

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



IN RE:	)	PDS Docket 14-02
	)	
The Complaint of Pacific Data Systems,	)	
Inc. [PDS] Regarding Interconnection	)	<b>RECOMMENDATION OF THE</b>
Agreement Dispute with Teleguam	)	<b>ADMINISTRATIVE LAW JUDGE;</b>
Holdings LLC-PDS Request for Fiber	)	<b>FINDINGS OF FACT AND</b>
Layout Maps	)	<b>CONCLUSIONS OF LAW</b>

This matter came before the Administrative Law Judge ["ALJ"] of the Guam Public Utilities Commission ["PUC"] for a hearing pursuant to Pacific Data Systems, Inc.'s ["PDS"] July 10, 2014, Formal Complaint [the "Complaint"] against Teleguam Holdings, LLC ["GTA"]. The Complaint concerns GTA's alleged failure to respond to PDS' request for Fiber Layout Maps or to engage in dispute resolution as required by the Interconnection Agreement. PDS requested that the PUC, through its Administrative Law Judge ["ALJ"], conduct arbitration (a formal proceeding for dispute resolution) in accordance with Interconnection Implementation Rules adopted by the PUC in Docket 05-1.

On September 3, 2014, the ALJ conducted a hearing on this matter and received testimony, evidence and argument by the parties. The ALJ now issues his Findings of Fact and Conclusions of Law and makes his recommendations to the PUC pursuant to Interconnection Implementation Rule 4(h).<sup>1</sup>

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<sup>1</sup> In addition to the complaint concerning Fiber Layout Maps, PDS filed a second complaint on July 14, 2014 concerning GTA's alleged failure to respond to PDS request for Dark Fiber Field Surveys. Although this complaint was heard at the hearing on September 3, 2014, the parties advised the ALJ on September 10, 2014 the parties had agreed to negotiate a stipulation to dismiss PDS' complaint regarding Dark Fiber Field Surveys. The ALJ queried the parties as to whether this meant he was no longer required to address the complaint regarding Dark Fiber Field Surveys; the parties confirmed that they were no longer requesting that the ALJ resolve the second Complaint. In addition, on September 15, 2014, at the request

## **FINDINGS OF FACT**

### **A. The Parties**

1. GTA is the incumbent local exchange carrier ["ILEC"] operating within the territory of Guam, which provides long distance telecommunication services, as well as other communication services, such as wireless telecommunications and broadband Internet access service within Guam.

2. PDS is a competitive local exchange carrier ["CLEC"] that provides telecommunication services, and other communication services in Guam.

### **B. Interconnection Agreement and Interconnection Implementation Rules**

3. PDS and GTA are parties to an Interconnection Agreement. Although the parties recently entered into a new Interconnection Agreement, the relevant Interconnection Agreement, for purposes of this proceeding, was approved by the PUC on October 29, 2010.<sup>2</sup>

4. On February 1, 2007, the PUC authorized and directed the commencement of rulemaking proceedings under 12 GCA §12104 to propose rules, consistent with Federal Communications Commission policy, to establish timelines, conditions and

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of the ALJ, GTA submitted to the ALJ an executed copy of the "Security Agreement" between the Teleguam Entities and the US Department of Justice. Such Agreement is relevant to the defense of GTA in this matter, but an executed copy of the Agreement had not been provided to the ALJ at the hearing on September 3. At the September 3 hearing, PDS submitted an unexecuted copy of the Security Agreement as Exhibit 8. The Record in this Docket includes all documents filed of record, emails between the parties and/or the ALJ, testimony and exhibits introduced by the parties at the hearing, briefs submitted, the argument presented by the parties at the hearing, and the executed Security Agreement.

