

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

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

INTRODUCTION

This is an Arbitration proceeding conducted pursuant to Rule 4(h) of the Commission’s Implementation Rules in Connection with Interconnection Agreements between GTA and Competing Local Exchange Carriers and CMRS Operators (PUC Order, Docket 05-01, adopted August 13, 2007) (hereinafter the “Interconnection Implementation Rules”). It concerns a dispute between Teleguam Holdings LLC [“GTA”] and Pacific Data Systems Inc. [“PDS”] regarding the establishment of rates for ten loops and two sub-loops [Unbundled Network Elements or “UNEs”], pursuant to their Interconnection Agreement [“ICA”].

This matter comes before the Guam Public Utilities Commission [“PUC”] upon the Recommendations issued by the Administrative Law Judge [“ALJ”] herein on April 3, 2017.¹

On November 13, 2013, PDS submitted a request to GTA to negotiate a new interconnection agreement and to determine the terms and conditions of such

¹ See Exhibit 1 attached hereto.

agreement.² After several meetings between the Parties, on April 22, 2014, PDS submitted a Petition for Compulsory Arbitration to resolve outstanding issues.³

In its Order Approving Interconnection Agreement dated August 28, 2014, the PUC approved the ICA⁴) that Teleguam Holdings, LLC (“GTA”) and Pacific Data Systems, Inc. (“PDS”) had agreed upon, with the exception of the pricing of twelve Unbundled Network Elements (“UNEs”), which remained in dispute. The UNE rates in the current ICA were deemed to be “interim rates” and to remain in effect until the approval of new UNE rates by the PUC subject to a subsequent “true-up” accounting.⁴

The 12 UNEs to be determined by the PUC in this proceeding include various “unbundled loops” and “sub-loops”: 2 and 4 wire Analog Voice Grade loops; 2 wire ISDN Digital Grade and 2 wire ADSL Compatible loops; 2 and 4 wire HDSL Compatible loops; 2 wire SDSL Compatible loop; 2 wire Digital loops of three varying lengths; and two 2 wire Compatible sub-loops.⁵

After a number of meetings between the Parties and several hearings before the ALJ, without resolution of the UNE rate issues, the ALJ issued an Order on March 17, 2015 ordering GTA to prepare and develop a TELRIC [“Total Element Long Run Incremental Cost”] study concerning the 12 UNE loop rates in arbitration.⁶ On August 17, 2015, the ALJ issued an order requiring GTA to develop TELRIC rates for the twelve

² PDS letter to GTA re: request for negotiation of new ICA dated Nov. 13, 2013.

³ PDS Petition for Compulsory Arbitration of PDS-GTA Interconnection Agreement dated April 22, 2014.

⁴ Order Approving the Interconnection Agreement, August 28, 2014, at ¶¶ 23 and 24; Order Re: Phase II Arbitration Issues, March 17, 2015.

⁵ Id. at Exhibit “3”.

⁶ ALJ Order Re: Phase II Arbitration Issues, PDS Docket 14-01, dated Mar. 17, 2015.

UNES as delineated in the ICA and the PUC's Orders of August 28, 2014 and the ALJ's Order of March 17, 2015, which were based on the 19 historical wire centers in existence prior to January 2015. The ALJ's order of August 17, 2015 also required completion of the TELRIC study by November 30, 2015.⁷

On November 30, 2015, GTA notified PDS and the PUC that it had completed its TELRIC study. After the execution of Non-Disclosure Agreements by the Parties, GTA provided seven files that constituted the GTA TELRIC Model on February 1, 2016. On March 2, 2016, the Parties held a webinar to discuss the GTA Model and its operation. On March 17, 2016, the Parties and their consultants, along with the ALJ and PUC consultants, met in San Francisco, California for a review of the GTA model conducted by GTA's consultants.

GTA submitted additional documents related to its TELRIC and a "locked-down" version of the model results on April 15, 2016. On May 18, 2016, GTA submitted the Direct Written Testimony of six witnesses in support of its proposed TELRIC model and the UNE rates resulting from that model. On August 30, 2016, PDS submitted the Responsive Written Testimony of its President and Expert Consultant. On November 4, 2016, GTA's witnesses submitted their Rebuttal Written Testimony. Between March and November 2016, the Parties conducted extensive discovery and written testimonies were submitted.

⁷ GTA Hearing Exhibit No. 5. ALJ Order on Issues Involving TELRIC Study, PDS Docket 14-01, dated Aug. 17, 2015.

