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April 26, 2019

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141

Dear Ms. Dortch:

Pursuant to the *Protective Order*¹ in the above-referenced proceeding, Puerto Rico Telephone Company, Inc. d/b/a Claro ("PRTC") submits a redacted version of the notice of *ex parte* filed as part of the above-referenced proceeding.

PRTC has designated, and received written approval to designate, as Highly Confidential the marked portions of the attached notice of *ex parte*. The Highly Confidential information appears after the headings **[[begin highly confidential information]]** and before the headings **[[end highly confidential information]]**. Please contact the undersigned with any questions.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Eduardo R. Guzman", written over a horizontal line.

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¹ *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141, Protective Order (WCB rel. June 1, 2018).*



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Re: Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141

Dear Ms. Dortch:

On November 7, 2018, Puerto Rico Telephone Company, Inc. d/b/a Claro (“PRTC”) met with staff from the Wireline Competition Bureau to express its support for the forbearance relief requested in the Petition for Forbearance of USTelecom—The Broadband Association, which was filed on May 4, 2018 in the above-referenced proceeding (“Petition”).¹ At the meeting PRTC underscored that the Commission should not exclude Puerto Rico from any forbearance relief that it may grant in response to the Petition and presented data and other information showing that the Puerto Rico market is not an outlier as it relates to the key benchmarks on which the Petition relies to request nationwide forbearance.

At the aforementioned meeting, staff from the Wireline Competition Bureau asked PRTC to submit additional data and information regarding the state of competition in Puerto Rico; the use of unbundled network elements (“UNEs”) in Puerto Rico; the potential effects of eliminating the obligation imposed on incumbent local exchange carriers (“ILECs”) by section 251(c) of the Communications Act² to provide access to UNEs and to offer for resale, and at wholesale rates, telecommunications services that the ILEC offers to retail subscribers (hereinafter, the “UNE and Resale Obligation”); and the costs to PRTC of complying with the UNE and Resale Obligation. PRTC submits this ex parte communication in response to these requests and inquiries.

¹ See Letter from Eduardo R. Guzmán, Counsel for Puerto Rico Telephony Company, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-141 (filed Nov. 9, 2018) (“PRTC November 2018 *Ex Parte*”).

² 47 U.S.C. § 251(c).

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I. THE CONTINUED REDUCTION IN PRTC WIRELINE CONNECTIONS AND PRTC'S SHARE OF TOTAL CONNECTIONS IN PUERTO RICO

PRTC filed Reply Comments in the instant proceeding that highlighted, among other things, the significant decline in PRTC switched access lines that has taken place since 2000.³ The PRTC Reply Comments relied on publicly available data from the Commission covering the period from 2000 and 2016, along with confidential data from the Form 477 that PRTC filed in 2017, to highlight the dramatic drop in ILEC wireline subscriptions in Puerto Rico from 1,299,000 in 2000 to 494,000 in 2016.⁴

Since that filing, PRTC wireline switched access lines have continued to decrease: to *[[begin highly confidential information]]* *[[end highly confidential information]]* as of December 31, 2017 and to *[[begin highly confidential information]]* *[[end highly confidential information]]* as of December 31, 2018.⁵ In short, PRTC wireline switched access subscriptions have decreased by *[[begin highly confidential information]]* *[[end highly confidential information]]* percent (*i.e.*, *[[begin highly confidential information]]* *[[end highly confidential information]]* switched access lines) during the last two years and by more than *[[begin highly confidential information]]* *[[end highly confidential information]]* percent since 2000 (*i.e.*, a reduction of more than *[[begin highly confidential information]]* *[[end highly confidential information]]*).

