

## BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PETITION OF GUAM TELECOM LLC	)	
FOR DESIGNATION AS AN ELIGIBLE	)	GT DOCKET 10-02
TELECOMMUNICATIONS CARRIER	)	
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### PUC COUNSEL REPORT

#### Procedural History

On October 26, 2010, Guam Telecom LLC (“GT”) submitted a Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) throughout the Territory of Guam.<sup>1</sup> In its petition, GT acknowledged the authority of the Commission to make such a designation and stated that it had never made an ETC application to the Federal Communications Commission (“FCC”). In its Petition, GT contends that it should be granted ETC Designation based upon the criteria and standards set forth in prior Commission Orders and precedent.<sup>2</sup>

On November 6 and 8, 2010, the PUC placed a notice in the Pacific Daily News inviting written comment from interested parties, on or before November 22, 2010, on GT’s Petition for ETC Designation.<sup>3</sup> To date no comments have been received. Counsel will advise the Commissioners if any comments are received before the deadline.

Previously GT was issued a Certificate of Authority by the PUC to provide resold and facilities based local exchange services on Guam.<sup>4</sup> Subject to certain conditions set forth below, Counsel recommends that GT’s Petition be **GRANTED**.

#### Standard of Review

A telecommunications carrier that has been designated as an ETC is eligible to receive federal high-cost universal service support under Section 254 of the federal Communications Act of 1934, as amended (the “Federal Act”). Under Section 214(e)(2) of the Federal Act, a state commission, such as the Guam PUC, is generally responsible for designating a telecommunications carrier as an ETC within such state in accordance

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<sup>1</sup> GT Petition for Designation as an Eligible Telecommunications Carrier, GT Docket 10-02, filed October 26, 2010.

<sup>2</sup> See PUC Orders Approving ETC Designation in Docket No. 06-08, Application of Pulse Mobile, LLC (Pulse Mobile); and Docket 08-05, Application of PTI Pacifica.

<sup>3</sup> See *Notice*, GT Docket 10-02, published in the Pacific Daily News on November 6, 2010.

<sup>4</sup> See GT Docket No. 09-01; in Docket 10-01, PUC approved GT’s General Exchange Tariff No. 1.

with the requirements of the Federal Act.<sup>5</sup> Specifically, the Federal Act provides that a state commission may designate a telecommunications carrier as an ETC if the following requirements are satisfied:

- (a) the carrier offers services that are supported by the federal universal service support mechanism, either using its own facilities or a combination of its own facilities and resale of another carrier's services;
- (b) the carrier advertises the availability of such services and the charges therefore using media of general distribution; and
- (c) the designation of such carrier as an ETC is in the public interest (if such carrier is seeking designation for an area served by a rural telephone company that has already been designated as an ETC).

On March 17, 2005, the Federal Communications Commission released its *ETC Designation Order*.<sup>6</sup> The Guam PUC has adopted the standards in the **ETC Designation Order** for use in evaluating petitions for ETC designation in Guam.<sup>7</sup> In addition, an ETC designation must be consistent with the public interest, convenience and necessity.<sup>8</sup>

### Analysis of GT's Petition

#### A. Statutory Requirements under Section 214(e) of the Federal Act.

GT is licensed to provide local exchange voice and data services throughout Guam, and requests designation as an ETC for the entire island of Guam.<sup>9</sup> In Exhibit 2 to the Petition, the Declaration of Craig R. Thompson, Mr. Thompson (The Chief Executive Officer of Guam Telecom) certifies that GT will offer all of the services designated by the FCC for support pursuant to Section 254(c) of the Act to any requesting customer within its designated service area; that GT offers or will offer, the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services; and that GT advertises or will advertise the availability of supported

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<sup>5</sup> 47 U.S.C. §214(e)(2); 47 C.F.R. §54.201(b).

<sup>6</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (Released March 17, 2005) (the "ETC Designation Order").

