



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:)	PDS DOCKET 14-01
)	
PACIFIC DATA SYSTEM INC.'S)	ORDER ON ISSUES
PETITION FOR ARBRITRATION OF)	INVOLVING
INTERCONNECTION AGREEMENT)	TELRIC STUDY

BACKGROUND

On August 28, 2014, the Commission approved an Interconnection Agreement (ICA) between TeleGuam Holdings LLC (GTA) and Pacific Data Systems (PDS) ("the Parties") which established "interim rates" for certain unbundled network elements ("UNEs").¹ The Parties specifically agreed that 12 rates for UNE services would be determined and/or arbitrated in Phase 2 of these proceedings.² In Exhibit 3, pricing for 10 loops and 2 sub-loops were identified for arbitration in Phase 2.³ The Commission determined that in Phase 2 there would be a determination of the 12 rates and a "true up" of those 12 rates.⁴ The "true up" was an accounting ordered to "reconcile the difference between the billings issued under the Interim rates and what the billings would have been under the Permanent Rates", after such rates were determined in Phase 2.⁵

In Phase 1 of the proceedings, and as part of their duties under the ICA, GTA and PDS agreed to continue good faith arbitration with the goal of establishing permanent rates for the 12) Unbundled Network elements. The 12 elements included 10 2 and 4 wire loops and 2 HDSL compatible sub-loops.⁶ At the time of the ICA approval in August of 2014, GTA considered its network to include those 12 unbundled elements. Subsequent to the issuance of the PUC Order dated August 28, 2014, GTA and PDS engaged in substantial negotiations in an effort to resolve the 12 Unbundled Network Elements without arbitration. The Parties met with the Administrative Law Judge (ALJ) on

¹ PUC Order Approving Interconnection Agreement, PDS Docket 14-01, dated August 28, 2014.

² Id. at p. 5.

³ Id. at Exhibit 3.

⁴ Id. at p. 6.

⁵ Id. at p. 5.

⁶ Id. at Exhibit 3.

numerous occasions, including November 17, 2014, December 1, 2014, and January 5, 2015 in an effort to resolve the rate pricing for the 12 unbundled network elements.

However, after numerous efforts by the Parties to resolve the rate pricing issues, with the assistance of the ALJ, the Parties were still unable to agree upon pricing for 12 Unbundled Network Element Rates.⁷ In the Order dated March 17, 2015, the ALJ concluded that there was no alternative but for an Order requiring GTA to undertake and prepare a "TELRIC" (total element long-run incremental costs) Study.⁸ The Order stated that "GTA shall undertake preparation and development of a TELRIC study concerning the 12 Unbundled Network Element Rates which are the subject of this Arbitration." (Emphasis added). Subsequent to the issuance of the aforementioned Order, both of the Parties retained separate consulting firms to assist with issues concerning the content and development of TELRIC studies for the network elements. GTA retained JSI. PDS retained Parrish, Blessing & Associates ("PBA").

There have been ongoing discussions between the Parties and their consultants since the issuance of the March 2015 Order. The Parties have focused on issues involving the scope of the TELRIC Study and the length of time needed to complete the study. On April 21, 2015, PDS indicated that GTA's consultant JSI intended to only include the Agana Central Office as a wire center in its TELRIC Study. 47 C.F.R. § 51.505(b)(1) provides:

Efficient network configuration.

The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, **given the existing location of the incumbent LEC's wire centers.**

(Emphasis added).

PDS took the position that the TELRIC Study must be based on all existing wire centers, not just the Agana CO.⁹

On June 2, 2015, PDS represented to the ALJ that JSI, the consultants to GTA, still intended to base the TELRIC Study on a single wire center. JSI represented that recent changes to GTA's network had altered the application and provisioning of unbundled loops.¹⁰ Further conferences were conducted between the Parties and the ALJ, on June 4, 2015, and July 8, 2015, to discuss and further explore the issues. On July 10, 2015, the ALJ asked the Parties to address certain questions:¹¹

⁷ ALJ Order Re: Phase II Arbitration Issues, PDS Docket 14-01, dated March 17, 2015.