A formal hearing was held in Guam on December 1, 2, 3, and 5, 2016, before the ALJ. All of those witnesses who submitted Written Testimony testified at the hearing. The Parties stipulated to the admission of the Written Testimony of all witnesses, and of all exhibits. On December 22, 2016, the Parties submitted proposed Findings of Fact and Conclusions of Law. On January 12, 2017, the ALJ presented preliminary recommendations to the Parties concerning the appropriate inputs to be used in the TELRIC model. These recommendations were prepared jointly by the ALJ and the PUC Consultants. Subsequently there were proceedings to reconcile the ALJ recommendations and other unresolved disputes by the Parties. There were further briefings by the Parties on the issues.

The Recommendations of the ALJ, dated April 3, 2017, were issued to the PUC pursuant to the Rules for Practice and Procedure and Interconnection Implementation Rule 4(h).⁸ In accordance with this Rule, this is a formal arbitration proceeding for dispute resolution. In this proceeding, the ALJ acts as an arbitrator. “The arbitrator has broad discretion in conducting the dispute resolution proceeding. The arbitrator shall have the authority to award remedies or relief deemed necessary by the arbitrator to resolve a dispute subject to the procedures established under this rule.” Rule 4(h)(6).

The Commission is required to issue a final order accepting or rejecting, in whole or in part, the recommendation of the arbitrator within ten days after the recommendation has been filed. Rule 4(h)(10).

⁸ See Exhibit 1 hereto.

The joint recommendations of the ALJ and PUC Consultants are set forth in the following documents: PDS Docket 14-01 Issue Analysis – Initial Analysis; Issue Analysis--Revised Set of Recommendations – Addendum; and Addendum to the skeleton Issues Matrix for Issues Briefed by the Parties after February 7, 2017. Copies of said documents are attached hereto collectively as Exhibit “2”. The Commission hereby adopts the Recommendations of the ALJ and PUC Consultants in their entirety and incorporates these documents by reference as its determinations.⁹

This proceeding involves the pricing for 12 specific UNE loops determined by GTA through a TELRIC study ordered by the PUC. PDS disputes the rates produced by the GTA TELRIC study on two basic grounds. First, PDS alleges that GTA’s all copper network supporting the UNEs is not compliant with the FCC’s “least cost, most efficient technology” requirement. Second, PDS alleges that the inputs used by GTA for the model are overstated or otherwise incorrect. GTA contends that its copper home run model is the only model compliant with the FCC TELRIC requirements and the Interconnection Agreement of the Parties. Furthermore, it alleges that PDS’ model is deficient and does not include necessary equipment and backup power to function properly.

FINDINGS

The PUC hereby adopts the Findings set forth in the ALJ Recommendations as its Findings. It concurs that all TELRIC Model inputs which were approved by the ALJ and the PUC Consultants should be adopted in the CostPro Model for determining final

⁹ See Exhibit 2 attached hereto.

rates for the 12 UNE elements. In particular, the PUC holds as follows as to the Model inputs:

1. The Parties have a fundamental dispute regarding the network architecture or topography necessary to comply with the TELRIC requirements that the model be forward-looking, most efficient, and least cost.
2. GTA contends that fiber is not presently used to provide any of the 12 UNE loops or sub-loops to PDS that are the subject of this proceeding. It should not be used in the modeling of the UNE investment.¹⁰
3. The GTA model uses copper loops from the REC [Remote Exchange Centers] to the end-user location to satisfy specific UNE loop requirements. GTA proposes that it provision the 12 UNE loops or sub-loops using “homerun copper from the 19 locations identified in the Commission’s Orders.”
4. The forward-looking cost model used by GTA is CostPro. CostPro has been used to establish UNE Rates in other jurisdictions.¹¹
5. Guam-specific inputs should be used when these inputs are available. The FCC has stated the use of state-specific data, rather than national data for universal service purposes, may be more appropriate for use in determining UNE rates.¹²
6. The Parties agree that the CostQuest platform will produce TELRIC-compliant results if TELRIC-compliant architecture and inputs are utilized in the model.

¹⁰ Valerie Wimer Direct Testimony at 5.

¹¹ Written Direct Testimony of Guttman and McKnight, at p. 6.

¹² GTA Hearing Exhibit No. 26. Written Rebuttal Testimony of Douglas Meredith, PDS Docket 14-01, dated Nov. 4, 2016, p. 12, lines 5-6.

