

PDS DOCKET 14-01

ALJ REPORT

1. This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Pacific Data Systems [“PDS”] Petition for Compulsory Arbitration of the PDS-GTA Interconnection Agreement.¹
2. On November 13, 2013, PDS submitted a request to Teleguam Holdings, LLC to negotiate a new interconnection agreement and to determine the terms and conditions of such agreement.²
3. In its April 22, 2014 Petition, PDS requested that the PUC provide Arbitration of outstanding issues between PDS and GTA in order to arrive at an Interconnection Agreement.³

4. Commencing in 2006, the PUC assisted PDS and GTA with regard to the arbitration of certain terms of their Interconnection Agreement. Upon the conclusion of arbitration and the issuance of a decision by the Administrative Law Judge ["ALJ"], the PUC approved the Interconnection Agreement between PDS and GTA.⁴
5. In 2010, PDS and GTA again arbitrated certain issues between them for a new Interconnection Agreement, which issues included Pre Billing, Assurance of Payment, and Dispute Resolution.⁵

⁵ PUC Amended Order, PDS Docket 10-02, issued June 16, 2010.

6. On September 28, 2010, the PUC approved the new Interconnection Agreement between PDS and GTA⁶; PUC further approved the First Amendment to the Interconnection Agreement concerning "Virtual Colocation Rack Space" on August 27, 2012.⁷
7. The PUC is statutorily empowered to arbitrate open issues under an interconnection agreement pursuant to federal regulation, 47 USC §252, Procedures for Negotiation, Arbitration, and Approval of Agreements.⁸ Any Interconnection Agreement adopted by negotiation or arbitration must be submitted for approval to the State Commission [such as the "PUC"].⁹
8. The parties met with the ALJ for a preliminary scheduling hearing in this docket on May 2, 2014. A Sixty day time frame was established for the arbitration of issues related to the Interconnection Agreement between PDS and GTA. The Parties were instructed to undertake good faith negotiations.¹⁰

CERTAIN ISSUES HAVE BEEN NEGOTIATED, WHILE OTHERS REMAIN OPEN

9. An Attachment to the proposed Interconnection Agreement ["ICA"] was "Access to Poles, Ducts, Conduits, and Rights of Way Attachment" (herein after "PDR"). This attachment governs the terms and conditions of PDS' access to poles, ducts, conduits, and rights of way.¹¹
10. The Parties have agreed that, due to the tight timelines for negotiation of the ICA, the PDR Attachment will not be negotiated in this current phase of the negotiation process. Instead of negotiating the PDR as an attachment to the ICA, the Parties have agreed to negotiate a separate, standalone agreement governing PDR apart from the ICA.¹²

⁶ PUC Order Approving Interconnection Agreement, GTA Docket 10-08, dated September 28, 2010.

⁷ PUC Order, Joint Petition of GTA and PDS for Approval of First Amendment to ICA, GTA Docket 12-06, issued August 27, 2012.

⁸ 47 U.S. Code §252(b).

⁹ 47 U.S. Code §252(e)(1).

¹⁰ Preliminary Scheduling Order, PDS Docket 14-01, dated May 6, 2014.

¹¹ PDR Attachment, See 1.1.2.

¹² SCHEDULING ORDER, PDS Docket 14-01, issued June 9, 2014, at p. 1.

11. The Parties have agreed to meet, in good faith, to negotiate and complete a PDR Agreement within six months from August 4, 2014. The PDR Agreement shall be submitted to the PUC for final approval.¹³
12. Another issue upon which the parties have made substantial progress in negotiating an agreement is "Collocation", which involves PDS' access to its collocation arrangements within GTA Central and Remote Office Facilities. The relevant language appears in the COLLOCATION ATTACHMENT at p. 94 of the ICA. The Parties have agreed that, pursuant to 47 CFR §51.323, PDS is entitled to unscheduled, unescorted access to its collocation locations in GTA Central Offices.¹⁴ Previously, PDS was only provided access to collocation sites in GTA facilities upon escort by GTA representatives.
13. GTA has determined that it desires to have security cameras at the collocation sites to monitor activities of its own employees and contractors, as well as PDS employees/representatives. The Parties agree that, pursuant to 47 CFR §51.323(i), an incumbent local exchange carrier may only impose security arrangements that are as stringent as the security arrangements that the incumbent Local Exchange Carrier [LEC] maintains at its own premises for its own employees or authorized contractors.
14. In accordance with 47 CFR §51.323, the parties have agreed to negotiate shared costs for security cameras at the collocation sites based on the least expensive, effective security option necessary for the collocation space allocated to PDS.¹⁵
15. Within two weeks of August 4, 2014, GTA will provide to PDS detailed price proposals on a site-by-site basis including the number and positioning of security cameras and whether each site will allow for the sharing of cameras to cover both GTA and PDS access monitoring.¹⁶ The parties agree to negotiate in good faith and resolve the cost issues within 30 days of the date of their Letter of Agreement. Depending on the selected vendor's ability, the parties intend to