[[end highly confidential information]]). According to data from the Puerto Rico Telecommunications Bureau ("PRTB"), total wireline connections in Puerto Rico (including both switched access lines and interconnected VoIP connections) decreased by 14 percent during that same time.⁶

As PRTC's switched access lines decreased from 2016 to 2018, so did PRTC's share of those lines as a percentage of all wireline connections (which include VoIP) in Puerto Rico. Data from the PRTB shows that, as of December 2018, there were 703,000 total wireline connections in Puerto Rico.⁷ That means that, as of December 2018, PRTC switched access lines represent *[[begin highly confidential information]]* *[[end highly confidential information]]* percent of all wireline connections in Puerto Rico—a decrease of *[[begin highly confidential information]]* *[[end highly confidential information]]* percent from 2016, when it stood at *[[begin highly confidential information]]* *[[end highly confidential information]]* percent—less than *[[begin highly confidential information]]* *[[end highly confidential information]]* percent of all connections in Puerto Rico (including both wireline and wireless).

³ See Reply Comments of Puerto Rico Telephone Company, Inc., WC Docket No. 18-141 (filed Sept. 5, 2018) ("PRTC Reply Comments").

⁴ See *id.* at 12.

⁵ See Puerto Rico Telephone Company, Inc. Form 477 (data as of December 31, 2018) ("PRTC December 2018 Form 477"); Puerto Rico Telephone Company, Inc. Form 477 (data as of December 31, 2017) ("PRTC December 2017 Form 477").

⁶ See Puerto Rico Telecommunications Bureau, *Estadísticas de la Industria de las Telecomunicaciones y Televisión por Cable en Puerto Rico* at 3 (2019) ("TRB 2018 Report"), https://docs.google.com/viewerng/viewer?url=http://www.jrtpo.pr.gov/estadisticas/Estadisticas_Trimestral.pdf&hl=en_US.

⁷ See *id.*

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PRTC also notes that these reductions in its switched access lines in 2017 and 2018 are not accounted for by lines that suffered damage (and thus have been subject to emergency discontinuance under section 63.63 of the Commission's rules). That is, a switched access line in a service area where PRTC's copper infrastructure was damaged as a result of Hurricanes Irma and María would have continued to be reported in Form 477 as a PRTC switched access line. Only when a PRTC customer cancels its switched access line would the switched access subscription count in Form 477 be affected. PRTC can confirm that since Hurricanes Irma and María many switched access customers have cancelled service in favor of a PRTC wireline competitor or a mobile line or as a result of leaving the island permanently.

II. IMPACT OF THE POTENTIAL ELIMINATION OF THE UNE AND RESALE OBLIGATION

In response to the questions posed by staff at the November 2018 meeting, PRTC conducted a detailed review of its wholesale invoicing, sales and revenue, including those derived from the provisioning of UNEs, tariffed services, and non-tariffed services. For purposes of the analysis, PRTC used the invoices for services rendered in November 2018. The results lend further support to PRTC's showing that Puerto Rico is not an outlier when it comes to the major competitive trends that have swept the telecommunications sector nationwide and that, as a result, eliminating the UNE and Resale Obligation would not affect competition in Puerto Rico negatively.

A. Background

Before empirically examining the effect of the UNE and Resale Obligation on competition in Puerto Rico, it is important to provide some background on the Puerto Rico telecommunications sector, its key players, and how technological advances during the last two decades have transformed the offering and use of telecommunications in the island.

The Puerto Rico telecommunications sector has experienced a remarkable transformation since the late 1990s, when PRTC was the government-owned incumbent provider of wireline service. As in the rest of the United States, the Puerto Rico market in the late 1990s was one where the internet and the popularity of text messaging were in their infancy, cable companies were not offering VoIP as a replacement for residential voice telephony, and wireless subscriptions constituted a small fraction of total voice connections. While various competitive local exchange carriers emerged from the outset after the enactment of the Telecommunications Act of 1996 (and its local equivalent in Puerto Rico), it was the advent of new technologies that fueled the revolution in customer choice in Puerto Rico. Three trends in particular were key: (1) the emergence of mobile services (including those offered by national carriers) that offered local island-wide calling at attractive rates; (2) the emergence of a single, well-funded cable company (Liberty Cablevision of Puerto Rico)⁸ that started offering residential and business services

⁸ Liberty Cablevision of Puerto Rico ("Liberty Cablevision") is a subsidiary of Liberty Latin America Ltd. that offers VoIP, broadband and cable service across Puerto Rico. Prior to 2012, there were three franchised cable

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through VoIP and hybrid coax fiber; and (3) the emergence of IP-based services (including high-capacity data services and VoIP) that are offered through fiber and fixed wireless platforms not controlled by PRTC.