7. PDS proposes a fiber-to-the-node (“FTTN”) DSL capable network that assumes fiber feeder will replace copper feeder for loops longer than 12k feet. In those cases, the unbundled loops would be hybrid loops – meaning that they consist of a copper segment and a fiber segment.¹³
8. The TELRIC requirements for the appropriate forward-looking network configuration when determining UNE loop rates are set forth in 47 CFR § 51.505(b)(1) of the FCC rules. This regulation states: **§51.505(b)(1) *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.
9. Although the PUC does not believe that either the GTA or the PDS models are fully compliant with the TELRIC standards, the PDS proposed model is more compliant with regard to the proposed fiber to the node (FTN) structure proposed.
10. Replacing large copper cables with smaller fiber cables reduces costs by allowing for more micro trenching and less conventional trenching and reducing the cost of the cables.¹⁴
11. Fiber outside plant is less expensive to provision, results in lower operating costs, and has far more capacity than copper outside plant.¹⁵

¹³ Blessing Direct Testimony at 43.

¹⁴ See PDS Exhibit 65.

12. It is more probable that an ILEC today would build an FTTN or FTTP based network rather than a homerun copper network to provide all the services its current network provides.
13. GTA contends that PDS can only use copper to provide xDSL loops. Copper based xDSL may use both IP-based (packet) and time-division multiplexing ('TDM') transmission protocols. 47 CFR 51.319(a)(2)(i) and (ii) explicitly require the unbundling of the TDM functionality of a hybrid loop. If TDM functionality over copper loops is capable of providing xDSL services, then the TDM functionality of a hybrid loop should as well.
14. The PDS proposed configuration, which includes fiber feeder, is more consistent with a forward-looking network as required by the FCC's TELRIC rules. For the foregoing reasons, the PUC finds that the network configuration proposed by PDS is more consistent with the TELRIC requirements and approves its adoption for the determination of UNE Loop rates.
15. The inputs for excavation costs in the respective cost models represent one of the most important determinants of UNE loop cost.¹⁶
16. The excavation cost inputs into the model are the weighted average cost across each cable size and type (fiber/copper) used in the Parties' model

¹⁵ LaBrunda Hearing Testimony and Blessing Responsive Testimony at 31.

¹⁶ PDS Exhibit 1 - Blessing Responsive Testimony at 50.

specifications.¹⁷ There is a model input for excavation in dirt or coral and an input for excavation in asphalt.¹⁸

17. According to GTA, the cost of the asphalt repair was based upon a quote from the Ryder Corporation. The quote is \$45 per linear foot for the cost of asphalt repair and restoration.¹⁹ The quote is for the restoration and repair of an 18 inch trench.²⁰
18. PDS' position is that \$15 per linear foot for asphalt repair should be used to reflect the fact GTA's proposed \$45 cost is for a trench three times wider than GTA itself proposed.
19. The GTA repair estimates should be used from Ryder Corporation that reflect the width of the trench being made are adopted. The estimates should be for 6 inch trenches.
20. Based on the estimates of both Parties, micro trenching is significantly less expensive than conventional trenching. Both Parties estimate the excavation cost associated with 2 inch micro trench. Both Parties agree that fiber optic cable would be placed in a micro trench. The issue in dispute is the largest size of copper cable that may be placed in a micro trench.

¹⁷ GTA Exhibit 24 (Wimer Rebuttal Testimony, Rebuttal Attachment 3, Tab "buried labor", rows 19-62) and PDS Exhibit 19 (DCB Exhibit 15-Revised GTA Attachment 11 with PDS OSP Model, Tab "Weighted Average Price").

¹⁸ GTA Exhibit 13 Valerie Wimer Direct Testimony Attachment 11, tab "Buried Contract Labor Costs".

¹⁹ GTA Supplemental Submission of Cost Study Information filed on 4-15-2016, Attachment 2, Paving Costs.

²⁰ Id.

21. GTA proposes to limit micro trenching to copper cables up to 50 pair based on company policy.²¹
22. PDS has provided testimony and exhibits demonstrating its belief that it is possible to place up to 200 pair copper cable in a micro trench.²²
23. Restricting micro trenching to copper cables 50 pair and below has a significant impact on the percentage of cable placed in micro trenches versus conventional trenches and, as a result, on the model input for the cost of excavation.
24. Some deference should be accorded to GTA on this issue, as it determines the best methods for constructing its network system. There are valid concerns about what type of trenching DPW will approve and the flexibility of 200 pair cable in a micro trench.
25. The PUC approves the ALJ recommendation that micro trenching should be used for up to 100 pair copper cables.
26. The Parties calculated the labor costs associated with outside plant construction. GTA, after revising its initial estimate, indicates that it relies on GTA actual labor rates and loadings. PDS used outside sources, primarily the Department of Labor. GTA uses 2014 actual labor costs with benefits and supervisory loadings.²³

²¹ GTA Exhibit 27 at 17.

²² PDS Exhibit 1 at 52.

²³ Written Direct Testimony of Valerie Wimer, at p. 17, lines 17-18.