<sup>7</sup> See Application of Pulse Mobile LLC for Designation as an Eligible Telecommunications Carrier, Docket 06-8, Order Asserting Jurisdiction (Sept. 28, 2006); Application of PTI Pacifica for Designation as an Eligible Telecommunications Carrier, Docket 08-05, Order Approving Designation (Jan. 7, 2008).

<sup>8</sup> 47 U.S.C. §214(e)(2).

<sup>9</sup> GT Petition for Designation as an Eligible Telecommunications Carrier, GT Docket 10-02, filed October 26, 2010, at p. 1.

services and the charges therefore using media of general distribution.<sup>10</sup> GT indicates that, with the exception of access to operator services, which GT intends to provide to its customers in Guam, GT already provides the support services required of all ETC's.<sup>11</sup>

With respect to voice-grade access to the public switched network, GT indicates that, through interconnection and other arrangements with Guam Incumbent Local Exchange carrier, GTA Teleguam ("GTA"), GT is able to originate and terminate voice service for all its subscribers on Guam.<sup>12</sup>

With respect to supported "local usage" an ETC applicant must demonstrate that it offers a local usage plan comparable to the one offered by the Incumbent Local Exchange Carrier [ILEC] in the service area for which the applicant seeks designation.<sup>13</sup> GT indicates that it includes "unlimited local usage in its service rate plans and thereby complies with the requirement that all ETCs offer local usage."<sup>14</sup>

GT indicates that it also provides dual tone multi-frequency ("DTMF") signaling and "single party service" throughout its service area.<sup>15</sup> With respect to access to emergency services, such as 911 and enhanced 911, GT indicates that it meets this requirement "as it currently provides its subscribers with access to 911 and enhanced 911 through arrangements with the incumbent local exchange carrier, GTA" (which has the sole connection to the government of Guam's PSAP, Public Service Access Point, in the service area)."<sup>16</sup>

However, to the extent that a government authority in the territory of Guam implements E911 systems, GT will be required to provide E911 service.<sup>17</sup> Any designation of GT as an ETC should be conditioned on GT's compliance with any FCC requirements concerning E911 service when implemented in the Territory of Guam.

GT indicates that it does not presently provide one of the support services required of all ETC's, which is "access to operator services."<sup>18</sup> However, it intends to provide access to operator services to its customers in Guam.<sup>19</sup> The FCC has indicated that a

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<sup>10</sup> GT Petition for Designation as Eligible Telecommunications Carrier, GT Docket 10-02, filed October 26, 2010, Exhibit 2, Declaration of Craig R. Thompson.

<sup>11</sup> GT Petition for Designation as Eligible Telecommunications Carrier, GT Docket 10-02, Id. at p. 3.

<sup>12</sup> Id.

<sup>13</sup> FCC ETC Order at ¶32.

<sup>14</sup> GT Petition for Designation as an Eligible Telecommunications Carrier, GT Docket 10-02, filed October 26, 2010 at p. 3.

<sup>15</sup> Id. at p. 3-4.

<sup>16</sup> Id. at p. 4-5.

<sup>17</sup> 47 C.F.R. §54.101(a)(5).

<sup>18</sup> Id. at p. 3.

<sup>19</sup> Id. at p. 5.

commitment in the Petition to provide all of the supported services is sufficient to satisfy the FCC's requirements.<sup>20</sup> GT has indicated to PUC Counsel that it intends to provide such service within approximately one month.<sup>21</sup> GT should be required to certify to the Guam PUC no later than August 31, 2011 that GT offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act either using its own facilities or a combination of its own facilities and resale.