<sup>2</sup> PUC Order Approving Interconnection Agreement, GTA Docket 10-08, dated October 29, 2010.

standards which GTA should meet in order to implement PUC-approved interconnection arrangements and to provide new entrants with a fair and reasonable opportunity to compete in the local exchange market. Another stated purpose of the rules was to establish a monitoring system by which the PUC could be assured that GTA was taking appropriate action to accommodate competitors (such as PDS) as well as its own customer base in the future.<sup>3</sup>

5. Thereafter, on August 13, 2007, the PUC approved the Interconnection Implementation Rules ["IIR" or "IIRs"].<sup>4</sup>

**C. The Course of the Proceedings in this Docket**

6. On November 27, 2013, PDS, through its President John Day, presented a written request to GTA for "Fiber Layout Map[s] showing GTA Fiber Cable Sheaths" for ten GTA central offices and/or Remote Centers.<sup>5</sup> PDS' Request was made pursuant to Section 8.2.19.1 of the PDS-GTA Interconnection Agreement (ICA) Network Elements Attachment, which provides as follows:

"8.2.19 PDS may request the following:

8.2.19.1 A fiber layout map that shows the streets within a GTA Wire Center where there are existing GTA fiber cable sheaths. GTA shall provide such maps to PDS subject to the agreement of PDS, in writing, to treat the maps as confidential and to use them for preliminary design purposes only. PDS acknowledges that fiber layout

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<sup>3</sup> PUC Order, Docket 05-01, issued August 13, 2007.

<sup>4</sup> Id.

<sup>5</sup> PDS Exhibit "1".

maps do not show whether or not spare Dark Fiber IOF are available. GTA shall provide fiber layout maps to PDS subject to a negotiated interval.”

7. On December 27, 2013, the President of PDS wrote to the Executive Vice President of GTA indicating that thirty days had passed without response by GTA on various PDS requests, including its request for Fiber Layout Maps. Mr. Day requested a response from GTA in a “timely, good faith manner.”<sup>6</sup>

8. On the same day, December 27, 2013, Daniel J. Tydingco, Executive Vice President of GTA, responded to Mr. Day indicating that GTA was aware of its obligations under the ICA. However, GTA indicated that it was restrained by its “Network Security Agreement, as mandated under Federal Law and FCC provisions,” and that the provision of information requested by PDS may be subject to certain restrictions. He further indicated that “GTA’s security officer is reviewing your request and we will respond as soon as possible.”<sup>7</sup>

9. On April 28, 2014, PDS submitted to GTA its “Notice of Dispute-GTA Failure to Respond to PDS Request of November 27, 2013 regarding PDS Request for Fiber Layout Map.” PDS indicated that this was a legitimate request under the terms of the ICA, and that GTA had failed to respond as required by the ICA even though five

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<sup>6</sup> GTA Response to PDS Complaint regarding Fiber Layout Maps, PDS Docket 14-02, filed August 29, 2014, at Attachment 1.

<sup>7</sup> Id.

months had passed since PDS's request.<sup>8</sup> PDS stated that it was bringing a dispute in accordance with Section 14, Dispute Resolution, of the PDS-GTA Interconnection Agreement. Pursuant to Section 14.1, PDS requested a meeting with GTA to negotiate a settlement of the dispute and assigned John Day as the PDS representative for that purpose.<sup>9</sup>

10. On April 30, 2014, GTA, through its Executive Vice President Mr. Tydingco, responded to PDS concerning its request for Fiber Layout Maps. GTA stated that such request was "inextricably linked with our FCC requirement and compliance obligations embedded in our Network Security Agreement ("NSA")." GTA had sought clarification from the federal entities on PDS' request and was awaiting their responses.<sup>10</sup> GTA further indicated that the material requested was ready and available for release, conditional upon receipt of federal clearance and imprimatur.<sup>11</sup>

11. On April 30, President of PDS sent an email to Ms. Lucy Perez, the Managing Director, Legal, Regulatory, Security & External Affairs, at GTA. Ms. Perez had forwarded the April 30 letter response of GTA to Mr. Day. Mr. Day indicated to Ms. Perez that the letter was not an adequate response to the issues nor in accordance with the ICA Dispute Resolution Process. PDS requested that GTA appoint an

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<sup>8</sup> PDS Exhibit 4.

<sup>9</sup> Id.

<sup>10</sup> GTA Response to PDS Compliant regarding Fiber Layout Maps, PDS Docket 14-02, filed August 29, 2014 at Attachment 1.