27. GTA labor rates are consistent with Guam specific labor rates from the US Department of Labor (DOL).²⁴
28. GTA uses a weighted average of the GTA employees that work on OSP construction to calculate the labor rate for the trench construction.²⁵
29. PDS uses Department of Labor minimum labor rates that must be paid to workers while working on a government contract.
30. GTA disputes the applicability of the DOL data to the TELRIC study. GTA also re-ran the DOL labor rates with GTA benefits and restated supervisory loadings. Based upon this analysis, the GTA rates compare very closely to the DOL minimum wage rates.
31. It is not clear that the DOL work classifications are equivalent to GTA job titles. PDS uses grounds maintenance worker from the DOL job titles for the majority of its construction workers.
32. The grounds maintenance worker's job description includes cutting grass and planting and is under the General Services and Support Occupations and not Mechanics and Maintenance and Repair Occupations which includes the cable splicer and telephone lineman.²⁶
33. GTA indicates that the revised loaded per hour labor rate is \$24.71 per employee for outside plant operations.²⁷ Each crew has a staff of 3 staff members. This rate

²⁴ Id. at p. 16, lines 308-320. Also, see Attachment 1 "Summary" tab.

²⁵ Id.

²⁶ Written Testimony of David Blessing, Exhibit DCB 10 (DOL 05-2138 Wage Determination Guam).

²⁷ GTA Exhibit 27 at 15-16.

was calculated based on base labor rates, hours, overtime and benefits paid to GTA employees.

34. The PDS analysis results in an average labor rate of \$18.62, which included benefits and vacation plus an allocation for employer Social Security contributions as required by law.
35. Nothing in the record indicates that GTA is not an efficient provider with respect to the wages paid to its employees. Furthermore, it is preferable to use inputs that represent the amounts actually incurred by GTA as opposed to DOL representative wages for positions that may not exactly match GTA job descriptions.
36. The PUC adopts GTA's calculation of labor costs.
37. GTA uses a trench sharing factor partially based on the allocation of a significant portion of trench investment to fiber non-UNE demand.²⁸
38. GTA claims that when PDS puts forth a fiber/copper loop network that the sharing inputs should have been revised because fiber is now an essential component of the modelled UNE and much of the trench cost assigned away should be included in the PDS UNE study.
39. PDS accepts the GTA sharing input and claims it does not change the allocation in its version of the model that replaced large copper feeder cables with fiber feeder cables.²⁹

²⁸ GTA Exhibit 27 at 17.

²⁹ GTA Exhibit 28 at 6.

40. The PUC adopts the 50/50 sharing originally proposed by GTA. The allocation of trenching costs between GTA's fiber optic cable special access customers and the remainder of the local loop facilities should be integrated into the trench cost inputs of the TELRIC model.
41. GTA alleges that a "separate binder group" is "required" to minimize interference between GTA and PDS' xDSL circuits, yet GTA acknowledged that it is not aware of any formal or informal complaints made by PDS that the xDSL and/or digital capable circuits leased by PDS suffered from interference.³⁰
42. The proposed GTA model separates the required loop types into two main categories - analog loops and digital/xDSL loops - based on two model scenarios. The investment associated with 2 and 4 wire analog loops is determined based on the 7 series scenario and the digital/xDSL investment is based on the 4 series scenario.³¹
43. The binder group assumption increases the rates for those loop types for which the 4 series scenario estimates investment. GTA's "vectoring technique" boils down to doubling the minimum cable size used in the model from 25 pair to 50 pair, doubling the number of pairs per location from 1.5 to 3 and reducing the feeder fill rate from the 85% used in the analog scenario to 60%.

³⁰ Id., Response to Question 3d.

³¹ GTA Exhibit 14 McKnight/Guttmann Direct Testimony at p. 24.

44. In essence, GTA's proposal adds more copper pairs resulting in larger, more expensive, cables that require larger, more expensive, trenches to place them in.³² GTA's discovery responses acknowledge that the xDSL loops that PDS currently leases from GTA are not subject to these vectoring techniques and GTA is unable to provide this technology to PDS.³³
45. When asked in discovery whether it was aware of any other jurisdiction that established higher rates for xDSL and digital services because binder group separation was required in order to provide xDSL capable loops, GTA acknowledged that it was not.³⁴
46. The difference between an analog loop and an xDSL is that an xDSL loop may require conditioning. As a result, there should be no difference in the monthly recurring cost for analog loops or xDSL loops since any difference should be reflected in the non-recurring cost.³⁵
47. GTA's justification for proposing higher rates for xDSL and digital circuits is an assertion that binder group separation is "required" to minimize interference between PDS and GTA circuits. This assertion is not supported since binder group separation is not being practiced on PDS loops and there have been no complaints about interference.