¹³ Id.; See also Letter of Agreement Regarding Negotiation of a Poles, Ducts, and Rights of Way Agreement between GTA and PDS [Letter from Andrew S. Quenga, GTA Legal Counsel, to Mr. John Day, PDS, dated August 4, 2014, a true and correct copy of which is attached hereto as Exhibit "1"].

¹⁴ SECOND SCHEDULING ORDER, PDS Docket 14-01, dated July 14, 2014; See also Letter of Agreement Regarding Collocation Access and Installation of Security Cameras in GTA Central Offices [Letter from Andrew S. Quenga, Legal Counsel, GTA, to Mr. John Day, Pacific Data Systems, dated August 4, 2014 and attached hereto as Exhibit "2"].

¹⁵ Id.

¹⁶ Id.

complete the installation of the security cameras within 90 days of the letter agreement.¹⁷

16. GTA agrees to pursue installations pursuant to an installation priority schedule provided by PDS. Should the parties fail to come to an agreement on costs, the cost issue shall be submitted to the PUC for resolution through the arbitration process. Prior to final installation and activation of the security cameras, PDS shall continue to pay escort fees pursuant to the previous Interconnection Agreement.
17. The parties have also been successful in resolving disputes concerning proposed language and definitional revisions in the Interconnection Agreement. The parties have resolved their differences concerning the definition of "End Office" and "Tandem Switch" and have agreed to continue to use the definitions for those terms contained in the existing ICA.
18. Various provisions in the ICA deal with issues involving "good faith performance" by the parties and the appropriate good faith response time period for responses by GTA to PDS' requests for pricing or new services. In general, the parties have agreed that the good faith response time used in the agreement will be 60 days.
19. The parties have successfully negotiated textual revisions to the agreement and other pending issues. PDS and GTA have agreed upon the textual language for their new Interconnection Agreement. The Agreement does not discriminate against a telecommunications carrier not a party to the Interconnection Agreement pursuant to the standards set forth in 47 USC §252[e][2][A].
20. Based upon the agreement of PDS and GTA, said parties signed and executed their Interconnection Agreement by the statutory deadline of August 11, 2014. The Agreement is consistent with the public interest, convenience and necessity. It clarifies arrangements for provision of collocation services by GTA to PDS and resolves other issues including good faith response time. In accordance with the Guam Telecommunications Act of 2004, it is in the public interest to provide the people of Guam with modern, innovative, accessible, and affordable telecommunications services and products.¹⁸

¹⁷ Id.

¹⁸ Guam Telecommunications Act of 2004, 12 GCA §12101(3).

21. There has been considerable discussion between the parties concerning the Pricing Attachment to the ICA, and particularly upon certain Unbundled Network Element Rates. The parties have been able to reach agreement on pricing with the exception of rates for 12 UNE services. A listing of the Unbundled Network Element Rates which will require a further study process and/or arbitration are set forth in the listing attached hereto as Exhibit "3".¹⁹
22. PDS has stated, on the record, that there is not a present need to arbitrate the two UNEs for sub-loop [2.1.21 and 2.1.22]. Sub-loops do not exist at present and PDS will not be using them in the near future.²⁰

**NECESSITY FOR THE ESTABLISHMENT OF
PHASE 2 PROCEEDINGS IN THIS DOCKET
FOR RESOLUTION OF OPEN ISSUES**

23. The parties have agreed that there is a need to arbitrate pricing and other issues in what is referred to as "Phase 2" of these proceedings. In the proceedings conducted to date, named as "Phase 1", the parties have agreed upon acceptable language for their Interconnection Agreement and have executed the same and filled the ICA with the PUC.²¹ However, there has been no agreement as to certain Unbundled Network Element pricing rates; these UNE rates, as well as other open issues, must be resolved through further negotiation and arbitration in Phase 2 of these proceedings.
24. The parties propose, and the ALJ concurs, that the arbitration of UNE pricing elements should be conducted in Phase 2 of these proceedings. In the Phase 1, proceedings, the parties have agreed that, for the UNEs for which new rates have not been agreed, the existing UNE pricing rates in the current ICA shall be deemed to be "interim rates." The presently agreed "interim rates" shall remain in effect until new rates are determined through a Total Element Long Run Incremental Cost Study to be conducted during Phase 2 of these proceedings. The current UNE rates shall remain in effect until new rates are determined through the TELRIC study and arbitration in Phase 2.