<sup>11</sup> Id.

individual responsible to enter into good faith negotiations with PDS in an effort to reach a resolution of the Fiber Layout Map dispute. PDS further requested that GTA make such assignment as soon as possible so that a meeting could be held in order for the parties to discuss a resolution of the disputes [including the dispute of PDS' Request for Fiber Maps]. PDS suggested that failure by GTA to meet in an effort to reach a negotiated resolution within the Section 14 timelines could result "in a finding of bad faith and other sanctions as applicable."<sup>12</sup>

12. On May 12, 2014, the Executive Vice President of GTA responded to the PDS Notice of Dispute dated April 28, 2014 and designated Lucia Perez as the representative of GTA in the Notice of Dispute concerning PDS' Request for Fiber Maps. GTA reiterated that it had a federal mandate and obligation to fully comply with the provisions of the Network Security Agreement (NSA) between Teleguam Holdings LLC and the United States Government. He indicated that: "Any and all requests, particularly requests peering into or accessing facilities and the network, must be screened accordingly." He indicated that GTA Security Personnel had notified the appropriate federal entities of the PDS request and had referred it to them. GTA was awaiting feedback from the federal authorities and would apprise PDS of updates.<sup>13</sup>

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<sup>12</sup> PDS Exhibit 5.

<sup>13</sup> GTA Response to PDS Compliant regarding Fiber Layout Maps, PDS Docket 14-02, filed August 29, 2014, at Attachment 1.



13. On May 14, 2014, Mr. Day of PDS wrote the GTA Representative-Fiber Map Dispute [Ms. Lucia Perez], inquiring as when she would want to meet to discuss these disputes.<sup>14</sup> PDS followed up their previous request and “voicemail” to Ms. Perez regarding the need to schedule meetings for resolution of the dispute. PDS indicated that: **“This section also states that ‘Failure by one party to meet with the other Party within the 60 day dispute resolution period shall constitute rebuttable evidence of that Party’s failure to meet its good faith obligations to negotiate the dispute.’”**

14. GTA did not respond further to PDS’ request that parties meet within the 60 day dispute resolution period to discuss the Fiber Map dispute.

15. Section 14, Dispute Resolution, of the ICA provides as follows:

“14. Dispute Resolution

14.1 Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties. To initiate such negotiation, a Party must provide to the other Party written notice of the dispute that includes both a detailed description of the dispute or alleged nonperformance and the name of an individual who will serve as the initiating Party’s representative in the negotiation. The other Party shall be ten Business Days to designate its own representative in the negotiation. The Parties’ representatives shall meet at least once within 60 days after the date of initiating Party’s written notice in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties’ representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations. Failure by one Party to meet with the other Party within the 60 day dispute resolution period shall constitute rebuttable evidence of that Party’s failure to meet its good faith obligations to negotiate the dispute. (emphasis added).

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<sup>14</sup> PDS Exhibit 6.

- 14.2 If the Parties have been unable to resolve the dispute within 60 days of the date of the initiating Party's written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction."

16. On July 10, 2014, PDS filed its Formal Complaint regarding an Interconnection Agreement Dispute with Teleguam Holdings LLC for failure to respond to PDS request for Fiber Layout Maps.

- (1) PDS indicated that, despite regular follow ups with GTA regarding the matter, the requested Fiber Layout Maps were never provided by GTA.
- (2) PDS never received a response from GTA regarding requests for a meeting to negotiate the dispute; the 60 day dispute resolution period lapsed without an attempt by GTA to participate in good faith negotiations to resolve the dispute.
- (3) PDS requested that the PUC order GTA to act on its ICA request for GTA Fiber Layout Maps and to rule on the violations alleged by PDS in its Complaint.

17. On July 11, 2014, GTA provided all of the requested Fiber Layout Maps to PDS. In its transmission, GTA indicated that it still had not received feedback from the



Department of Defense but was still sending the information to PDS on the 60<sup>th</sup> day of the assignment of the GTA representative.<sup>15</sup>

**D. The September 3, 2014 Hearing**

18. After the submission of briefs, the parties convened with the ALJ for a hearing on the PDS Fiber Layout Maps Complaint on September 3, 2014.

19. Through the testimony of its President John Day, PDS established that GTA did not provide the Fiber Layout Maps to PDS until seven months after its initial request.

20. According to Mr. Day, the ICA establishes a clear right in PDS to the provision of these maps by GTA pursuant to Section 8.2.19.1 thereof.

21. Mr. Day testified that receipt of these Fiber Layout Maps is needed by PDS so that it can gain access to GTA facilities and to bring its fiber optic cables into the GTA central offices.