³² PDS Exhibit 1 Responsive Testimony of David Blessing at p. 39-40.

³³ Exhibit GTA-20 Teleguam Holding, LLC's Response of May 27, 2016 to PDS Informal Data Request of May 23, 2016, Response to Question 3a.

³⁴ Exhibit GTA-20 Teleguam Holding, LLC's Response of May 27, 2016 to PDS Informal Data Request of May 23, 2016, Response to Question 3b.

³⁵ PDS Exhibit 1 at p. 41.

48. The practice has not been accepted or required in any other jurisdiction and is not required to provide xDSL service that meets the standards of the ICA and the GPUC. GTA's binder group separation proposal is not accepted by the PUC.
49. The Weighted Average Cost of Capital is used to account for the investors' cost of equity and interest expense for debt holders. For TELRIC, the FCC has stated that "the currently authorized rate of return at the federal or state level is a reasonable starting point" in determining the [WACC].³⁶
50. GTA has proposed the use of 11.25% rate of return in the true-up period up to May 25, 2016, and a rate of return of 9.75% for the remainder of the true-up period and going forward.
51. The 11.25% Rate of Return was the FCC's authorized rate of return for ILECs regulated under 47 CFR Part 69 and was replaced on May 25, 2016 by 9.75%.
52. PDS objects to the use of the 11.25% rate of return for any portion of the true-up period on the basis that it is not "forward-looking." Since FCC replaced 11.25% with 9.75%, 11.25% cannot be considering to be "forward looking" under the TELRIC Model.
53. PDS also asserts that an FCC Staff Report adopted the WACC of 8.5%. However, the FCC did not adopt the Staff Report or the proposed rate.
54. The PUC adopts the rate of 11.25% for the true-up period and up to May 25, 2016. The WACC of 9.75% is adopted in developing all UNE rates as a prospective WACC for GTA.

³⁶ 2003 NPRM, at ¶82.

55. GTA proposes to base placing hours for copper cable on actual recorded results and copper cable costs based on actual recent purchases. PDS proposes to base copper cable prices on quotations from Superior Essex, and isolated the cable placing hours from the GTA Solomon System.
56. GTA copper cable costs are documented through its purchasing system and the inventory list.³⁷
57. GTA uses a type of copper cable that has proven capability to withstand the unique conditions of Guam and provide superior transmission characteristics.³⁸
58. PDS Copper cable material costs are based on quotes from a vendor and not from actual purchase orders or inventory reports.³⁹
59. In keeping with the preference for actual information when supported, the GTA copper cable costs will be used in the TELRIC model.
60. The GTA copper cable placing hours will be used in the TELRIC model. GTA has met its burden of proof on these issues.
61. GTA proposed to use the results of its Non-recurring Rates Cost study as the Non-recurring rates in this proceeding.⁴⁰ These are a one-time charge for UNE loops, akin to a set up charge.
62. GTA estimated non-recurring charge rates for four types of UNE loops – 2 wire analog, 4 wire analog, 2 wire digital/HDSL and 4 wire digital/HDSL.⁴¹ The rates

³⁷ Written Direct Testimony of Valerie Wimer, at pg. 22, lines 2-12.

³⁸ Written Rebuttal Testimony of Andy LaBrunda, PDS Docket 14-01, dated Nov. 4, 2016, at p. 8, lines 158-167. (“Written Rebuttal Testimony of Andy LaBrunda”)

³⁹ Written Direct Testimony of John Day, PDS Docket 14-01, dated Aug. 30, 2016, at p. 13, lines 1-5.

⁴⁰ GTA Exhibit 27 at p. 27-28.

were derived based on the total of 28 UNE loop installations over a five month sample period.⁴²

63. PDS proposed that the Commission adopt the current NRC rates as shown in the ICA. For the two sub-loop elements where no current rate exists, PDS recommended that the current 2 wire and 4 wire analog NRCs be adopted.⁴³
64. Time was tracked using dispatch time, completion time, and one person did manual tracking.⁴⁴
65. GTA Labor rates were calculated based on the individual who worked on the order.⁴⁵
66. GTA calculated the Non-Recurring Cost (NRC) rates by multiplying the labor rate/hour by the number of hours for each individual. The average of the loops of the same type was the proposed rate for that loop.⁴⁶
67. The PDS calculations use DOL minimum wage rates with vacation, fringe benefits, SSI loading but do not include any supervisor loading.⁴⁷
68. The PDS calculations for NRC did not account for the time for the dispatch, testing, close out and billing update functions on any of the orders.⁴⁸

⁴¹ PDS Exhibit 1 at p. 81.

