

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

IN RE: PACIFIC DATA SYSTEMS, INC. )  
AND GTA TELEGUAM LLC/ ) PDS Docket 09-03  
DELAYED SERVICE )  
\_\_\_\_\_ )

**ORDER**

This matter comes before the Guam Public Utilities Commission ["GPUC"] upon the Findings of Fact and Conclusions of Law issued by the Administrative Law Judge ["ALJ"] David A. Mair on November 16, 2009, which is made *Attachment A* hereto.<sup>1</sup> Therein ALJ Mair addresses issues raised in Pacific Data Systems, Inc.'s ["PDS"] October 28, 2009 Complaint ["the Complaint"] against GTA TeleGuam LLC ["GTA"].<sup>2</sup>

On September 28, 2006, GTA and PDS entered into an Interconnection Agreement ["ICA"].<sup>3</sup> The ICA was approved by the GPUC on October 4, 2006 pursuant to 47 U.S.C. §252.<sup>4</sup> Subsequently, on February 1, 2007 the GPUC authorized rule making proceedings concerning implementation of the interconnection agreements between GTA and new entrants into the market. The stated purpose of such rules was to provide new entrants with a fair and reasonable opportunity to compete in the local exchange market, and to establish a monitoring system by which GPUC could be assured that GTA was taking appropriate action to accommodate competitors (such as PDS). The GPUC approved the Interconnection Implementation Rules ["IIR" or "IIRs"] on August 13, 2007.<sup>5</sup>

In its Complaint, PDS alleged that GTA has committed numerous violations of the IIR provisions. A hearing was conducted before ALJ Mair on November 11, 2009, at which time submissions, testimony, evidence and argument were presented by the parties and considered by ALJ Mair.<sup>6</sup> Subsequent to the hearing ALJ Mair issued his Findings of Fact and Conclusions of Law (*Attachment A*). Therein, the ALJ makes various

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<sup>1</sup> Findings of Fact and Conclusions of Law issued by ALJ David A. Mair on November 16, 2009, *Attachment A* hereto (hereinafter referred to as "ALJ Findings and Conclusions").

<sup>2</sup> PDS Complaint against GTA Teleguam LLC, filed October 28, 2009 in PDS Docket 09-03.

<sup>3</sup> Agreement by and between PDS and GTA Telecom (September 28, 2006).

<sup>4</sup> GPUC Order October 4, 2006.

<sup>5</sup> GPUC Order approving Interconnection Implementation Rules, Docket 05-01, August 13, 2007.

<sup>6</sup> ALJ Findings and Conclusions, pg. 1

recommendations to the GPUC pursuant to Interconnection Implementation Rule 4(i)(4).

ALJ Mair finds that GTA committed numerous violations of the IIR provisions, including the following: (1) Failure to Produce Firm Order Commitments within two business days of receipt of the service order; (2) Failure to Timely Deliver Service Orders, as required by IIR 7(h)(1); (3) Provision of services to PDS worse than those that GTA provides to itself; (4) Failure to Maintain Records of each instance in which it fails to supply essential facilities and services to an interconnecting telecommunications carrier, as required by IIR 7(1)(7); (5) Failure to Produce Order Completion Notices; (6) Failure to Produce Monthly Monitoring Reports to the GPUC, specifying, among other matters, the “average completion interval” to provide service to GTA customers.<sup>7</sup>

GTA admitted some of these violations, including its failure to produce or provide to the GPUC the reports required by the IIRs.<sup>8</sup>

Based upon the record, the ALJ found that various defense presented by GTA were not persuasive. The ALJ rejected GTA defenses that the alleged default in payment by PDS justified GTA not providing service; that GTA has not in fact provided worse service to PDS than it has provided to itself; that the number of service orders at issue must be “individually scrutinized” and that it is unfair to require GTA to explain the reasons for delay; and that PDS has failed to comply with the ICA by not submitting a “pre-qualification certificate” to GTA, thereby excusing GTA’s obligation to provide the requested service.<sup>9</sup>

The ALJ concluded as follows:

“...GTA has failed to act in good faith and has violated Guam law, the ICA and IIRs by deliberately and willfully: (a) omitting material information and facts that GTA is required to maintain and/or produce; (b) refusing to use commercially reasonable efforts in implementing the ICA in regard to PDS; (c) engaging in anti-competitive action, conduct or behavior toward PDS; (d) consistently failing to complete PDS service orders in a timely fashion; (e) consistently failing to provide PDS with FOCs; (f)

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<sup>7</sup> ALJ Findings and Conclusions, pgs. 4-8.