¹⁹ Pricing Attachment, Exhibit "3".

²⁰ Hearing on July 30, 2014, at PUC Office.

²¹ PDS-GTA Interconnection Agreement, filed with the PUC on August 11, 2014.

25. Once permanent UNE rates are determined in Phase 2 of these proceedings, there will be a "true-up" accounting to reconcile the difference between the billings issued under the Interim rates and what the billings would have been under the Permanent Rates. Reconciliation period will start from the date upon which the Interim Rates go into effect and cease at the effective date of the Permanent rates. At the conclusion of this Phase 1, the ALJ recommends that the PUC establish pricing for the 12 UNE services. The "Interim Rates" should be the existing UNE rates that are already in effect and to which the parties have previously agreed. Interim Rates will be effective upon approval by the PUC of such rates and implementation of the new ICA.
26. With regard to pricing of the 12 UNE services, Phase 2 will involve the determination and arbitration of the following issues:
 - (a) The undertaking of a TELRIC study that complies with the requirements of 47 C.F.R. 51.505 and 51.511;
 - (b) The conduct of the applicable TELRIC study by GTA development of its rate proposals accordingly, and presentation of applicable rates to PDS and the PUC for review and approval by the PUC;
 - (c) Determination by the ALJ and the PUC of cost responsibility for the TELRIC study between GTA and PDS;
 - (d) Implementation of permanent rates for the UNE charges and the carrying out of true-up proceeding by the ALJ and the PUC.
27. At the commencement of the Phase 2 proceedings, the ALJ shall determine, upon recommendation by the parties, the appropriate timeframe for resolution of Phase 2 issues.
28. In Phase 2 proceedings, the ALJ and the PUC will also determine outstanding issues involving collocation and the PDR Attachment [as outlined above].

RECOMMENDATION

29. The ALJ recommends as follows:
 - (a) The PUC should review the final copy of the Interconnection Agreement, which contains the provisions negotiated by the parties, within thirty days after the

parties' submissions thereof and issue a final order approving it pursuant to 47 USC 252[e][4].

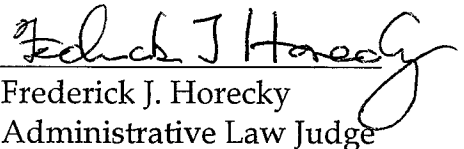
(b) The PUC should approve existing rates in the ICA as "Interim Rates" for those services set forth in the listing agreed upon by the parties as "Unbundled Network Element Rates for Arbitration."

(c) The ALJ should be authorized by the PUC to conduct Phase 2 proceedings and determine those issues in accordance with the procedures set forth in this Report.

(d) The Administrative Law Judge should be authorized to undertake such proceedings as are necessary, including arbitration, in Phase 2 of these proceedings to resolve any open issue(s).

30. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 19th day of August, 2014.


Frederick J. Horecky
Administrative Law Judge

Mr. John Day
Pacific Data Systems
185 Ilipog Drive
HBC Bldg. Suite 204A
Tamuning, Guam 96913

Subject: Letter of Agreement Regarding Negotiation of a Poles, Ducts and Rights of Way
Agreement between GTA and PDS

Dear Mr. Day,

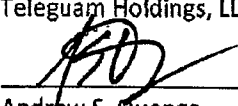
On November 27, 2013, PDS submitted to GTA its Request for Access to GTA Poles, Ducts, and Rights-of Way pursuant to section 9.1 of the GTA-PDS Interconnection Agreement ("ICA"). GTA and PDS (the "Parties") subsequently exchanged draft Poles, Ducts, and Rights-of-Way ("PDR") agreements and after review of the agreements, agreed to negotiate a separate, stand-alone agreement apart from the ICA.

The Parties agree to negotiate in good faith and complete a PDR agreement within six (6) months of this letter. The parties further agree that the agreement shall be submitted to the Guam Public Utilities Commission ("PUC") for approval.

If the parties are unable to agree upon a PDR agreement by the time specified above, the parties agree to submit the issue to the PUC for arbitration.

By signing below, GTA and PDS agree to the terms herein.