22. He further stated that, without such maps, PDS' plans and permitting process through the Department of Public Works is delayed; without the maps, PDS has no certainty as to where the entrance is for each of GTA's facilities.

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<sup>15</sup> Email from Lucia Perez to PDS Representatives, dated July 11, 2014, with RSC and CO Fiber Maps attached.

23. Although PDS followed up its request to GTA on numerous occasions, GTA did not provide the Fiber Layout Maps until seven months after the initial PDS request.

24. According to Mr. Day, GTA relied upon its National Security Agreement as the reason for non-disclosure. PDS submitted what appeared to be a copy of GTA's Security Agreement as Exhibit "8", which it obtained from the Internet. However, PDS was not certain whether this was the actual Security Agreement nor had GTA provided a copy of such agreement to PDS.

25. PDS took the position that the Security Agreement in no manner prevented GTA from disclosing the Fiber Layout Maps to PDS. Appendix A of the Security Agreement provides that: "Nothing in this Agreement is intended to limit any obligation imposed by Federal Law or Regulation."

26. PDS contended that disclosure of the Fiber Layout Maps was required by federal regulation, 47 CFR §51.307(e), which states as follows:

"An Incumbent LEC shall provide to a requesting telecommunications carrier technical information about the incumbent LEC's network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section."

27. After PDS filed its Notice of Dispute, it made a number of requests to GTA to meet within the 60 day dispute resolution period under the ICA. However, GTA never responded to the PDS May 27, 2014 email requesting a meeting. PDS viewed

GTA as failing to comply with its legitimate requests and that there was no valid reason for delay.

28. PDS also requested that the PUC find that GTA's failure to provide the requested Fiber Layout Maps delayed PDS' ability to implement competitive services, in violation of PUC IIR Rule 5(c)(1)(iii), Rule 5(c)(1)(vi), and the requirement of federal law that GTA provide PDS with technical information regarding GTA's network in order to allow PDS to access unbundled network elements as defined by the Telecom Act.

29. During cross-examination, Mr. Day admitted that GTA's response on July 11, 2014, which provided the Fiber Layout Maps, was "a compliant response, albeit late."

30. Mr. Daniel Tydingco, Executive Vice President, testified on behalf of GTA. He indicated that there was a "National Security Agreement" in effect between Teleguam Holdings LLC and the United States Department of Justice and other federal authorities. The appointment of a "Security Officer" by GTA was required; there had been no such federal review requirement under prior ICA Agreements.

31. GTA believed that it was required to submit information requests, such as that for PDS of Fiber Layout Maps, for federal review within the confines of the new Security Agreement. Ongoing communications were made with Mr. Day of PDS concerning the need to have PDS' request reviewed through appropriate federal

channels. As recently as one week ago, Team Telecom received federal communications that there should be a confidentiality agreement between GTA and PDS.

32. According to GTA, the cause of the delay in providing the Fiber Layout Maps to PDS was not intentional, but resulted from the need of GTA to seek federal guidance regarding its obligations. Even though what GTA transmitted to PDS may be acceptable to the federal authorities, a confidentiality agreement is still required.

33. GTA also had concerns regarding the recent alleged illegal entry to a GTA facility and tampering by a PDS employee with GTA facilities.

34. On cross examination, Mr. Tydingco testified that GTA was, on an ongoing basis, attempting to receive follow ups from its Security Officer regarding federal communications. Scheduling a meeting with PDS might well have not been fruitful because of the ongoing federal review.

### **CONCLUSIONS OF LAW**

#### **A. The Federal Telecommunications Act of 1996**

35. "Seeking to spur competition in the telecommunications industry," Congress "passed the Telecommunications Act of 1996" (hereinafter the "Act").<sup>16</sup>

36. The Act is "designed in part, to erode the monopolistic nature of the local telephone service industry by obligating the current providers of local phone service

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<sup>16</sup> PDS Exhibits 15 and 16.

