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	)	**ORDER RE: PHASE II ARBITRATION ISSUES**

FINDINGS OF FACT

On August 28, 2014, the Guam Public Utilities Commission ["PUC"] issued an Order herein approving an Interconnection Agreement between Teleguam Holdings LLC ["GTA"] and Pacific Data System Inc. ["PDS"].[1] The Commission authorized the Administrative Law Judge ["ALJ"] to conduct Phase II Proceedings in this docket.[2] Certain Unbundled Network Element Pricing Rates ["UNE Rates"] have not been agreed to by the parties in Phase I and will be resolved through further negotiation and arbitration in Phase II of these proceedings.[3] Further, with regard to the pricing of the 12 UNE services, Phase II of these proceedings 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.[4]

Since the issuance of the PUC Order dated August 28, 2014, GTA and PDS have engaged in substantial negotiations in an effort to resolve the 12 Unbundled Network Elements for arbitration. The parties also met with the ALJ on numerous occasions, including November 17, 2014, December 1, 2014, and January 5, 2015 in an effort to resolve the rate pricing differences. However to date, and after the ALJ provided the parties with additional opportunities for resolution of the UNE rate issues, the parties have been unable to agree upon pricing for 12 Unbundled Network Element Rates. At least at present, it appears that there is no alternative but to proceed with formal

[1] PUC Order, PDS Docket 14-01, dated August 28, 2014.
[2] Id. at p. 6.
[3] Id. at p. 5.
[4] Id. at pgs. 5-6.

arbitration for such rates under applicable law and the Rules and Regulations established by the Federal Communications Commission ["FCC"].[5]

CONCLUSIONS OF LAW

Under Section 251(c) of the Telecommunications Act of 1996, an Incumbent Local Exchange Carrier [an "ILEC", such as "GTA"] must accommodate a request by a Competitive Local Exchange Carrier [a "CLEC", such as PDS"] to interconnect with the ILEC's existing local network to use the network to compete for the provision of local telephone service. The ILEC must provide a requesting CLEC with access to the elements that make up the ILEC's network on an individual or unbundled basis. The 1996 Act also required the FCC to formulate rules for pricing for interconnection and unbundled network elements. Under rules established by the FCC, pricing for unbundled network elements ["UNEs"] must use a "forward-looking cost methodology that is based on the ILEC's total element long-run incremental costs ["TELRIC"].[6] The FCC's forward-looking economic cost based pricing rules that apply to UNE services are set forth in 47 C.F.R. §51.505, which states in part:

> "Cost study requirements: an incumbent LEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking cost per unit of providing the element, using a cost study that complies with the methodology set forth in this section and Section 51.511."

The parties to this proceeding agree that the required cost study which must be undertaken by GTA to substantiate and justify the rates to be charged for the 12 UNE rates at issue is a TELRIC study. Given that the parties have been unable to resolve rate issues for the UNEs, it is appropriate at this time for the ALJ to order that GTA undertake a TELRIC study for the 12 UNEs at issue.

With regard to the allocation of the parties' expenses related to the TELRIC study, the PUC will proceed ahead, at least in part, in accordance with the manner specified in the

[5] The parties considered such alternatives as a "Rate Banding" Approach, where pricing depends upon the distance of the loop and various other proposals to agree upon pricing for certain of the rates. On January 5, 2015, the parties represented to the ALJ that they were too far apart at the present time for agreement. There appears to be no alternative at present but for the ALJ to order a "TELRIC Study."

[6] In the Matter of the Investigation into Quest Corporation's Compliance with Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts, Docket No. T-00000A-00-0194, Decision No. 64922, Phase II Opinion and Order, Arizona Corporation Commission, at p. 2-3.

prior Report of Georgetown Consulting Group in Docket No. 05-11.[7] A first group of expenses includes cost study and modeling expenses, comprising: (a) Costs incurred by GTA to build or modify an appropriate model; (b) costs incurred by PDS to build or develop its own model, if it so elects, and (c) costs incurred by GTA and possibly PDS to develop the required inputs to their model(s).

A second group of costs includes those incurred by each party in analyzing the GTA and possibly PDS model(s) and providing comments to the Guam Public Utilities Commission regarding the same. For both of these categories of costs, each party must bear the respective expenses incurred in this proceeding. GTA will bear the expense of its TELRIC study, and PDS must bear the expense of any response or alternative cost study proposed by PDS. The regulations of the Federal Communications Commission require that GTA bears the burden of demonstrating to the Guam PUC that the rates for each interconnection element does not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in the FCC regulations.[8] The PUC adopts the GCG allocation of cost study and related party expenses.