⁴² GTA Exhibit 27 at p. 23.

⁴³ PDS Exhibit 1 at p. 83.

⁴⁴ Oral Testimony of Vickie Taitano, Hearing on the Merits, dated Dec. 1-5, 2016.

⁴⁵ Written Testimony of Valerie Wimer, at p. 23, lines 19-20.

⁴⁶ Id. at lines 19-20.

⁴⁷ PDS Hearing Exhibit No. 32, DCB-14b, PDS Labor Rates tab.

⁴⁸ PDS Hearing Exhibit No. 31, DCB 14a tab "Summary of Orders" tab.

69. Current NRC rates were based on Price-Cap Carrier rates from the mainland in the original ICA between PDS and GTA and have not changed in subsequent agreements.
70. The GTA NRC rates are acceptable TELRIC-based estimates for the tasks performed.
71. The PUC adopts the NRCs proposed by GTA. The justification is that GTA has demonstrated, through its NRC study, reasonable NRCs.

CONCLUSIONS OF LAW

72. The PUC hereby adopts the Conclusions of Law set forth in the ALJ Recommendations as the PUC Conclusions of Law. Said Conclusions of Law are incorporated herein by reference.
73. Applicable legal authority recognizes that State Commissions such as the Guam PUC *“have wide latitude in applying the ‘most efficient technology’ standard under the current rules.... network”*⁴⁹

POST-HEARING PROCEEDINGS

74. After the hearing was concluded, on January 12, 2017, the ALJ provided his recommended “TELRIC Model Inputs” to the Parties, as developed by the PUC Consultants, Slater Nakamura LLC and the ALJ.

⁴⁹ FCC, In the Matter of Review of the Commission’s Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, WC Docket No. 03-173, Notice of Proposed Rulemaking (September 15, 2003) at pgs. 5 & 20.

75. On January 25, 2017, GTA filed its COMMENTS ON PRODUCING THE ALJ'S CONFORMING MODEL.⁵⁰ GTA raised certain "difficulties" concerning the ALJ inputs:

(1) The ALJ recommendation concerning cost for asphalt repair of a six inch trench was incorrect;

(2) GTA contended that certain additional equipment needed to be added to the PDS model in order to convert electrical signals to optical signals at every node. In addition, the PDS model did not include the REC equipment necessary to deliver PDS an IP signal that would attach to its co-location equipment; and

(3) GTA indicated that the CostQuest model default did not include inputs to model the optical to electrical conversion.⁵¹

76. GTA proposed "populating the model" with GTA inputs, by using its work order costs which demonstrate the optical to electric conversion. GTA also included costs for missing battery backup costs.⁵²

77. With regard to Rate Zones, GTA changed its model from three Zones to now reflect 19 REC rates.⁵³ Thus, there will be separate rates for each of the twelve UNEs for the 19 RECs. PDS does not object to this change. The PUC adopts the revised model which reflects 19 REC Rates.

⁵⁰ Teleguam Holding LLC's Comments on Producing the ALJ's Conforming Model, PDS Docket No. 14-01, filed January 25, 2017.

⁵¹ Id. at pgs. 2-3.

⁵² Id. at p. 4.

⁵³ Id.

78. PDS continued to take the position that the initial Recommendation of the ALJ as to asphalt repair costs was correct. The repair cost for an 18 inch trench should be \$15 per linear foot.⁵⁴
79. On February 7, 2017, pursuant to discussions with the PUC Consultants, the ALJ issued a letter to the Parties indicating that the model which CostQuest was to produce was not an IP (Internet Protocol) Model. Rather, GTA's model was to be modified to include fiber feeder for copper loops of more than 12,000 feet.⁵⁵
80. PDS claimed that even the weighted average rate from GTA's compliance filing of \$27.13 for an average 2-wire UNE rate is almost twice as high as the national average. Based upon the fact that "GTA has not demonstrated anything significantly unique about Guam to justify the highest UNE rate under the U.S. flag, PDS requested that the ALJ follow the lead of the South Carolina Commission and grant a 25% rate reduction for all UNE loops.⁵⁶
81. Under the PDS analysis, application of a 25% rate reduction for all UNE loops would result in a weighted average rate for the 2-wire UNE loop from \$25.29 to \$18.97.⁵⁷
82. The ALJ did not adopt the application of 25% reduction in the weighted average rate for the 2-wire loop. The PUC concurs with the ALJ's reasoning. First, the rate determinations by GTA were not based upon population density, but upon

⁵⁴ PDS Response to the GTA Status Report, PDS Docket 14-01, dated February 6, 2017, at p. 2.

⁵⁵ Id. at pgs. 2-3.