(known as ‘incumbent local exchange carriers’ or ‘incumbent LECs’) to facilitate the entry of competing companies into the local telephone service markets across the country.”<sup>17</sup>

37. “The Act not only permitted competitors to operate their own local exchange networks in competition with the local telephone company, but also obliged the local incumbent to assist new entrants in several respects.”<sup>18</sup>

**B. The Guam Telecommunications Act of 2004**

38. Guam’s Legislature enacted the Guam Telecommunications Act of 2004 (hereinafter the “Guam Act”) to create a “new regulatory environment conducive to competition” that would “promote the development of modern, innovative, accessible, and affordable telecommunications services and products for the people of Guam.”<sup>19</sup>

39. The Guam Act exists to “[e]ncourage the entry of new providers of telecommunication services, encourage the introduction of new telecommunications services and products for the consumers of Guam, and increase investment in telecommunications infrastructure in Guam.”<sup>20</sup>

**C. Jurisdiction of ALJ and GPUC to Resolve ICA Disputes**

40. The PUC established the IIRs to provide “administrative procedures for Commission resolution of disputed issues arising under or pertaining to ICAs approved

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<sup>17</sup> Iowa Utilities Board v. FCC, 120 F.3d 753, 791 (8th Cir. 1997).

<sup>18</sup> Worldnet Communications, 497 F.3d at 3 (internal citations omitted).

<sup>19</sup> 12 G.C.A. §12101(a)(3).

<sup>20</sup> 12 G.C.A. §12101(b)(3).

by the Commission pursuant to its authority under the Federal Telecommunications Act of 1996 and the Guam Telecommunications Act.”<sup>21</sup>

41. Under the IIRs, the GPUC’s “ALJ shall act as arbitrator” of disputes involving the “terms and conditions in the ICA” and the “[i]mplementation of activities explicitly provided for, or implicitly contemplated in the ICA.”<sup>22</sup>

**D. The Duty of GTA to Produce Fiber Layout Maps to PDS**

42. In accordance with Section 8.2.19.1 of the Network Elements Attachment of the PDS-GTA ICA, PDS is entitled to request from GTA Fiber Layout Maps which show the streets within a GTA Wire Center where there are existing GTA fiber cable sheaths: “GTA shall provide such maps to PDS subject to the agreement of PDS, in writing, to treat the maps as confidential and to use them for preliminary design purposes only.” (Emphasis added). The section further provides that: “GTA shall provide fiber layout maps to PDS subject to a negotiated interval.”

43. The right of PDS to obtain such Fiber Layout Maps relate to its ability to interconnect with GTA’s office facilities. The Federal Telecommunications Act of 1996, as well as the federal regulations requiring interconnection, sought to protect the right of local exchange carriers such as PDS to interconnect with the facilities of the Incumbent local exchange carrier, GTA. While GTA ultimately did provide the Fiber

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<sup>21</sup> IIR 4(a).

<sup>22</sup> IIR 4(b)((1)-(4)).

Layout Maps to PDS approximately seven months after PDS' initial request, and after PDS filed its Complaint herein, there was a substantial delay in PDS' ability to exercise its interconnection rights.

44. However, notwithstanding GTA's eventual production of the Fiber Layout Maps, PUC must address the issue of the impact of GTA's Security Agreement upon GTA's duty to produce Fiber Layout Maps to PDS. The issue could well arise again in the future. When PDS requests information in the future relating to interconnection access to GTA's facilities, GTA could possibly again raise the Security Agreement as a reason for non-production. It is an issue that is "capable of repetition, yet evading review."<sup>23</sup>

45. There are provisions of the Security Agreement which arguably could require review by the United States Government Authorities of a request such as that of PDS to GTA for Fiber Layout Maps.<sup>24</sup> In particular, Section 3.5 of implies that information requests to GTA regarding facility access or sensitive information must be reviewed by the Security Officer and the appropriate federal officials.<sup>25</sup>

46. GTA does have significant legal obligations with the United States Government with which it must comply pursuant to the Security Agreement. In the

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<sup>23</sup> Super Tire Engineering Co. v. McCorkle, 416 U.S. 115 (1974)

<sup>24</sup> See Sections 2.3, 3.1, 3.2 and 3.5 of the Security Agreement submitted herein on September 19, 2014 (It is also set forth in PDS Exhibit 8).

<sup>25</sup> Id.



first instance, GTA could reasonably have believed that it needed to clear the request for provision of the Fiber Layout Maps with the Department of Justice before releasing such maps.