⁸ Id., Ordering Provision 1, at p. 5.

⁹ PDS, Comments regarding JSI/GTA plans for TELRIC Study in Phase II of GPUC Docket PDS 14-01, PDS Docket 14-01, filed April 21, 2015.

¹⁰ PDS, Phase II and the TELRIC Study, PDS Docket 14-02, filed June 2, 2015.

¹¹ Email from ALJ Frederick J. Horecky to the Parties, PDS Docket 14-02, dated July 10, 2015.

1. How does the FCC Regulation, 47 C.F.R. § 51.505(b)(1) apply to this proceeding regarding the meaning of “existing wire centers”?
2. Is a serving wire center the same as a wire center?
3. Can a prior Commission Order directing Parties to arbitrate pricing for 10 loops and 2 sub-loops can be altered by GTA’s position that there is now only one wire center?

At the center of the discussion is the question: What elements should be subject to the TELRIC study?

CURRENT POSITIONS OF THE PARTIES

A summary of the positions of GTA and PDS are presented below.

GTA

Recent changes to GTA’s network have altered the provisioning of unbundled loops. Because GTA has eliminated all switching functions in its remote offices as well as the Tumon and Dededo locations; all network element unbundled loops would originate from the Agana office under the FCC definition of an unbundled loop. Therefore, the TELRIC study for loops should reflect this fact and be based on the single Agana wire center. Loops, as contained in the ICA and the March 17, 2015 Order, would be reclassified as sub-loops. JSI has further indicated that it would need six months from May 13, 2015, to complete the TELRIC Study.¹²

PDS

The issues related to wire centers and dark fiber pricing were settled by the PUC Order issued in August 2014. The only open issue is the rates for the 10 UNE loops and 2 sub-loop rates to replace the interim rates currently in effect. The “existing location of wire centers” as defined in 47 C.F.R 505 (b)(1) must be strictly interpreted to mean the existing GTA wire center locations in existence at the time the new PDS-GTA Interconnection Agreement was signed on August 11, 2014. In accordance with prior PUC Orders and Consultant Reports issued in 2006, there are 19 wire centers, and these must be taken into account in the TELRIC Study. PDS believes that JSI can complete the TELRIC Study within 8-10 weeks.

¹² Representation by JSI Consultant Douglas Meredith at Hearing and Teleconference of July 8, 2015, at PUC Office.

DETERMINATIONS

It is generally recognized that Incumbent Local Exchange Carrier, such as GTA, is responsible for providing the TELRIC Study. The ILEC undertakes the development of the cost study. 47 C.F.R. § 51.505(e) provides as follows:

(e) *Cost Study Requirements.* An Incumbent LEC must prove to the State Commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in this section and § 51.511.

Since the ILEC has the burden of proof to justify its rates, it should have some latitude in determining how the TELRIC Study will be conducted, as long as it complies with the methodology required by the Federal Communications Commission.

However, this docket is an ICA negotiation between the Parties and an arbitration proceeding. In an arbitration proceeding, the Commission limits its consideration to the matters set forth in the petition or a response thereto. Section 252(b)(4)(A) of the Telecommunications Act. Rate pricing issues were raised as a subject of arbitration in the Petition. The Order of the Commission issued August 28, 2014 already determined that, in Phase 2 of these proceedings, the 12 rates for UNE services would be determined and/or arbitrated, including pricing for 10 loops and 2 sub-loops. Specific loops and sub-loops for Arbitration in Phase 2 were identified in Exhibit 3 to the Commission's Order.