⁵⁶ Id. at p. 8; see In the Matter of Joint Application by Bell South Corporation, WC Docket 02-150, 17FCC Rcd 17595 at ¶53 (Sept. 18, 2002).

⁵⁷ Id.

numbers of buildings/premises in each zone. According to GTA, the methodology utilized by CostQuest in determining zone density is compliant with that approved by the FCC.

83. More fundamentally, however, the use of average UNE rates from a 2006 study, or even the updated study proposed by witness Blessing, is of questionable accuracy. It is difficult, if not impossible, to determine whether the pricing therein is accurate or whether it has in fact been updated. Even PDS admitted that an inflation factor should be applicable to rates that were set or established in 2006 and earlier.
84. The whole purpose for conducting a TELRIC Study is to utilize the required rate setting strategy and to come up with the appropriate and justifiable rates under such procedure. In general, the remedial process established by the Telecommunications Act of 1996 contemplates that such UNE rates will be determined by arbitration, utilizing procedures set forth in federal law and FCC Orders. The rate elements are required to be those that are just and reasonable rates for such network elements; the prices that entrants pay for interconnection and unbundled elements “should be based on the local telephone companies Total Service Long Run Incremental Cost of a particular network element...”⁵⁸
85. Under certain circumstances, some state Commissions have altered the rate results produced by a TELRIC Study. Largely these price reductions were

⁵⁸ 47 UFC § 252(d)(1); In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, FCC 96-325, Released Aug. 8, 1996, at ¶29.

designed to reflect the nascent characteristics of emerging alternatives to the local exchange and data offerings of the incumbent LECs. In a sense some regulatory Commissions offered a helping hand to fledgling competitors until such time as they had the customer base and resources to build their own networks. That was nearly twenty years ago, at the time of the passage of the Federal Telecommunications Act. Competition in the telecommunications industry, not only in the United States but on Guam as well, is strong. There are strong competitors to GTA, including Docomo, IT & E, and Iconnect to name a few. Ordering GTA to reduce prices established by the TELRIC study is not necessary at this point in time and would be a disservice to other competitors in the market. The ALJ does not believe that a departure from the final results of the TELRIC Study in this case is justified. Under certain circumstances, some state Commissions have altered the rate results produced by a TELRIC Study. The PUC does not believe that a departure from the final results of the TELRIC Study in this case is justified.

86. The Parties, as well as the ALJ and the PUC Consultants, have struggled mightily to come up with final recommendations and results produced by the CostQuest model. If there were to be a departure from the Model at this time, such would call into question the purpose and reason for conducting such a study in the first place. A proper application of the TELRIC Study is supposed to produce, in the final analysis, just and reasonable UNE rates.

87. The FCC TELRIC method is that approach which produces the “most efficient network” that is capable of providing the required services.
88. As stated by GTA, that there is no “second-step” in the process that requires the Guam PUC compare TELRIC-determined rates to rates in other states. It declines to do so.
89. PDS also alleged that a “second-step” in the PUC review process should focus on whether or not the proposed UNE rates fostered competition. PDS believes that the Commission has the authority to reduce UNE rates “to ensure a competitive market.”⁵⁹
90. The PUC does not choose to exercise its authority to reduce UNE rates “to ensure a competitive market.”

FINAL DETERMINATIONS AND PROPOSED RATES

91. The PUC adopts the final recommendations and the rates proposed by the PUC Consultants and the ALJ on March 12, 2017, and in the ALJ Recommendations.
92. The PUC orders that the model be corrected to provide that GTA’s labor rate is \$24.71 per hour rather than \$31.56.⁶⁰
93. As to GTA’s objection to the ALJ recommendation that it use TDM (Time Division Multiplexing), such determination to base the UNE loop prices on a hybrid fiber/copper TDM network is transparent and easily adapted to fiber

⁵⁹ PDS Response to GTA Compliance Model filed on February 9, 2017, PDS Docket 14-01, dated February 16, 2017.

⁶⁰ Issue Analysis – Revised Set of Recommendations (Addendum), PDS Docket 14-01, filed March 12, 2017.

feeder in loops greater than 12,000 feet.⁶¹ The GTA model has been thoroughly vetted, the model framework has wide-spread acceptance, including by the FCC, and is in sync with how the FCC has set UNE loop prices in the past.