47. That being said, however, the ALJ does not agree that the provisions or requirements of the Security Agreement provide an excuse to GTA, or a justification for the failure to produce the Fiber Layout Maps. Even assuming that GTA was required to submit PDS' request for Fiber Layout Maps to federal officials, GTA should have taken proactive action regarding the request prior to the expiration of a seven month period. GTA could have brought this matter to the attention of the PUC for action. Having notified USDOJ of the request, it could have earlier released the maps to PDS when there was no federal response. Ultimately, GTA took the last course of action when it released the maps to PDS without prior federal approval in July of 2014.

48. Under federal law, GTA has a duty to provide information regarding access to interconnection facilities to PDS. An Incumbent Local Exchange Carrier such as GTA has the duty to negotiate interconnection agreements in good faith with other telecommunication carriers such as PDS.<sup>26</sup> GTA has contractual obligations to PDS in the Interconnection Agreement that were established and solidified prior to GTA's entry into the Security Agreement. The ALJ finds it highly unlikely that the Federal Government intended the Security Agreement to hinder or restrict the rights of LECs

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<sup>26</sup> 47 U.S.C. §251.

such as PDS. A major purpose of the Federal Telecommunications Act of 1996 was to protect the interconnection rights of local incumbent exchange carriers and to create competition in the telecommunications industry. As will be discussed *infra*, federal law in fact expressly protects the right of LECs to information regarding access to interconnection facilities.

49. Federal law also imposes a duty upon state commissions such as the Guam Public Utilities Commission to assist parties such as GTA and PDS with arbitration of Interconnection Agreements, and also requires Guam PUC to approve such Interconnection Agreements.<sup>27</sup> Thus, the requirement that GTA and PDS enter into an interconnection agreement is in reality a contractual obligation established by federal law.

50. The PUC has expressly adopted the interconnection requirements contained in Part 51 of Title 47 of the Code of Federal Regulations, and incorporated such requirements into its own Interconnection Implementation Rules.<sup>28</sup>

51. The ALJ is not convinced that the Security Agreement in any matter abrogates, affects, restricts, diminishes or limits the duty of GTA to provide Fiber Layout Maps to PDS under the ICA. In fact, Appendix A to the Security Agreement

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<sup>27</sup> 47 U.S.C. §252.

<sup>28</sup> PUC Order, Docket 05-1 [Interconnection Implementation Rules], adopted August 13, 2007.

states: **“Nothing in this Agreement is intended to limit any obligation imposed by Federal law or regulation.”**<sup>29</sup>

52. The duty of GTA and PDS to enter into an Interconnection Agreement and to abide by its terms and obligations is a duty which originates in federal law. In addition, 47 C.F.R. §51.307(e) provides that an incumbent LEC such as GTA “shall provide to a requesting telecommunications carrier technical information about the incumbent LEC’s network facilities sufficient to allow the requesting carrier to achieve access to unbundled network elements consistent with the requirements of this section.”

53. Under both the Interconnection Agreement and 47 C.F.R. §51.307(e), GTA has a duty to provide the Fiber Layout Maps to PDS.

54. In this case, GTA’s failure to provide the Fiber Layout Maps to PDS until seven months after PDS’s initial request was an unreasonable and unjustified delay. The ALJ notes that GTA, notwithstanding the fact that no action had been taking by the USG parties in approving release of the maps under the Security Agreement, nonetheless determined that it would release such maps on July 11, 2014, one day after PDS filed its Complaint.

55. For future reference of the parties, it is important for the PUC to establish a rule that that governs the release of information required under the ICA. The PUC should issue a determination that the Security Agreement does not provide a

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<sup>29</sup> PDS Exhibit 8, Appendix A.

justification or excuse for the non-release of information to a LEC such as PDS, if release is required under the Interconnection Agreement or federal regulation,. The Security Agreement cannot be construed as an absolute excuse or defense for nonproduction of information to which PDS is entitled under the ICA. Otherwise, the right of PDS to obtain Fiber Layout Maps and other information under the ICA or federal regulation would be meaningless.

56. The PUC should expect, with regard to future dealings of the parties, that GTA will produce all information required under the ICA and federal regulation.