The Commission already determined in its August 2014 Order that pricing was required to be determined by GTA in the TELRIC Study for 10 loops and 2 sub-loops. GTA agreed that such rates would be determined in Phase 2. The ALJ included a requirement in the March 17, 2015 Order that the TELRIC Study must include the 12 Unbundled Network Element Rates previously identified in the August 2014 Order. The Order expressly stated that "GTA shall undertake preparation and development of a TELRIC Study concerning the 12 Unbundled Network Element Rates which are the subject of this Arbitration".¹³ This Order remains in effect to date and has never been changed or altered. GTA continues to have an obligation under the August 2014 and March 2015 Orders to develop Rates in a TELRIC Study for the 10 loops and 2 sub-loops previously identified in Exhibit 3.

These two Orders are still valid and in effect. Their requirements are not changed or altered by GTA's position that new network circumstances now exist. Therefore, GTA

¹³ ALJ Order Re: Phase II Arbitration Issues, PDS Docket 14-01, dated March 17, 2015, at p..

continues to be bound by the requirements of both the August 2014 and March 2015 Orders; it is required to include rates in its TELRIC Study for the 10 loops and 2 sub-loops previously identified. In its July 15, 2015 briefing to the Commission's ALJ, GTA stated that as of January 2015, its network was reconfigured to a single switching location.¹⁴ However, GTA did not raise any issue concerning the potential impact of loop provisioning in advance of the March 17, 2015 TELRIC ruling. GTA did not raise any objection to inclusion of a rate study for the 10 loops and 2 sub-loops in the TELRIC Study. GTA, in its July 15 brief on wire center issues, stated that the single wire center will not change PDS' ability to continue with its current collocations or order loop facilities from those locations. The single wire center, GTA maintains, redefines those facilities as sub-loops instead of loops.¹⁵

GTA further indicates that PDS will be able to order HDSL sub-loops from all collocations and a variety of loops from the GTA Central Office/Wire Center in Hagatna. Notwithstanding GTA's commitment to provide collocation to PDS, it does not offer to perform a TELRIC study or offer another pricing solution that would result in permanent rather than interim rates. There is an additional problem with a TELRIC Study that does not include the 10 loops and 2 sub-loops. In PDS' July 15 brief to the ALJ, it indicates that, under the proposed GTA TELRIC study, there will be no permanent prices for sixteen of the collocation sites. If there is no pricing for the 10 loops in the TELRIC Study, it would be impossible to true-up any prices.

The August 28, 2014, PUC Order established the "true-up" procedure. However, if the TELRIC Study does not establish permanent rates for the same 10 loop services for which "interim" rates were previously established, there could not possibly be any "true-up." GTA must include permanent rates in the TELRIC Study for the 10 loops and the 2 sub-loops so that there can be a true-up of like rates to like rates.

Both Parties have raised issues regarding the FCC regulation 47 CFR 51.505, which refers to the TELRIC study being based upon an efficient network's "existing wire centers". GTA argues that under the new configuration, there is only one wire center, the Agana CO. That office constitutes the "existing wire centers" for TELRIC purposes. PDS believes that the existing wire centers at the time of the signing of the ICA constitute existing wire centers for TELRIC purposes. In addition, PDS believes that the new configuration of the network will result in increased loop lengths and increased costs. The ALJ concurs with PDS' interpretation of "existing wire centers": for purposes of this arbitration, the applicable definition is the network's "existing wire centers" as of August 28, 2014. GTA was ordered to provide a TELRIC study for rates for specific services that existed as of August 28, 2014.

¹⁴ TeleGuam Holding, LLC's Brief on Wire Center Issues, PDS Docket 14-02, dated July 15, at p. 2.

¹⁵ *Id.* at p.3.

It must also be recognized that GTA has the right to make changes to its network, especially those that modernize or make its operations more efficient, as long as proposed changes are in accordance with FCC Rules and Regulations, the ICA, and PUC Order/Guam law. It is not the role of the Guam Public Utilities Commission to dictate to GTA how its network should be configured, or what the most efficient network configuration is. The ALJ concurs that the unbundling of network elements should not prevent ILEC's from investing in new facilities and deploying new technology through network changes.¹⁶ In its TELRIC Study, in addition to pricing for the 10 loops and 2 sub-loops outlined in prior PUC Orders, GTA is free to include pricing in its study for "loops" based upon its new definition as the Agana CO as the single wire center. However, pricing for the 10 loops and 2 sub-loops should be completed as a first priority and inclusion of other definitions of "loops" may not delay the completion of the study by the date indicated herein.