The effects have been striking. More than twenty years after the enactment of the Federal Telecommunications Act of 1996, the number of PRTC switched access lines, the total number of switched access lines have fallen from 1.225 million in 1999⁹ to **[[begin highly confidential information]]** **[[end highly confidential information]]** in 2018, and PRTC's share of total wireline connections in Puerto Rico have plummeted—all while the number of wireless subscriptions, the non-ILEC share of total wireline connections, and the demand for IP-based solutions (particularly in the business data services segment) have exploded. The following data points—derived from publicly available Commission data, publicly available PRTB data, and PRTC's Form 477 filings—highlight the transformation:

First, and as shown above and in PRTC's prior ex parte filing with the Commission, the number of PRTC's switched access lines has decreased at a rate comparable to the decrease in ILEC switched access lines nationwide.¹⁰

Second, during that same period, the number of mobile telephony subscriptions exploded. Data from the Commission show that mobile subscriptions in Puerto Rico have increased from 1.37 million in 2001 to almost 3.2 million in 2016.¹¹ As shown in Table 1 below, from 2008 to 2016—the same period during which total wireline connections in Puerto Rico decreased by 16 percent—mobile subscriptions *increased* by 21 percent. Data from the PRTB indicate that total mobile telephone subscriptions have increased to more than 3.3 million as of December 31, 2018.¹²

Third, non-ILEC wireline connections (including both VoIP and switched access lines) have continued to increase both in total number and as a percentage of total wireline connections, while PRTC's switched access lines have decreased. As Table 1 shows, from 2008 to 2016 non-ILEC wireline connections increased by 47 percent, from 210,000 to 308,000,¹³ resulting in the non-ILEC share of total wireline connections to jump by 16 percentage points—from 22 percent to 38 percent.¹⁴

television providers in Puerto Rico, each holding an exclusive franchise that covered different parts of the island without any overlapping. After Liberty Cablevision acquired OneLink Communications in 2012 and then Choice Cable in 2015, it became the single cable television provider in Puerto Rico.

⁹ FCC Report 43-01, ARMIS Annual Summary Report.

¹⁰ See discussion *supra* p. 1; PRTC November 2018 *Ex Parte*, Attachment at 7; see also Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Voice Telephone Services: Status as of June 30, 2017*, Table: Nationwide and State-Level Data for 2008-Present (Nov. 2018) (“*FCC June 2017 Voice Telephone Services Report*”).

¹¹ *Id.*

¹² See PRTB 2018 Report at 3.

¹³ See FCC June 2017 *Voice Telephone Services Report*, Table: Nationwide and State-Level Data for 2008-Present.

¹⁴ *Id.*

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Table 1

Evolution of Customer Connections in Puerto Rico

	Dec-08	Jun-16	% Chg.
Mobile	2,624,000	3,178,000	21%
Wireline	965,000	811,000	-16%
ILEC Wireline	755,000	503,000	-33%
Non-ILEC Wireline	210,000	308,000	47%
Total	3,589,000	3,989,000	11%

Fourth, the loss in PRTC wireline connections was partially offset by the growth in non-ILEC wireline subscriptions. As Table 1 shows, non-ILEC wireline subscriptions have increased by 47 percent since 2008. The growth of non-ILEC VoIP subscriptions has played an important role in this growth.

Fifth, mobile substitution has been a critical factor since the early 2000s, when mobile providers offered island-wide local calling that made using a switched access line unattractive, especially when considering intra-island long distance charges. As mobile technologies in Puerto Rico have continued to evolve and service quality has continued to improve, PRTC's experience has been that many consumers, particularly younger consumers, are moving away from wireline voice services toward mobile voice service. Indeed, for many consumers in Puerto Rico the only reason to have a wireline voice service is that it is included in a broadband and video bundle. That helps explain why triple-play and quadruple-play offerings define the competitive wireline retail segment in Puerto Rico. It also helps explain why non-ILECs captured less than half of the 251,000 wireline connections that PRTC lost between 2008 and 2016.¹⁵ Even after accounting for population loss, the data suggest that many customers that dropped their switched access line replaced it with a mobile line.

