecommunications Carrier Status, CP Docket 11-01, dated July 27, 2011 at p. 1.

<sup>2</sup> Id. at p. 1.

<sup>3</sup> 47 U.S.C. §214(e)(6).

<sup>4</sup> Letter from Richard C. Yu, Managing Member, Choice Phone LLC, to PUC Administrator Lou Palomo, Re: Choice Phone LLC dba iConnect Request for Determination on Jurisdiction to Designate Eligible Telecommunications Carrier Status, CP Docket 11-01, dated July 27, 2011 at p. 1.

*PUC Jurisdiction over CMRS Petition  
For Designation as an Eligible Telecommunications Carrier*

In general, under Section 214(e)(2) of the Federal Act, a state or territorial public utilities commission, such as the Guam PUC, is generally responsible for designating a telecommunications carrier as an ETC within such state in accordance with the requirements of the Federal Act.<sup>5</sup> As previously indicated, the FCC may act upon a petition by carrier for designation as an ETC when a state or territorial PUC finds that it lacks jurisdiction or declines to assert jurisdiction.

An applicant for ETC designation with the FCC must demonstrate that it is not subject to the jurisdiction of a state PUC before the FCC may consider its application for ETC designation.<sup>6</sup> To satisfy this requirement, the applicant must provide the FCC with an “affirmative statement” from the state PUC that it lacks or declines to assert jurisdiction to undertake the ETC designation.<sup>7</sup>

The first issue is whether the Guam PUC has jurisdiction over Choice Phone LLC. In general, a person can provide or resell telecommunications services in Guam if it possesses a certificate of authority issued by the Commission, **except that a certificate of authority shall not be required for any person to provide commercial mobile service.**<sup>8</sup> Choice Phone LLC is a commercial mobile radio service (“CMRS”) licensee operating and serving customers in both the territory of Guam and the Commonwealth of the Northern Mariana Islands.<sup>9</sup>

However, it cannot be said that the PUC necessarily lacks jurisdiction over a CMRS carrier. CMRS providers are required to “register” with the PUC. Registration is required for CMRS providers pursuant to Docket 05-01 [Guam Telecommunications Act of 2004] Order Instituting Regulatory Proceedings, issued February 1, 2005.<sup>10</sup> Furthermore, in Docket 06-8, the Application of Pulse Mobile, LLC for designation as an Eligible Telecommunications Carrier, the PUC found that Pulse Mobile provides

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<sup>5</sup> 47 U.S.C. §214(e)(2); See also 47 C.F.R. §54.201(b).

<sup>6</sup> Letter from Richard C. Yu, Managing Member, Choice Phone LLC, to PUC Administrator Lou Palomo, Re: Choice Phone LLC dba iConnect Request for Determination on Jurisdiction to Designate Eligible Telecommunications Carrier Status, CP Docket 11-01, dated July 27, 2011 at p. 1.

<sup>7</sup> Id. at p. 1, fn 4.

<sup>8</sup> 12 GCA §12103.

<sup>9</sup> Id. at p. 1.

<sup>10</sup> PUC Order, Docket 05-01 [“Guam Telecommunications Act of 2004] Order Instituting Regulatory Proceedings, issued February 1, 2005.

wireless telecommunications within the territory of Guam; yet, in that docket, the PUC's regulatory consultant [Georgetown Consulting Group] and Pulse Mobile agreed that the PUC has jurisdiction under Section 214(e) of the Federal Act to grant PM ETC status if PUC finds, after appropriate review, that the requirements of the Federal Act are met. The Commission ordered that it would exercise the jurisdiction conferred by 47 U.S.C. §214 to consider PM's Petition for ETC designation.<sup>11</sup>

Not only has the PUC asserted jurisdiction over a CMRS licensee; CMRS providers are also subject to PUC jurisdiction with regard to the E911 surcharge reporting requirements and requirements concerning the approval of interconnection agreements between CMRS providers and the incumbent local exchange carrier.<sup>12</sup>

Guam PUC does have jurisdiction to act upon a petition for ETC designation by a CMRS provider, as indicated by the assertion of jurisdiction over Pulse Mobile LLC in Docket 06-8. In Docket 06-8, Pulse Mobile had originally sought and obtained a determination from the Guam PUC that it would **refrain** from asserting jurisdiction to entertain a PM petition for designation as an ETC. Pulse Mobile subsequently petitioned the PUC to reconsider its earlier decision to decline jurisdiction and then accept a PM Petition for ETC Designation.

### *Authority of PUC to Decline to Assert Jurisdiction*

Based upon a substantial backlog at the FCC that prevented PM from obtaining its ETC designation in a timely manner, the PUC decided to exercise its jurisdiction to consider PM's petition for ETC designation. Nevertheless, the PUC's actions in Docket 06-8 indicate that it does have the power and authority to decline to assert jurisdiction or to act upon a petition for ETC designation by a CMRS Provider. PUC initially did issue a letter confirming that it had originally intended to refrain from exercising jurisdiction over GTA Wireless for the limited purpose of acting upon GTA wireless's petition for designation as an ETC carrier under Section 214(e) of the Federal Communications Act of 1934.<sup>13</sup>

### *ALJ Recommendation*

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<sup>11</sup> PUC Order Asserting Jurisdiction, Docket 06-8, dated September 28, 2006.

<sup>12</sup> See, for example, Guam Cellular and Paging, Inc. v. GTA Telecom LLC, Docket 07-5, Order Approving Interconnection Agreement, dated April 9, 2008.

<sup>13</sup> Administrative Law Judge Report, Docket 05-01, filed on February 24, 2005 with letter attached concerning "Designation of GTA Wireless, LLC as an Eligible Telecommunications Carrier."

ALJ Report  
In the Matter of:  
Choice Phone LLC Petition for ETC  
CP Docket 11-01  
September 9, 2011

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In this Docket, it is the recommendation of the Administrative Law Judge that the PUC decline to assert jurisdiction to act upon a petition for ETC designation so that Choice Phone may submit a single petition before the FCC. Choice Phone is seeking to obtain an ETC designation in the CNMI, as well as in Guam. The Guam PUC does not have jurisdiction over CMRS services in the CNMI.<sup>14</sup> Allowing Choice Phone to file a single petition for ETC designation in both jurisdictions with the FCC would be the most efficient and cost effective course of action.<sup>15</sup>

The ALJ recommends that PUC authorize the issuance of the letter attached as Exhibit A, by which the PUC would agree to Choice Phone's request with conditions. The ALJ recommends that the PUC authorize Chairman Johnson to execute the letter in the form recommended herein.

Dated this 9<sup>th</sup> of September, 2011.

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Frederick J. Horecky  
Administrative Law Judge

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<sup>14</sup> See the Guam Telecommunications Act of 2004, 12 GCA §12101 et. seq.; various provisions of the Act indicate that the authority of the PUC extends to telecommunications services in Guam.

<sup>15</sup> Letter from Richard C. Yu, Managing Member, Choice Phone LLC, to PUC Administrator Lou Palomo, Re: Choice Phone LLC dba iConnect Request for Determination on Jurisdiction to Designate Eligible Telecommunications Carrier Status, CP Docket 11-01, dated July 27, 2011 at p. 2.