57. PDS has also alleged that GTA's failure to provide the requested Fiber Layout Maps delays PDS' ability to implement competitive services in various parts of Guam. The delay in providing the Fiber Layout Maps to PDS could likely have this effect. In the testimony of John Day, PDS established that it needs the Fiber Layout Maps to interface with and access GTA's network. For planning and permitting purposes, PDS must know where the entrances to the GTA office facilities are located; this apparently cannot be determined by a mere visual inspection. To the extent that PDS is unable to commence and complete its network planning, the delay in the provision of the requested layout maps is anti-competitive. PDS was delayed in its plans to install services. GTA's failure to provide the Fiber Layout Maps would tend to

delay PDS' ability to make permit applications for such facilities with the Department of Public Works or to obtain permits.<sup>30</sup>

58. GTA and PDS are obligated to implement the provisions of the ICA in good faith, and to comply with the provisions of the ICA with "the highest standards of professionalism, decency and honesty."<sup>31</sup> As previously stated, the ALJ can understand that, initially, GTA may have felt it necessary to process PDS's request through the federal review procedures of the Security Agreement. However, given the length of the delay, it was not reasonable for GTA to continue to refuse to provide PDS with the Fiber Layout Maps for such an extended period. Rule 5(c) of the IIRs indicates that certain prohibited acts "are examples of failure to act in good faith." Rule 5(c)(1)(v) states that "No telecommunications carrier shall: ... upon bona fide request, unreasonably refuse to fully disclose in a timely manner all information necessary to achieve interconnection;..." Here PDS made a legitimate request for information, the Fiber Layout Maps; GTA did not disclose, in a timely manner, all information necessary for PDS to achieve interconnection.

**E. GTA's Failure to Meet with PDS within the 60 Day Dispute Resolution Period.**

59. PDS' filing of a formal Notice of Dispute, on April 28, 2014, regarding GTA's failure to provide Fiber Layout Maps, initiated the Dispute Resolution process in

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<sup>30</sup> Testimony of John Day.

<sup>31</sup> IIR 5(a).

Section 14 of the ICA. Thereunder, once the parties' representatives are designated, they have an obligation to meet: "the Parties' representatives shall meet at least once within 60 days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute."<sup>32</sup> (Emphasis added).

60. When PDS filed its Notice of Dispute on April 28, 2014, the Parties' representatives were required to meet on or before June 27, 2014. As detailed in the Findings of Fact above, PDS requested, on numerous occasions, that the representatives of PDS and GTA meet to discuss the dispute regarding Fiber Layout Maps. In his email to GTA dated May 27, 2014, the President of PDS Mr. Day pointed out that a meeting for the dispute was mandated by Section 14.1 of the ICA. He specifically requested that GTA communicate a time and place for the required dispute resolution.

61. GTA never responded to PDS' May 27, 2014 request for a Dispute Resolution meeting. During the hearing on this matter, Mr. Daniel J. Tydingco, EVP of GTA, suggested that since GTA was attempting to receive a follow-up from its Security Officer concerning PDS' request, holding of a meeting "might not have been fruitful."<sup>33</sup>

62. However, the ICA does not authorize the parties to fail to hold a meeting on the grounds that the meeting might not lead to resolution of a dispute. Section 14 of the ICA **requires** such a meeting. The purpose for such a Dispute Resolution Process is

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<sup>32</sup> §14.1 of the ICA.

<sup>33</sup> Testimony of Daniel J. Tydingco.

that the holding of a required meeting will lead the parties to discuss ideas for the resolution of a dispute and hopefully lead to a resolution. In this case, an earlier resolution would have dispensed with the necessity of PDS' having to file a Complaint to obtain the Fiber Layout Maps.

63. Section 14.1 of the ICA expressly provides that: "Failure by one party to meet with the other party within the 60 day dispute resolution period shall constitute rebuttable evidence of that party's failure to meet its good faith obligations to negotiate the dispute." (Emphasis added). GTA has not rebutted the evidence of its failure to meet its good faith obligation to negotiate the dispute.

64. The PUC Interconnection Implementation Rules place an extremely high significance upon the duties of the parties to participate in dispute resolution. IIR 4, Dispute Resolution, subsection (e), provides as follows:

**"All parties participating in dispute resolution under this rule have a duty to participate in good faith. Good faith participation means both parties meet and confer with minds open to persuasion and with an eye toward reaching agreement on the disputed issues."** (emphasis added).

