

**BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

**IN RE:    PACIFIC DATA SYSTEMS, INC.  
          AND GTA TELEGUAM LLC /  
          DELAYED SERVICE**

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**Docket No. 09-03  
  
ORDER**

This matter comes before the Administrative Law Judge (the “ALJ”) of the Guam Public Utilities Commission (“GPUC”) in response to the GPUC’s Order dated November 19, 2009, GTA TeleGuam L.L.C.’s (“GTA”) Verified Petition for Clarification or Rehearing of the GPUC’s November 19, 2009 Order, Pacific Data Systems, Inc.’s (“PDS”) Request for a Pre-Hearing Conference Regarding Damages, Attorneys’ Fees and Penalties, and PDS’s Motion for Sanctions against GTA. Having reviewed the above, and the record before the GPUC in this matter, the ALJ determines the following.

**1.     GTA’s Petition for Rehearing**

GTA’s Verified Petition for Clarification or Rehearing (“Petition”) argues that the ALJ’s November 16, 2009 Findings of Fact and Conclusions of Law (“Findings”) and the GPUC’s November 19, 2009 Order (“Order”) are merely “interim” in nature and that another hearing should be conducted. Petition, p. 2 (November 30, 2009). Thus, GTA “seeks confirmation that the rulings in the Order entered by the GPUC were, in fact, ‘interim.’” *Id.* For the reasons discussed herein, the ALJ finds this argument to lack merit.

**A.     Rule 4(j)**

While PDS sought “interim” relief under Rule 4(j) of the GPUC’s Interconnection Implementation Rules (“IIRs”) in its October 28, 2009 Formal Complaint, this case was heard

under Rule 4(i), which provides for expedited dispute resolution. The case was neither heard nor scheduled pursuant to the “interim” provisions of Rule 4(j). This was made plainly evident in the Order scheduling the case issued on November 5, 2009, as well as the Order from the GPUC dated November 19, 2009, which stated, “the ALJ makes various recommendations to the GPUC pursuant to Interconnection Implementation Rule 4(i)(4).” Order, p. 1-2 (November 19, 2009). Nothing in Rule 4(i) makes reference to “interim” relief. Furthermore, the Findings make no reference to “interim” relief. Thus, the relief granted was not “interim” in nature.

**B. Rule 37**

GTA’s Petition has been filed pursuant to Rule 37 of the GPUC Rules for Practice and Procedure, which requires that any Petition for Rehearing “based upon claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the ground of error.” The Petition is defective inasmuch as it fails to specify any particular erroneous findings of fact or conclusions of law in the Findings or the Order.

**C. Presentation of Evidence**

In the Petition, GTA also maintains that “[t]he expedited hearing process should not be allowed to strip a party of the ability to make discovery and build a case.” Petition, at 3. The primary reason, however, that GTA was unable to timely present evidence on the responsiveness of GTA to PDS service orders was that GTA failed to generate the information and documents that it was required to produce and maintain. For instance, it is undisputed that GTA: (a) repeatedly failed to issue FOCs as required by IIR 7(b); (b) failed to create the records required by IIR 7(i)(7), which, if generated as required, would have specified the “reason for delay” in providing service to PDS; (c) repeatedly failed to issue OCNs as required by IIR 7(b)

and the Definitions; and, (d) failed to compile the monthly monitoring reports required by IIR 7(j),(k) and (m), which, if created, would have specified the “average completion interval.” GTA cannot fail to generate information and documents that it was required by applicable rules and regulations to maintain, and then complain that it needs additional time to gather such information.

**D. Due Process Considerations.**

The ALJ and the GPUC have complied with all of the due process requirements relating to a hearing conducted under IIR 4(i). As shall be discussed herein, the ALJ will not recommend that the GPUC impose any penalties on GTA without first giving notice to GTA of a penalty hearing as required under Guam law and affording GTA an opportunity to be heard and present evidence. Furthermore, the ALJ is requiring that PDS file a separate petition should it wish to seek the recovery of any attorneys’ fees or damages. Should such a petition be filed, GTA would of course be given notice of any hearing in that case and likewise afforded an opportunity to be heard and present evidence. Hence, prior to the imposition of any penalties, attorneys’ fees or damages, GTA would be afforded ample due process and the benefit of another hearing.