Previously GTA argued that PDS could be required to share the expense of a TELRIC study pursuant to 12 GCA §12105(c). Based upon the clear requirements in federal law that GTA is required to provide such study to justify its rates, it is not appropriate to require PDS to share in the expense of the TELRIC study. GTA further argued that even if the PUC finds that it does not have the authority to order PDS to share in the expense of the TELRIC study, it should nonetheless find that the cost of a TELRIC study can be included in the final UNE rates.[9] The ALJ is not prepared to rule upon this issue at the present time. This issue will also be decided at a later point in time during the true up portion of the proceedings. It is noted that, in the above referenced GCG Report, GCG indicated that "GTA may be permitted to recover a portion of such costs through its NECA tariffs."[10]

A third category of costs involves those incurred by the Guam PUC and its staff in analyzing the model(s) and inputs and outputs of the model(s). GCG recommended an

[7] Georgetown Consulting Group Inc., Docket No. 05-11: Report on the Allocation of Expenses for Permanent Interconnection Rates between GTA Telecom LLC and Pacific Data Systems, filed September 8, 2006.
[8] Id. at p. 3; See 47 C.F.R. §51.505(e).
[9] Brief of Teleguam Holdings LLC on TELRIC Study Issues, PDS Docket 14-01, filed November 7, 2014.
[10] Georgetown Consulting Group Inc., Docket No. 05-11: Report on the Allocation of Expenses for Permanent Interconnection Rates between GTA Telecom LLC and Pacific Data Systems, filed September 8, 2006, at p. 3.

allocation of 20% of the PUC expenses to PDS and 80% of such expenses to GTA.[11] The ALJ is not prepared to adopt that allocation recommended, at least at the present time. GCG based such allocation from statistical data in 2006-7 compiled by the FCC stating that the projected nationwide market share of all CLECs based on revenues could be expected to be at least 20% of the regulated local exchange market. At this time PUC has no information before it concerning whether the 2006-7 data is today still reflective of an accurate allocation, or what the current status of such data would indicate. The ALJ is also not convinced that use of such national U.S. data is an appropriate basis upon which to determine allocation of costs between the two parties to this arbitration proceeding.

There is a standing Commission Order in this Docket that GTA and PDS are directed to each pay one-half of the PUC's regulatory expenses and fees in this docket.[12] This proceeding arose as an arbitration proceeding to negotiate an interconnection agreement between the parties. In such a proceeding PUC expenses would normally be allocated equally between the parties. The amount of expense and length of time that the proceeding will take to resolve depends upon the respective positions of the parties and their willingness to negotiate. For the present time, the equal allocation of PUC expenses to GTA and PDS (50/50% allocation) will remain.

However, the ALJ further advises the parties that PUC reserves the right to further revise such allocation when the proceedings are concluded pursuant to Amended Rule 1.b.iii (RULES GOVERNING REGULATORY FEES FOR TELECOMMUNICATIONS COMPANIES). In other words, when the true-up proceedings occur herein concerning the interim UNE rates, PUC will also further consider whether the 50/50% allocation is appropriate, or whether one of the parties should be required to pay a higher percentage/portion of the PUC fees and expenses. Such revised allocation could result in one party having to reimburse the other for PUC expenses incurred in this proceeding. Whether there is a revision may depend upon the outcome of the proceeding, which party prevails, and which party's position is found to be more reasonable.

The parties are reminded that, if these proceedings must be arbitrated to their conclusion, the proceeding will likely be extremely costly. The parties will be expected to timely pay all invoices submitted by the PUC and its Consultants. The ALJ has already advised the parties that it will retain its telecommunications consultant Slater, Nakamura & Co. LLC in this proceeding. Considerable expense could be incurred by

[11] Id. at p. 5.
[12] PUC Order, PDS Docket 14-01, dated August 28, 2014, Ordering Provision No. 6 at p. 7. The ALJ is constrained by this provision unless and until the Commission orders otherwise.

the PUC in retaining its Consultant to advise it. Detailed advice and consultation from such Consultant likely will be required.

ORDERING PROVISIONS

After careful review of the record herein, including the briefs and representations of GTA and PDS, the Administrative Law Judge **HEREBY ORDERS** as follows:

1. GTA shall undertake preparation and development of a TELRIC study concerning the 12 Unbundled Network Element Rates which are the subject of this Arbitration. GTA has estimated that such study will take 6-8 months to complete. Such study shall be completed as expeditiously as possible.

2. Each party shall bear its own costs and expenses for building, development or modification of appropriate cost models, or the required inputs to such models.

3. Each party shall also bear its own costs in analyzing the other party's model(s) or for providing comments to the Guam Public Utilities Commission regarding the same.

4. For the time being, Guam PUC, Consultant, and staff expenses in analyzing the model(s) and the inputs and outputs of the model(s) shall be allocated equally between the parties. However, PUC reserves the right to subsequently reallocate such costs and expenses pursuant to Amended Rule 1.b.iii (RULES GOVERNING REGULATORY FEES FOR TELECOMMUNICATIONS COMPANIES). Such reconsideration/possible reallocation will be considered during the true-up portion of the proceedings.

5. The parties are required to timely pay all fees and costs incurred by the PUC in these proceedings.

6. On April 2, 2015 at 9 a.m., a scheduling conference shall be held between the parties and the ALJ at the PUC office. The purpose of the conference shall be to discuss a more detailed schedule for the preparation of the TELRIC study and applicable inputs, and further scheduling of the rates/arbitration proceedings.

7. The ALJ continues to encourage the parties to work together to resolve their differences on pricing issues. The parties have both indicated that, under applicable regulation, a TELRIC study is not necessarily required if the parties agree upon another method for resolving the UNE rates. Less costly and time

consuming methods of resolving this dispute should be carefully considered by the parties.

SO ORDERED this 17th day of March, 2015.

Frederick J. Horecky
Administrative Law Judge