Finally, demand for high-capacity business data services has been surging. Transport networks, including PRTC's, have made significant progress in the transition to IP. Where the business data services market was once limited predominantly to circuit-based DS1 (1.544 Mbps) or DS3 (44.45 Mbps) offered by PRTC, advancement in technologies have led to IP-based circuits with commercial speeds exceeding 1 Gbps and services for residential and small business users with speeds of 100 Mbps offered by various providers. As in the rest of the United States, circuit-based business data services have not been able to compete with this faster and more scalable technology.

The number of providers in Puerto Rico reflects the maturity of this transformed market. In all, thirty-five entities are authorized by the local regulator, the PRTB, to offer telecommunications services in Puerto Rico. In the mobile segment there are five facilities-based providers, including three national carriers (Sprint, AT&T, and T-Mobile) that compete

¹⁵ From 2008 to 2016, non-ILEC wireline connections increased by 98,000. Data from the PRTB and PRTC show that as of December 31, 2018, there were 200,096 VoIP subscriptions and PRTC reported less than 9,000 VoIP subscriptions.

with PRTC's mobile service and various mobile virtual network operators, including enTouch, Tracfone, Virgin Mobile USA, and AirVoice Wireless.¹⁶ In the wireline segment, PRTC actively competes with Liberty Cablevision; AT&T, which acquired the wireline operations of Centennial de Puerto Rico;¹⁷ and competitive local exchange carriers such as WorldNet Telecommunications and Optivon. In recent years fixed wireless providers such as Aeronet, VPNet, and others have become prominent competitors, as have fiber-based competitors, which include AeroNet, Critical Hub Networks, and PREPA Networks (a subsidiary of Puerto Rico's government-owned electric utility).

The ultimate result of this technological transformation and maturing market has been wide availability of broadband services and consumer choice among technologies and providers. The Commission's data indicate that more than 75 percent of the census blocks in Puerto Rico (containing more than 80 percent of the island's locations) are served by at least two wireline broadband providers at speeds of at least 10 Mbps/1 Mbps, and that 77 percent of the census blocks are served by non-ILEC providers (*i.e.*, Liberty and/or fixed wireless providers).¹⁸ The Commission's mobile broadband deployment data also show that almost all of the populated areas in Puerto Rico are served by at least two mobile LTE providers and most of the population is covered by four or more mobile LTE providers.¹⁹ Table 2 below, which was excerpted from Appendix F1 to the Commission's 2018 Broadband Deployment Report,²⁰ shows that 99.9 percent of the island's population is served by either at least one wireline broadband provider delivering speeds of 25 Mbps/3 Mbps or at least one mobile LTE provider delivering speeds of 5 Mbps/1 Mbps, and that 89 percent of the island's population is served by at least one wireline broadband provider at speeds of 25 Mbps/3 Mbps *and* at least one mobile LTE provider at speeds of 5 Mbps/1 Mbps up.

Table 2

Percentage of Population with Broadband Coverage: Puerto Rico					
State, County or County Equivalent	Population Evaluated	% of Pop. with Fixed 25 Mbps/3 Mbps	% of Pop. with Mobile 5 Mbps /1 Mbps	% of Pop. with Fixed 25/3 & Mobile LTE 5/1	% of Pop. with Fixed 25/3 or Mobile LTE 5/1
Puerto Rico	3,415,571	89.20%	99.80%	89.10%	99.90%
Rural Areas	218,499	62.80%	92.70%	61.10%	98.90%
Urban Areas	3,197,072	91.00%	100.00%	91.00%	100.00%

¹⁶ See <http://www.jrtpr.pr.gov/companias/> (listing Commercial Mobile Radio Service providers registered with the PRTB).