Accordingly, the ALJ hereby finds that the Petition is without merit and, therefore, recommends that the GPUC deny the Petition.

**2. PDS’s Request for Pre-Hearing Conference Regarding Damages and Attorneys Fees**

In its October 28, 2009 Formal Complaint, PDS also sought relief under Sections 12107 and 12108 of the Guam Telecommunications Act. *See* PDS’s Formal Complaint, p. 7, ¶5

(October 28, 2009). However, as expressed in the Findings, the ALJ concluded that the time limits for expedited relief under Rule 4(i) and Sections 12107 and 12108 were incompatible. Accordingly, the ALJ ruled that “[s]hould PDS seek to recover damages or attorneys fees under Sections 12107 and 12108, then it should file a separate petition under those sections.” The Order from the GPUC did not authorize the ALJ to conduct a hearing in this docket to award damages or attorneys’ fees to PDS under Sections 12107 or 12108. The Order merely authorized the ALJ to conduct a hearing under Section 12108 for the purpose of determining whether penalties should be imposed against GTA.

Therefore, PDS is hereby instructed to file a separate petition if it wishes to seek recovery of damages and/or attorneys’ fees. At this time, neither the ALJ nor the GPUC have made any findings or rulings regarding whether PDS is entitled to recover damages and/or attorneys’ fees. To be clear, the ALJ will not make any recommendations to the GPUC regarding an award for damages and/or attorneys’ fees without first affording GTA a hearing to present evidence supporting any defense.

### **3. Monthly Hearings**

The Order has authorized the ALJ to conduct monthly hearings to determine whether GTA has in fact completed PDS service orders as required under the IIRs and the GPUC’s Order. Inasmuch as the Christmas and New Year holidays are only a few days away, the ALJ will schedule the first monthly hearing on Monday, January 11, 2010 at 1:30 p.m. As part of the hearing, GTA shall address whether it has commenced submitting the monthly performance reports as required under IIR 7(j), (k), and (m). In addition, GTA shall also address whether it has commenced maintaining the records required by IIR 7(i)(7).

Prior to the first monthly hearing, however, PDS and GTA shall submit the following to the ALJ: (a) on December 28, 2009, PDS shall submit any briefs or evidence relating to GTA's compliance or non-compliance with the GPUC's Order; (b) on January 4, 2010, GTA shall respond to PDS's filing and submit any briefs or evidence relating to such compliance or non-compliance; and, (c) on January 7, 2010, PDS shall respond to GTA's filing.

#### **4. Penalty Hearing**

In the Order, the GPUC authorized the ALJ to conduct a penalty hearing pursuant to Title 21 G.C.A. 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." *See* Order, at 3. Although the ALJ does not waive the right to recommend that the GPUC impose penalties for conduct that pre-dates the Order, the ALJ presently intends to focus on prospective conduct subsequent to the GPUC's Order, and not on retrospective conduct prior to the Order.

Simply stated, in the event that GTA has complied with the GPUC's Order, the ALJ will recommend that no penalties should be assessed. However, should GTA fail to prospectively comply with the GPUC's Order, the ALJ will look at both prospective and retrospective conduct to determine what penalties should be recommended to the GPUC. Accordingly, the ALJ will decide after each monthly hearing, discussed above, whether it is necessary to schedule a Section 12108 penalty hearing.

Should the ALJ determine after any monthly hearing that a penalty hearing should be scheduled, both GTA and PDS will be provided with the required notice of such a hearing. To be clear, however, the ALJ will not make any recommendations to the GPUC regarding the

imposition of penalties without first providing GTA with notice and an opportunity to present evidence supporting any defense.

**5. PDS's Motion for Sanctions**

On December 11, 2009, PDS filed a Motion for Sanctions against GTA based on an alleged failure of GTA to comply with the GPUC's Order. After the January 11, 2010 monthly hearing, the ALJ will either issue an order scheduling this motion as part of a penalty hearing, or the ALJ will otherwise rule on the motion or hold it in abeyance.

SO ORDERED this 15<sup>th</sup> day of December, 2009.



**DAVID A. MAIR**  
**Administrative Law Judge**

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