GT also meets other provision of service requirements such as "access to interexchange service", "access to directory assistance", and "toll limitation for qualifying low-income customers."<sup>22</sup> Once designated as an ETC for Guam, GT will participate in the lifeline rate as required by Guam Law.<sup>23</sup> The supported services in Guam will be provided by GT using its own facilities, through the Hybrid Fiber Coax ("HFC") network infrastructure of its sister company, MCV, which consists of switching, trunking and network equipment, together with expansions, editions, or enhancements to the network.<sup>24</sup>

## **B. Additional FCC Requirements for ETC Designation**

The FCC requires any applicant for ETC Designation to commit to providing service throughout its proposed designated service area to all customers making a reasonable request for service, as well as to comply with additional certifications. GT appears to satisfy all of the additional mandatory requirements set forth in the ETC designation Order. It has committed to providing service to all requesting customers within the service area. To the extent that GT receives a request from a potential customer, it will provide service immediately using its standard customer equipment. If it receives a request from a customer within its service area but outside its existing network coverage, GT will attempt to provide service by determining whether equipment can be deployed to provide service or adjustments can be made to the network or customer facilities to provide service.<sup>25</sup>

GT has committed that it will notify the requesting customer and the Guam PUC within 30 days of any determination that it cannot provide service to a requesting customer in accordance with the FCC requirements.<sup>26</sup> It will include information in its annual report filed with the PUC detailing how many requests for service were unfulfilled for the past year.<sup>27</sup> In addition GT has submitted a five year network improvement plan

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<sup>20</sup> FCC ETC Order at note 39.

<sup>21</sup> Telephone Conference between GT Representative Sean Miles and PUC Counsel on November 9, 2010.

<sup>22</sup> Id. at pgs. 5-6.

<sup>23</sup> Id. at p. 6.

<sup>24</sup> Id.

<sup>25</sup> Id. at pgs. 6-7.

<sup>26</sup> Id. at p. 7.

<sup>27</sup> Id.

demonstrating how universal service funds will be used to improve coverage. It intends to make significant investments, to deploy the most current technology, and to develop new products for Guam customers.<sup>28</sup> Counsel recommends that the PUC monitor GT's implementation, through the use of universal service support, of such five-year plan.

GT indicates that it will advertise the availability of its universal service offerings and the applicable charges through media of general distribution.<sup>29</sup> GT certifies that it has backup power and the ability to reroute traffic and the capability to manage traffic spikes to remain functional in emergency situations.<sup>30</sup> Finally, it acknowledges that PUC may require it to provide equal access to long distance carriers in its designated service area in the event that no other ETC is providing equal access within the service area.<sup>31</sup>

### **C. Public Interest Analysis**

For the public interest, the *ETC Designation Order* provides that the Guam PUC should consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the ETC applicant's service offering.<sup>32</sup> GT has presented a compelling case that its designation as an ETC is in the public interest<sup>33</sup>:

#### **"DESIGNATING GT AS AN ETC WILL ADVANCE THE PUBLIC INTEREST**

GT requests ETC designation throughout Guam. As noted above, GT proposes to provide services as an ETC to the entire Island of Guam, and will provide designated ETC services to all requesting customers throughout Guam. The designation of GT as an ETC is in the public interest. Designating GT as an ETC fulfills several of the underlying federal policies favoring competition and the provision of affordable telecommunications service to consumers. Granting ETC status to GT will promote competition in the provision of universal services to the benefit of consumers on Guam by creating incentives to ensure that quality services are available at "just, reasonable, and affordable rates." In addition, designating GT as an ETC will advance universal service by bringing consumers on Guam new and

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<sup>28</sup> Id. at p. 7, Exhibit 3 to the Petition (Exhibit 3 is submitted under a claim of confidentiality) .

<sup>29</sup> Id. at p. 7.

<sup>30</sup> Id. at p. 8.

<sup>31</sup> Id. at p. 8.

<sup>32</sup> 47 C.F.R. §54.202(c); see also ETC Designation Order.

<sup>33</sup> GT Petition for Designation as Eligible Telecommunications Carrier, GT Docket 10-02, Id. at pgs. 9-10.

advanced telecommunications services which will create increased competitive choice.

In sum, GT has made significant commitments to improve the wireline services available throughout Guam. GT's universal service offering will provide benefits to consumers. Grant of ETC designation would serve the public interest and convenience, and would permit GT to comply with these commitments.

