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9 **OFFICE OF PUBLIC ACCOUNTABILITY**
10 **PROCUREMENT APPEALS**

11 IN THE APPEAL OF
12 PACIFIC DATA SYSTEMS, INC.,
13 Appellant.

OPA Docket No. OPA PA 12-017

**OPPOSITION OF PACIFIC DATA
SYSTEMS, INC. TO GTA'S MOTION
IN LIMINE**

14 **I. THE NECA TARIFF IS RELEVANT**

15 Sections 8 and 17 of the Tariff of the National Exchange Carriers
16 Association ("NECA") is relevant because GTA made it so. In Part B of its appeal in
17 this matter, PDS argued that GTA failed to meet the requirements of the IFB by
18 improperly conditioning its bid. This is in reference to the "Terms and Conditions" that
19 GTA submitted with its bid. PDS' objection to those "Terms and Conditions" was part
20 of its May 9, 2012 Protest (*see* Exhibit A to the PDS appeal and Exhibits 7 and 8 thereto).

21 GTA's "Terms and Conditions" are also attached as Exhibit I to the PDS
22 appeal. On p. 4 of GTA's "Terms and Conditions" at ¶ I under the SPYDER section, it is
23 stated that "National Exchange Carriers Association Tariff. Broadband services are
24 provided by GTA under Sections 8 and 17 of the National Exchange Carriers
25 Association (NECA) Tariff FCC No. 5, which is made part of this Agreement. The terms
26 and conditions stated in this Agreement are subject to revision in the NECA Tariff
27 and/or mandated by the Federal Communications Commission (FCC)."
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In Exhibit J to this appeal, PDS provided an analysis of the conflict between GTA's "Terms and Conditions" and the IFB requirements. The last page of that analysis compares the NECA Tariff with the IFB requirement that the pricing of Monthly Recurring Costs shall be at a firm fixed price. This is in contrast to the NECA Tariff which is subject to revision. GTA's incorporation of the NECA Tariff into its bid is thus highly inconsistent with the IFB requirement of a firm fixed price.

Sections 8 and 17 of the NECA Tariff contain over 500 pages as GTA states. The simple answer to this is that GTA should not have conditioned its bid by reference to this 500 page document.

Although GTA complains that it now has only a limited amount of time until trial to try to understand the relevance of the NECA documents, this argument ignores the fact that it was GTA that made the NECA documents relevant in the first place. The argument also ignores the fact that the problem of the NECA Tariff was identified by PDS in its May 9, 2012 protest, and again in Exhibit J to this appeal.

II. CONCLUSION

In conclusion, GTA's Motion in Limine should be denied.

DATED this 28th day of December, 2012.

Respectfully submitted,

BERMAN O'CONNOR & MANN
Attorneys for *PACIFIC DATA SYSTEMS, INC.*

By: 
BILL R. MANN