

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

In the Matter of:	}	PTI Docket 09-01
PTI PACIFICA INC.	}	
USAC CERTIFICATION	}	PUC LEGAL COUNSEL REPORT

BACKGROUND

On August 31, 2009, PTI Pacifica Inc. (“PTI”) petitioned the Guam Public Utilities Commission (“PUC”) to issue a certification that PTI will use federal universal service support funds for purposes in compliance with Section 254(e) of the Telecommunications Act.¹ PTI seeks a finding by the PUC that it will comply with §254(e), which states that universal service funds (“USF”) may be used only for the purposes designated in the federal Act.

PTI receives monies from interstate USF that are designated to support local services, build needed infrastructure and improve service quality. Each year the PUC is required to certify (by September 30) to the Federal Communications Commission (“FCC”) and the Universal Service Administrative Company (“USAC”) that universal service funds will be used only for the purposes designated in the federal Act. Absent such a Certification by PUC, PTI, as an “Eligible Telecommunications Carrier” (“ETC”), would be denied funds for each quarter of the year that certification is delayed.

On January 7, 2008, the PUC granted PTI’s Petition for Designation as an ETC throughout the Territory of Guam.² In accord with such Order, PTI’s annual designation as an ETC is subject to its provision of annual certifications and data submissions to the PUC. PUC requires such information so that it can ensure that funds received by PTI will be expended in accordance with the requirements of the Telecommunications Act. Based upon the certifications and documentation provided by PTI in its 2009 Annual Compliance Filing, it is Counsel’s opinion that there is a sufficient factual and evidentiary basis upon which the Commission can reasonably certify that the USF distributed to PTI in calendar year 2009 will be used in accord with the purposes and requirements designated in the federal Act. Counsel recommends that PTI’s request for USAC certification be GRANTED with respect to wireless services. A draft letter to the FCC is attached.

¹ PTI 2009 Annual Compliance Filing, Docket 08-05.

² PUC Order Approving Designation, Docket 08-05, issued January 7, 2008.

RECENT CHANGES IN PTI OPERATIONS

On May 2, 2008, PTI acquired the telecommunications assets of IT&E, a carrier that had been certified as an ETC by the FCC. This transaction included all of IT&E's wireless and wire line operations, including its CLEC operations.³ On May 12, 2009, the Federal Communications Commission, in WC Docket No. 08-54 [IN THE MATTER OF IT&E OVERSEAS, INC., Transferor, and PTI PACIFICA INC., Transferee], approved the transfer of assets, licenses and other authorizations from IT&E to PTI Pacifica.⁴ In addition, on May 28, 2009, the PUC issued an ORDER approving the assignment and transfer of the Certificate of Authority of IT&E to PTI.⁵

Along with its Filing, PTI is required to include a detailed build-out plan satisfying the FCC's requirements as part of its annual submission (Five Year Quality Service Improvement Plan). As a result of the asset purchase from IT&E by PTI, PTI obtained a wireless network and customer base much more rapidly than was originally anticipated in the five year plan submitted with PTI's original petition for certification as an ETC. The original plan has assumed that PTI would develop its wireless system from scratch; such assumption was no longer accurate in light of the asset purchase by PTI. In its current Five Year Plan filed with its 2009 Annual Compliance Filing, PTI reports that in April 2009, it replaced IT&E's old CDMA and GSM networks with new networks. The revised build-out plans filed by PTI envision the expansion and continued improvement of the CDMA and GSM networks.⁶

REQUIREMENTS

The PTI ETC Designation Order contains the following requirements:

- (a) PTI must comply with any local usage requirements prescribed by the FCC;
- (b) PTI must comply with any FCC requirements concerning E911 services when implemented in the Territory of Guam;

³ Georgetown Consulting Group Report in Docket 08-05, USAC Certification – PTI Pacifica, September 21, 2008, p. 1.

⁴ FCC Memorandum Opinion and Order and Declaratory Ruling, WC Docket 08-54 [In the Matter of IT&E Overseas, Inc., Transferor and PTI Pacifica Inc., Transferee], released May 12, 2009.

⁵ PUC Order Approving Assignment and Transfer of IT&E Overseas Inc. Certificate of Authority to PTI Pacifica Inc., issued May 28, 2009.

⁶ PTI 2009 Annual Compliance filing, p. 7.