Timing of the TELRIC Study

Issues have arisen between the Parties concerning the length of time that GTA's Consultant requires to complete the TELRIC Study. The proceeding does need to be expedited, and the study completed as soon as possible. In the Status Conference conducted on July 8, 2015, JSI and the Counsel for GTA represented that the study could be completed six months from May 13, 2015. The ALJ hereby orders that GTA complete the TELRIC Study by November 30, 2015. If there is no agreement between the Parties thereafter as to the pricing for the 10 loops and 2 sub-loops, the ALJ will schedule an expedited arbitration proceeding to resolve any remaining issues.

Interim Rates

PDS has suggested that, due to delays in this proceeding, the PUC should establish "Interim Rates" for the 10 loops and 2 sub-loops. The rationale is that delay has caused competitive harm to PDS. The establishment of "Interim Rates" is not necessary or practical at the present time. The establishment of such rates, in and of itself, would be a laborious and difficult task. Could such rates be established without a TELRIC Study? Having another proceeding to establish "Interim Rates" would be akin to conducting a new rate case within the existing rate case. In any event, the "true-up" process set forth in the PUC 2014 Order is sufficient to provide a remedy for any harm claimed by PDS, if in fact the rates are readjusted in its favor.

GTA has not demonstrated that the network changes it has made preclude it from providing rates for what would now be called sub-loops. Indeed, GTA continues to furnish those facilities to PDS on an ongoing basis. It has been the intention of the

¹⁶ Id. at p. 7.

Commission that permanent prices be established for those Unbundled Network Elements contained in the ICA and to continue their availability to PDS or other competitors of GTA seeking the same facilities. GTA's reliance on the definition of a loop given its new switching configuration is misplaced in the context of the development of a TELRIC study.

ORDERING PROVISIONS

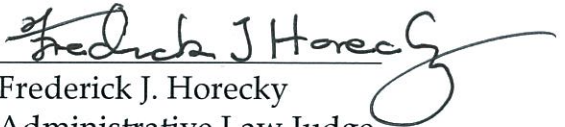
After careful review of the record herein, including the briefs and representations of GTA and PDS, the Administrative Law Judge **HEREBY ORDERS** as follows:

1. GTA shall develop TELRIC rates and prices for unbundled network elements currently furnished to PDS as delineated in the ICA and the Commission's August Order and the ALJ March Order. The TELRIC Study undertaken by GTA and its consultants shall include the 10 loops and 2 sub-loops previously set forth in the Orders and agreed to by the Parties.
2. GTA and its consultant shall complete the TELRIC Study by November 30, 2015.
3. GTA may also, if it chooses, develop a TELRIC study for unbundled loops associated with the new network architecture. However, the inclusion of such matters in the study shall in no manner delay completion of the Study by November 30, 2015. Determination of pricing for the 10 loops and 2 sub loops previously required shall be the principal priority.
4. Until such time as permanent rates are in place, GTA shall continue to furnish PDS the 10 unbundled loops and 2 sub-loops delineated in the Orders and the ICA.
5. Upon the establishment of permanent, prices for the elements under study shall be trued-up, and refunds or retroactive payments determined as appropriate.
6. Upon development of permanent prices, GTA is free to incorporate the new terminology "sub-loop" in the interconnection agreement and to alter its billing and provisioning terminology as necessary to reflect its network architecture. However, such changes must be accomplished in accordance with applicable FCC Rules and Regulations, the ICA, and PUC Order/Guam law.

ALJ Order
PDS Docket 14-01
August 17, 2015

7. Upon submission by GTA of the TELRIC Study, the ALJ will schedule further arbitration proceedings if the Parties are unable to resolve the rates for the elements at issue.

SO ORDERED this 17th day of August, 2015.


Frederick J. Horecky
Administrative Law Judge