In this matter, GTA did not demonstrate a "good faith participation" in the dispute resolution process.

#### **F. Violations of GTA**

65. For the foregoing reasons, the ALJ finds GTA has failed to act in good faith by failing to meet with PDS within the 60 day dispute resolution period to



negotiate the dispute concerning Fiber Layout Maps. GTA also failed to fully disclose, in a timely manner, the Fiber Layout Maps. PDS is entitled to the production of such maps pursuant to Section 8.2.19.1 of the PDS-GTA Interconnection Agreement (ICA) Network Elements Attachment. A delay by GTA for a seven month period in disclosing such Fiber Layout Maps is a violation of its duty under federal regulation to provide technical information about the incumbent LEC's network facilities sufficient to allow PDS to achieve access to unbundled network elements. PDS was delayed in its ability to implement and provide competitive telecommunications services. These actions constitute violations of IIR 4(e), 5(a), and 5(c)(1)(v), and of 47 C.F.R. §51.307(e).

**G. Assessment of Regulatory Fees.**

66. In accordance with Amendment Rule 1.b.iii (RULES GOVERNING REGULATORY FEES FOR TELECOMMUNICATIONS COMPANIES), for proceedings under Rule 4 of the Interconnection Implementation Rules, including dispute resolution, "PUC's regulatory expenses... shall be allocated against such party or parties as the Commission deems appropriate." The ALJ recommends that the PUC allocate all of the regulatory expenses in this proceeding to GTA. PDS was required to institute these proceedings because GTA had not provided the Fiber Layout Maps and did not participate in the meeting between the parties pursuant to the Dispute Resolution process. Although GTA did ultimately, after seven months, provide the Fiber Layout Maps to PDS, this delay was unreasonable and detrimental to PDS. In

light of GTA's position concerning the Security Agreement, PDS had a need to proceed with this proceeding to obtain clarification as to whether GTA could withhold documents under the ICA by virtue of the requirements of the Security Agreement. Assessment of PUC's regulatory fees and expenses is authorized pursuant to 12 GCA §§12002(b), 12104, 12109, the Rules Governing Regulatory fees for Telecommunications Companies, and Rule 40 of the Rules of Practice and Procedure before the PUC.

**H. Attorney's Fees.**

67. Pursuant to 12 GCA §§12107, the Commission may impose attorney's fees against a party. Attorney's fees may be imposed if the Commission determines, after notice and opportunity for hearing, that a party has failed to act in good faith. PDS has requested that it be awarded its attorney's fees in this proceeding and that such fees be assessed against GTA. However, this issue has not been fully addressed by the parties, nor has there been a full opportunity for a hearing on the issue. The PUC should authorize the ALJ to conduct a hearing to determine whether attorney's fees should be assessed against GTA, and, if so, in what amount.

**CONCLUSION**

Having found in favor of PDS on its Complaint, the ALJ hereby makes the following recommendations to the PUC:

1. That the PUC approve the findings of fact and the conclusions of law of the ALJ, and award relief to PDS in accordance therewith;

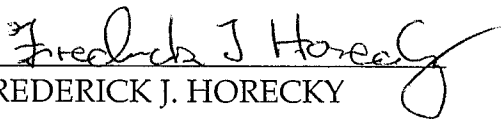
2. That the PUC authorize the ALJ to notice and conduct a hearing pursuant to 12 GCA §12107(d) or other applicable provision to determine whether attorney's fees should be imposed against GTA, and if so, in what amount;

3. That the PUC determine that the review requirements of the Security Agreement do not in any manner abrogate, affect, restrict, diminish or limit the duty of GTA to provide Fiber Layout Maps to PDS under the ICA. GTA is obligated to provide such Maps to PDS under the ICA and to disclose all required information;

4. That GTA be ordered to fully comply with its information disclosure requirements under the ICA and federal regulation;

5. That GTA be required to pay the PUC's regulatory expenses pursuant to Amended Rule 1.b.iii (RULES GOVERNING REGULATORY FEES FOR TELECOMMUNICATIONS COMPANIES).

Dated this 23<sup>rd</sup> day of September, 2014.

  
FREDERICK J. HORECKY  
Administrative Law Judge