- (c) PTI must certify to the Commission that PTI (i) 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 (ii) advertises the availability of supported services and related charges using media of general distribution;
- (d) PTI must notify the Commission within thirty (30) days of any determination that it cannot provide service to a requesting customer in accordance with the FCC's requirements;
- (e) PTI must file a detailed build-out plan satisfying the FCC's requirements;
- (f) PTI must file with the Commission by August 31 of each year, beginning 2008, an annual certification in substantially the form required by Section 314(b) and Section 54.314(c) of the FCC's rules to verify that PTI will use federal high-cost support only for those facilities and services for which the support is intended;
- (g) PTI must annually submit to the Commission by August 31 of each year the following records and documentation: (i) PTI's progress towards meeting its build-out plans; (ii) 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; (iii) the number of requests for service from potential customers within PTI's service area that were unfulfilled for the past year; (iv) the number of complaints per 1,000 handsets; (v) PTI's compliance with the CTIA Consumer Code; (vi) PTI's certification that it is able to function in emergency situations; (vii) PTI's certification that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier; and (viii) PTI's certification that it acknowledges that the Commission 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.
- (h) PTI must promptly submit to the Commission any additional information or reports that the Commission may reasonably request from time to time.

COMPLIANCE WITH REQUIREMENTS

(a) *Local usage requirements-*

Having acquired IT&E's wireless business, PTI certified that it now offers the nine core services identified for USF.

(b) *E911 service-*

In its application for ETC designation PTI indicated that it would support 911 service and E911 once implemented by the Government of Guam. PTI continues to support 911 services. PTI continues to provide 911 services by forwarding such calls to the applicable government agencies. If and when E911 is adopted in Guam, PTI will comply with such requirements.

(c) *Certification of services-*

PTI has provided a certification that it 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. It further certified that it advertises the availability of supported services in the media of general distribution.

(d) *Notification of inability to provide service to a requesting customer-*

PTI reports that for the period of June 31, 2008, through July 31, 2009, it had no unfulfilled requests for service.

(e) *Filing of a detailed build-out plan satisfying the FCC's requirements -*

PTI has filed a detailed Five-year service quality improvement plan which appears to be in compliance with applicable requirements [see further discussion with regard to paragraph (g)(i) below].

(f) *Filing of annual certification under Section 54.314(b)-*

PTI has certified that all federal high-cost support provided to it in the Territory of Guam will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. This

certification to the PUC is substantially the same as would have been required by the FCC.

(g) *Documentation-*

(i) PTI's progress towards meeting its build-out plans - As indicated earlier, PTI has substantially revised its Five-year plan. It has placed new CDMA base stations and GSM base stations in its networks. Major upgrades to PTI's switching facilities and data operations have been implemented in the past year, and PTI plans to continue its efforts to upgrade the capabilities of its supported networks in the future. It appears that PTI has demonstrated substantial progress in achieving the service improvements envisioned by the Federal USF programs.

(ii) Information on any outages - PTI reported that it had no outages lasting at least 30 minutes or affecting at least 10% of end users served or 911 facilities.

(iii) Unfulfilled requests for service - - PTI indicates that it had no unfulfilled requests for voice service interconnected with the public telephone network.

(iv) Complaints per 1,000 handsets - PTI reported 32 complaints per 1,000 handsets. The increase in complaints was attributable to operational issues related to the former CDMA network utilized by IT&E and billing dispute issues. According to PTI, both of these issues have been corrected. Over the past year PTI has installed new CDMA and GSM wireless networks in Guam which have dramatically improved service. Adjustments have been made to the billing system which have significantly reduced the number of billing issues.

(v) Compliance with the CTIA Consumer Code - PTI certifies that it is in compliance with the CTIA Consumer Code within the reporting period.

(vi) Ability to function in emergency situations - PTI certified that it has the ability to remain functional in emergency situations. There is a reasonable amount of backup power to ensure functionality without an external power source. PTI indicated that it can reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations.

(vii) Certification of local usage plan – PTI presently offers an unlimited usage local calling plan available to all customers. It currently offers various local usage plans that provide consumer value that is reasonably comparable to the plans offered by the ILEC, GTA Telecom. Its Wireless plans are comparable to those offered by other carriers in Guam.

(viii) Equal access certification - PTI has certified that the PUC may require it to provide it equal access to long distance carriers in the event that no other ETC is providing equal access in the service area.

(h) *Prompt submission of information or reports-*

PTI must promptly submit to the Commission any additional information or reports that the Commission may reasonably request from time to time. PTI has been responsive in providing additional information requested by legal counsel on September 8 and 9, 2009.

Legal Counsel has not become aware of any contrary evidence which would contradict the above certifications by PTI. It is Legal Counsel's belief that PTI has satisfied all of the criteria set forth in the PTI ETC Designation Order and the FCC's requirements. PTI has already made major and substantial progress on its network and service improvement plans. There is no basis upon which it would be expected that future USF support will not be used for the purposes intended. Therefore, Legal Counsel recommends approval of PTI's request for USAC certification.

Dated this 11th day of September, 2009.

Frederick J. Horecky
PUC Legal Counsel