### **Regulatory Oversight and Requirements**

GT has certified that all federal high-cost support will be used solely for the provision, maintenance and upgrading of facilities and services for which support is intended. Pursuant to 254(e) of the Act. It commits to provide this certification to the PUC on an annual basis.<sup>34</sup> Counsel recommends that GT should be required to file with the Guam PUC a copy of each annual certification made by it under §4.314(b) of the FCC's rules at 47 C.F.R.

In addition, GT has committed to submit to the Guam PUC on an annual basis the following records and documentation:<sup>35</sup>

- GT's progress towards meeting its build-out plan;
- Information on any outage lasting at least 30 minutes and potentially effecting either at least 10% of the end users served or 911 facilities;
- The number of requests for service from potential customers within GT's service area that were unfulfilled for the past year;
- The number of complaints per 1,000 lines;
- GT's compliance with applicable service quality standards and consumer protection rules;
- GT's ability to function in emergency situations;
- GT's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and
- GT's certification that it acknowledges that the Guam PUC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access in the service area.

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<sup>34</sup> Id. at p. 8.

<sup>35</sup> Id. at p. 8.

GT should be required to submit these records and documentation to the Guam PUC by August 31 of each year, beginning 2011.

These records and documentation should be consistent with FCC requirements. PUC should also monitor GT's implementation of its build-out plans. FCC should otherwise reserve its jurisdiction to continue to review GT's records and documentation to ensure that high-cost support it receives is being used "only for the provision, maintenance and upgrading of facilities and services" in the area where it is designated as an ETC. PUC reserves continuing review of authority over GT's ETC designation.

### **Summary of Recommendations**

Based on the foregoing, Counsel recommends that GT's Petition be **GRANTED** and that GT be designated as an eligible telecommunications company throughout the entire Territory of Guam under Section 214(e) of the Federal Act, subject to the following conditions:

- (1) GT must comply with any local usage requirements prescribed by the FCC;
- (2) GT must comply with any FCC requirements concerning E911 service when implemented in the Territory of Guam;
- (3) GT certify to the Guam PUC by August 31 of each year, beginning August 31, 2011, that GT (a) offers all of the services designated by the FCC for support pursuant to Section 254(c) of the Federal Act either using its own facilities or a combination of its own facilities and resale and (b) advertises the availability of supported services and the charges therefore using media of general distribution as described in its Petition;
- (4) GT must notify the Guam PUC within thirty (30) days of any determination that it cannot provide service to a requesting customer in accordance with the FCC's requirements;
- (5) GT must file with the Guam PUC a copy of each annual certification made by GT under Section 54.314(b) of the FCC's rules;
- (6) GT must submit to the Guam PUC by August 31 of each year, beginning August 31, 2011 the following records and documentation: (a) GT's progress towards meetings its build-out plans; (b) information on any outage lasting at least 30 minutes and potentially affecting either at least 10 percent of the end users served or 911 facilities; (c) the number of requests for service from potential customers within GT's service areas

that were unfulfilled for the past year; (d) the number of complaints per 1,000 handsets; (e) GT's compliance with applicable service quality rules, standards, and consumer protection; (f) GT's certification that it is able to function in emergency situations; (g) GT's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and (h) GT's certification that it acknowledges that the Guam PUC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access in the service area;

- (7) GT must promptly submit to the Guam PUC any additional information or reports that the Guam PUC may reasonably request from time to time.

Consistent with the FCC practice, the Guam PUC should reserve jurisdiction and authority to (a) institute an inquiry on its own motion to examine GT's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the Territory of Guam, (b) revoke GT's ETC designation if it fails to fulfill any requirements of Section 214 of the Federal Act, the FCC's rules and regulations or the Guam PUC's Order after GT begins receiving universal service support and (c) assess penalties for violations of the Guam PUC's rules and orders.

Dated this 15th day of November, 2010.

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PUC Legal Counsel