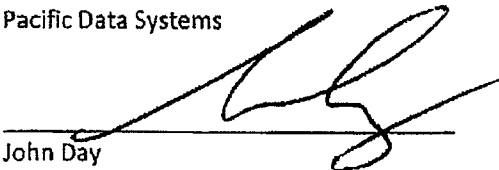
Teleguam Holdings, LLC



Andrew S. Quenga
Legal Counsel

8/4/14

Pacific Data Systems



John Day
President

Mr. John Day
Pacific Data Systems
185 Ilipog Drive
HBC Bldg, Suite 204A
Tamuning, Guam 96913

Subject: Letter of Agreement Regarding Collocation Access and Installation of Security Cameras
in GTA Central Offices

Dear Mr. Day,

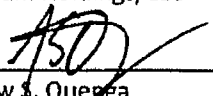
Pursuant to Interconnection Agreement ("ICA") negotiations between PDS and GTA, the parties have agreed to ICA terms providing PDS with the unescorted access to its collocation locations in GTA Central Offices. Pursuant to 47 CFR § 51.323, the parties have agreed to negotiate to share costs for security cameras at these locations based on the least expensive, effective security option necessary for the collocation space allocated to PDS.

Within two weeks of the date of this letter, GTA will provide to PDS detailed price proposals on a site-by-site basis including the number and positioning of security cameras and whether each site will allow for the sharing of cameras to cover both GTA and PDS access monitoring. The parties agree to negotiate in good faith and resolve the cost issues within 30 days of this letter and, depending on the selected vendor's ability, for completion of installation of the security cameras within 90 days of this letter. GTA agrees to pursue installations pursuant to an installation priority schedule provided by PDS. Should the parties fail to come to an agreement on costs, they agree to submit this issue to the Guam Public Utilities Commission for resolution.

Prior to final installation and activation of the security cameras, PDS shall continue to pay escort fees, pursuant to the previous ICA.

By signing below, GTA and PDS agree to the terms herein.

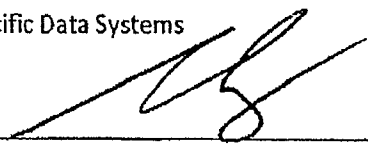
Teleguam Holdings, LLC



Andrew S. Quenga
Legal Counsel

8/4/14

Pacific Data Systems



John Day
President

GTA - PDS New ICA

Unbundle Network Element Rates for Arbitration

Item	Service	Existing ICA NRC	PDS Proposed NRC	GTA Proposed NRC	Existing ICA MRC	PDS Proposed MRC	GTA Proposed MRC	BILLING UNIT	ICA References
2	UNBUNDLED NETWORK ELEMENTS								
2.1	Unbundled Loops								
2.1.1	2-Wire Analog Voice Grade Loop	\$25.00	\$15.00	\$67.72	\$24.50	\$8.00	\$46.99	per loop	Network Elements 3.1.1
2.1.3	4-Wire Analog Voice Grade Loop	\$35.00	\$25.00	\$117.21	\$55.68	\$16.00	\$92.96	per loop	Network Elements 3.1.2
2.1.5	2-Wire ISDN Digital Grade Loop	\$100.00	\$15.00	\$93.20	\$30.00	\$10.00	\$24.20	per loop	Network Elements 3.1.3
2.1.6	2-Wire ADSL-Compatible Loop	\$75.00	\$15.00	\$74.42	\$30.00	\$10.00	\$46.99	per loop	Network Elements 3.1.4
2.1.7	2-Wire HDSL-Compatible Loop	\$75.00	\$15.00	\$75.92	\$30.00	\$10.00	\$50.22	per loop	Network Elements 3.1.5
2.1.8	4-Wire HDSL-Compatible Loop	\$100.00	\$25.00	\$117.21	\$52.50	\$18.00	\$53.87	per loop	Network Elements 3.1.6
2.1.10	2-Wire SDSL-Compatible Loop	\$75.00	\$15.00	\$74.42	\$30.00	\$10.00	\$21.92	per loop	Network Elements 3.1.8
2.1.14	2W Digital loop (loop length 12K to 30K)	\$85.00	\$50.00	\$86.15	\$35.00	\$12.00	\$92.96	per loop	Network Elements 3.1.14.1
2.1.15	2W Digital loop (loop length 12K to 18K)	\$100.00	\$50.00	\$75.92	\$35.00	\$12.00	\$27.27	per loop	Network Elements 3.1.14.2
2.1.16	2W Digital Loop (loop length less than 12K)	\$75.00	\$15.00	\$61.96	\$30.00	\$10.00	\$26.62	per loop	Network Elements 3.1.14.3
2.1.21	2-Wire HDSL-Compatible Sub-Loop (LT 10K feet)	new	\$15.00	\$202.11	new	\$6.00	\$14.24	per sub loop	Network Elements 6
2.1.22	4-Wire HDSL-Compatible Sub-Loop (LT 10K feet)	new	\$25.00	\$204.94	new	\$10.00	\$28.26	per sub loop	Network Elements 6