94. GTA contends that the TDM model only accounts as for voice over POTs (“Plain Old Telephone Service”). Such service is precisely what PDS requests in terms of a UNE loop. Such a loop is a physical facility from point A to point B over which it has control of the traffic, recognizing that stepdown electronics are integral to an efficient voice network.⁶²
95. Neither of the Parties has proposed a TELRIC compliant network. PDS has proposed an IP network architecture. However, GTA points out that the FCC has ruled that an ILEC is under no obligation to either unbundle or make the capabilities of an IP network available to CLECs.⁶³
96. The ALJ and the PUC Consultants are not aware of any cases where the FCC has approved the use of an all copper network, which is recommended by GTA, since the passage of the 1996 Telecommunications Act. Similarly, an IP network, whether hybrid fiber/copper or all fiber, has never been approved as the basis for UNE Loop pricing. The recommendation for basing UNE loop prices on a hybrid fiber/copper TDM Network, using the GTA model, is adopted.⁶⁴

⁶¹ Id. at p. 27.

⁶² Id. at pgs. 25-26.

⁶³ Id. at p. 26.

⁶⁴ Id. at p. 27.

97. GTA's estimate of 27 inches for the repair of a 6-inch trench is adopted. GTA's estimate should therefore be adopted for conventional trenching in asphalt.⁶⁵
98. In keeping with the preference for actual pricing information, when supported, GTA copper cable costs, as set forth in its inventory, will be used for cost estimates for cable sizes larger than 300 pair.⁶⁶
99. For labor and equipment that comprise the SIA, not described in the justification/analysis by the PUC Consultants, the values set forth by GTA and Witness Wimer's exhibits should be adopted.⁶⁷ For purposes of the calculation of the SIA, the loop ends at and includes the horizontal and vertical MDF (Main Distribution Frame) Blocks.⁶⁸
100. No intermediate frame is used or appears to be required in bringing service to PDS; it will not be included in the SIA calculation.⁶⁹
101. Item 2 in Diagram 1 of the GTA reply to PUC Consultant Thorsen's questions ("install horizontal to switch") is not a component of the loop and therefore is not be included in the SIA.⁷⁰
102. SIA costs are altered to reflect the installation of 100 Scotch Locks per hour.⁷¹
103. The SIA costs are also changed to reflect normalized values as discussed below.⁷²

⁶⁵ Id. at pgs. 26-27.

⁶⁶ Id. at p. 28.

⁶⁷ Id. at pgs. 28-29.

⁶⁸ Id. at p. 29.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

104. The PUC adopts the values contained in the GTA inventory report, \$95 for the MDF Block Horizontal and Vertical and \$2.11 for the GDT.⁷³
105. The PUC adopts the Consultants' recommendation that an installation amount of 100 Scotch Locks per hour be utilized.⁷⁴
106. GTA has submitted proposed rates for ten loops and two sub-loops in accordance with the ALJ Recommendations. The final recommended rates for the 12 UNEs are set forth in Exhibit "3" attached hereto.⁷⁵

ORDERING PROVISIONS

After consideration of the Recommendations of ALJ and the PUC Consultants, the above findings and conclusions, and the record herein, for good cause shown, on motion duly made, seconded and carried by the undersigned Commissioners, the Guam Public Utilities Commission **HEREBY ORDERS:**

1. All rulings and orders of the ALJ in this proceeding are confirmed and ratified. All motions not heretofore granted or denied are denied. No other matters currently require discussion.
2. The PUC approves the 12 UNE rates for ten loops and two sub-loops set forth in Exhibit "3", as "just and reasonable rates". Such rates have been duly determined in accordance with the TELRIC standards.
3. The Parties shall "true-up" the amounts paid by PDS for loops under the "Interim Rates" starting August 28, 2014. True up Rates until May 2016 will use

⁷³ Id.

⁷⁴ Id. at pgs. 30-31.

⁷⁵ See Exhibit 3 attached hereto.

the 11.25% weighted costs of capital. True-up rates from June 2016 to present will use a 9.75% cost of capital. Rates subsequent to the true-up period should be those established in Exhibit “3”.

4. The “true-up” accounting will reconcile the difference between the billings issued under the Interim rates and what the billings would have been under the Permanent Rates. The reconciliation period will start from the date upon which the Interim Rates went into effect and cease at the effective date of the Permanent rates.
5. The UNE rates approved by the PUC will be effective on a going forward basis upon PUC issuance of its Order.
6. The rates approved by the PUC should be incorporated by the Parties in their Interconnection Agreement.
7. GTA and PDS should be ordered and directed to each pay one-half of the PUC’s regulatory expenses and fees in this Docket. Each party should bear its own attorney’s fees and costs.

Dated this 13th day of April, 2017.

Jeffrey C. Johnson
Chairman

Joseph M. McDonald
Commissioner

Rowena E. Perez
Commissioner

Peter Montinola
Commissioner

Michael A. Pangelinan
Commissioner

Andrew L. Niven
Commissioner

Filomena M. Cantoria
Commissioner