<sup>8</sup> Id. at pg. 8.

<sup>9</sup> ALJ Findings and Conclusions, pgs. 8-11.

consistently failing to provide PDS with OCNs; (g) engaging in acts, conduct, or behavior with the sole purpose of delaying implementation of the ICA; and (h) systematically and deliberately providing services at intervals to itself that are worse than those provided to PDS. These actions constitute violations of IIR 7(h)(1); IIR 5(c)(1)(i)(ii)(iii) and (vi); IIR 5(c)(2)(vi); IIR 7(j), (k), and (m); IIR 5(c)(3), and ICA Section 3.2.2 at 65.”<sup>10</sup>

GPUC is required to issue a final order accepting or rejecting, in whole or in part, the recommendation of the arbitrator [ALJ] within ten [10] days after the recommendation has been filed.<sup>11</sup> Having considered the record of the proceedings herein, the pleadings of the parties, and the Findings of Fact and Conclusions of Law issued by the ALJ on November 16, 2009, and good cause appearing, the Guam Public Utilities Commission hereby ORDERS as follows:

1. The Findings of Fact and Conclusions of Law issued by the ALJ on November 9, 2009 are hereby adopted and approved.
2. The ALJ is authorized to notice and conduct a hearing pursuant to Title 12 GCA Section 12108 for the purpose of determining and recommending to the GPUC whether penalties should be assessed against GTA and, if so, in what amount;
3. GTA is ordered to process and complete all pending and rejected service orders from PDS within fifteen (15) days from the date of this Order;
4. GTA is ordered to process and complete all future orders from PDS within the timeframes set forth under the IIRs’;
5. For a period of one calendar year from the date of this Order, the ALJ shall conduct monthly hearings with GTA and PDS for the purpose of determining whether GTA has in fact completed PDS service orders as required by the IIRs; the ALJ shall make monthly reports and recommendations to the GPUC regarding GTA’s compliance or non-compliance with the IIRs and ICA;

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<sup>10</sup> Id at pg. 15.

<sup>11</sup> IIR 4(h)(10).

6. GTA is ordered to immediately commence submitting monthly performance monitoring reports as required by IIR 7(j), (k), and (m); overdue monthly performance monitoring reports shall be submitted by GTA within sixty (60) days from the date of this Order;
7. GTA is ordered to immediately commence maintaining the records required by IIR 7(i)(7), which should indicate, among other matters, “each instance when it fails to supply essential facilities and services to an interconnecting telecommunications carrier in accordance with the provisioning intervals established by the Rule, “ and “the reason for the delay;”
8. GTA is prohibited from requiring that PDS service orders be “pre-qualified” pursuant to the provisions of ICA Network Elements Section 3.2 until GTA first conducts the “manual survey” required by ICA Network Elements Section 3.2.2 at 65; and
9. GTA and PDS are ordered to pay for the GPUC’s regulatory fees and expenses incurred in this Docket, including, without limitation, consulting and counsel fees and expenses, and the fees and expenses for conducting the hearing process. Assessment of GPUC’s regulatory fees and expenses is authorized pursuant to 12 GCA §§ 12002(b), 12024(b), 12104, 12109, the Rules Governing Regulatory fees for the Telecommunications Companies, and Rule 40 of the Rules of Practice and Procedure before the GPUC.

Dated this 19<sup>th</sup> day of November, 2009.

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Jeffrey C. Johnson  
Chairman

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Joseph M. McDonald  
Commissioner

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Rowena E. Perez  
Commissioner

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Filomena M. Cantoria  
Commissioner

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Michael A. Pangelinan  
Commissioner