

On My Mind

10/22/04

I owe the governor - and my readers - an apology, and I offer it herewith. I charged the governor, some three weeks ago, with "what appeared to be abuse of power," among other things, regarding his role in the negotiations for the sale of MTC stock to Pacific Telecommunications Inc. I was wrong. His conduct is not an abuse of power. Rather, he is legitimately exercising his responsibility, as it were, to represent the government of the CNMI in what is a transaction of major importance involving access to improved telecommunication capabilities for us all.

As I now understand it, thanks in large part to an hour's briefing from the CNMI's Telecommunications Commission Director Adam Turner, the FCC approval given to the sale of MTC's stock covered only such federal concerns as national security and interstate long distance capability. Other concerns, such as the inter-island toll, employee retention, and price increases were not covered and must be raised by the local parties involved. The governor and the AG's Consumer Counsel intervened in the process to make sure that such concerns were fully addressed.

What had particularly triggered my concern in the seemingly long-drawn-out negotiation between the parties was the governor's insistence that MTC divest itself of sole ownership of the inter-island fiber optic cable. Surely, I wrote, whoever invested in installing the cable had the right to control it. But doing so, and in particular in the manner in which MTC is doing so, as I now understand it, is where the abuse of power - so to speak - actually lies. MTC's control of the cable constitutes a monopoly, with all the consequences a monopoly incurs, from higher prices to less competition and fewer service options.

Interestingly, while Turner did not say so directly, it would appear that much of the present cable issue could have been avoided if the original negotiations for installation of the cable had been seen as anything more than a land lease issue. The conditions of access and use now being sought by the governor and the consumer counsel could have been written into the original agreement. But they were not. Thus, the concern with this issue now.....

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Much of this information, I should note, has not been readily available to the general public. It could have been - if the media had taken the time and trouble to dig it up and provide it to the rest of us, but they have not. Turner himself admitted that the Telecommunications Commission could, perhaps have done better in keeping the public informed, and has promised to make an attempt to do so in the future, despite the Commission's limited staffing.

Much more information on the cable issue has just become available thanks to the Attorney General's office, and in particular, Assistant Attorney General Jay Livingstone, who made available to the media this past week the brief in opposition to MTC/PTI's position on competitive ownership of the fiber optic underwater cable. The brief was filed with the Commission by the governor and the consumer counsel, together with a supporting affidavit. Also available from the AG's office, on request, are the briefing of the governor and consumer counsel to the

Commission on the issue, an affidavit in support of that document, a proposed case schedule and proposed order in support of the schedule. The proposed order would place all underground cable-related assets in a trust governed by a Commission-appointed trustee who would auction off up to 33% of the total capacity currently available on the Inter-island cable. As an alternative, the briefing proposes that the Commission could conduct a “contested case hearing” according to a schedule provided in the order. Livingstone said the documents could be supplied either in hard copy (at the cost of copying) or via e-mail.

Three key points made in the documents: MTC is currently using only one-half of the capacity of its underground cable. Selling one-third of its capacity would, therefore, not harm MTC or PTI's businesses, as they claim. Secondly, MTC presently charges ten times more, at \$7,143.00 per month, to lease a T1 (underwater fiber optic) line between the CNMI and Guam than the price to lease the same capacity between Guam and Hawaii, an increase of 1000%. And thirdly, MTC's present pricing policies restrict the capacity available to its competitors. Individuals elsewhere in the United States can lease greater capacity to their homes than telecommunications companies can lease from MTC. (The assumption here being that PTI, the proposed new owner, would continue these practices unless the Commission prohibits it from doing so.)

The documents point out that MTC would not lose anything by being forced to sell 1/3 of its capacity in the interisland cable to other companies rather than to PTI, as PTI has argued. It would still be paid for the sale. The ownership would just not be concentrated in one company.

The governor and the consumer counsel also argue that assertion made by MTC/PTI that a competitor could always lay another cable is not valid - the expense would be too great and the traffic not enough to make it a viable undertaking.

There are also extensive legal arguments about the authority of the Commission, the legality of what is being proposed, and the legitimacy of requiring divestiture, in response to arguments to the contrary being raised by MTC/PTI.

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It is ironic that just as the Telecommunications Commission is heading into the home stretch, so to speak, in its negotiations with MTC/PTI in regard to the MTC sale, the House Committee on Public Utilities would release a committee report expressing concern over how the Commission is handling the process, as it did this past week, according to an article in the <i>Marianas Variety</I> earlier this week. Most of the concerns that had been raised about the sale have been resolved between the parties, and only the cable and an audit issue remain.

The Commission, with a minimum of staffing, has done what appears to be a very competent and professional job in dealing with complex technical and legal issues. I was not able to contact the House Public Utilities Chairman, in time for this column, to ask why his committee chose to release its report now, when the bill it refers to was introduced back in February, or why it did not delete from the report the references to a telecommunications agency. But as the saying

goes, "if it ain't broke, why fix it?"

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Short takes:

A reader protested my praising Columbus, in last week's column, for his courage, bravery, etc., when he treated the natives he found at the end of his journey so poorly. In a way, I view that as blaming a two-year old for something he or she has done in ignorance. People's attitudes, society's norms change. It doesn't seem quite fair to judge the people of Columbus' century according to contemporary norms of civilized behavior. Which is not to say, I would hasten to add, that I condone Columbus' actions.

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It is curious that environmental concerns have played no part in either the debates, or, from what little I have seen or heard, in the other campaign appearances of either Bush or Kerry. Bush has a terrible environmental record, with his withdrawal from the Kyoto protocols, his loosening of protection for national forests, his refusal to support better gas mileage in cars and lower air pollution from the industrial sector. Kerry, on the other hand, has been described as having an excellent record on environmental concerns. It would be interesting to learn why Kerry has not made use of that strength.

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As our own local elections begin to heat up, along with much speculation on party primaries, third parties, independent candidates, etc., it might be timely to consider the need for a change in our election laws to deal with the split votes that might result. If there are three candidates for governor, under present law a candidate with as few as 34% of the votes could become governor - if the vote split that evenly. That could be avoided if there were a law requiring candidates for governor to win at least 51% of the vote. Which would, in turn, require run-off elections if, in a three-way race (or four- or five-way) no candidate won more than 50% of the votes. But at least it would ensure that whatever candidate did win, he or she would in fact represent a majority of the voters, rather than only 1/3 of them. Legislators, are you listening????

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Last, but not least, KRNM, the local National Public Radio station, is in the midst of its semi-annual fund drive. If you listen to Performance Today or Car Talk, Justice Talking or Fresh Air, Jazz Profiles or Echoes, or any of the other wonderful shows available on NPR through KRNM - and you want to continue receiving such shows, it behooves you to show your support in a substantive way, and to phone, e-mail or mail your pledge and your donation to public radio during this drive. Call 234-5766, or 234-5498, ext 1520, or e-mail carlp@nmcnet.edu, or mail a check to KRNM/NMC, P.O. Box 501250, Saipan, MP 96950. **Do it today!**