¹⁷ Centennial de Puerto Rico was one of the first competitive local exchange carriers in Puerto Rico.

¹⁸ See Federal Communications Commission, Form 477 Broadband Deployment Data (June 2017); *see also* FCC Releases Form 477 Data on Broadband Deployment as of June 30, 2017, *Public Notice*, 33 FCC Rcd 8590 (Sept. 10, 2018).

¹⁹ See Federal Communications Commission, LTE Coverage by Number of Providers YE 2017 (Dec. 20, 2018), <https://www.fcc.gov/reports-research/maps/lte-coverage-number-providers-ye-2017/>.

²⁰ 2018 Broadband Deployment Report, Appendix F1, *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199 (Feb. 2, 2018).

A look at the discrete segments that make up the Puerto Rico telecommunications sector highlights the competition and dynamism that has marked the last two decades.

1. Business Data Services Segment

Underpinning the transformation of the Puerto Rico telecommunications sector is booming competition for business data services.²¹ As the Commission has noted, the functions and services traditionally provided over circuit-based networks are moving to wireless and fiber-based networks that rely on internet protocol (“IP”) transmission.²² Puerto Rico is no exception. The components of PRTC’s network that correspond to transport and point-to-point transmission already have transitioned to IP, which has increasingly become the technology of choice for carriers and large business users alike. PRTC’s competitors have not stayed behind. Liberty Cablevision offers IP-based services over its hybrid fiber coax facilities. Other providers, including PREPA Networks, AeroNet, and Critical Hub Networks, offer fiber-based services, while fixed wireless providers offer point-to-point services, including backhaul. Not surprisingly, the Commission in the *BDS Order* included Puerto Rico in its determination that the nationwide market for IP-based business data services, circuit-based business data services above DS-3 level, and transport services (including special access) were competitive, and it applied that same competitive market test that it applied in the rest of the United States to find that the every “municipio” in Puerto Rico was competitive when it came to DS-1 and DS-3 end user channel terminations, which are last-mile connections used by competitive carriers.²³

2. The Residential and Business Retail Segment

Competition at the wholesale and business data services level has translated into sustained competition at the retail level. The residential sector was long ignored by traditional CLECs such as WorldNet, and it was not until 2015—when Liberty Cablevision became the sole cable company provider in Puerto Rico—that non-UNE-based voice service was offered widely to residential customers across the island. Still, the last ten years have seen fundamental changes in the residential segment in Puerto Rico. PRTC lost more than 198,000 residential switched access lines between 2008 and 2017—a decrease of more than 34 percent (and a decrease of 779,000 switched access lines or 67 percent when compared to 2001).²⁴ In comparison from 2008 to 2016 (the last year for which the Commission has released data on non-ILEC wireline connections in Puerto Rico), non-ILEC residential wireline connections *increased* by 47 percent.²⁵

²¹ The Commission has defined business data services as “dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections.” *Business Data Services in an Internet Protocol Environment*, Report & Order, 32 FCC Rcd 3459, 3463 (2007) (“*BDS Order*”).

²² See *id.* at 3471-72.

²³ *Id.* at 3499-3506; *Wireline Competition Bureau Publicly Releases List of Counties Where Lower Speed TDM-Based Business Data Services Are Deemed Competitive, Non-Competitive, or Grandfathered*, WC Docket 16-143, 05-25; RM-10593 (May 15, 2017).

²⁴ See *FCC June 2017 Voice Telephone Services Report*, Table: Nationwide and State-Level Data for 2008-Present. In 2000, PRTC had 1,170,000 residential switched access lines.

²⁵ See *id.*

This trend was initially driven by mobile substitution ever since mobile carriers offered voice telephone packages that treated all calls within Puerto Rico as local calls (a trend that started in the early 2000s), the Puerto Rico residential customer has viewed mobile calling as a viable and often more economical alternative to wireline voice telephony service. The decrease in PRTC residential wireline connections has been further driven by the expansion in non-UNE-based voice offerings by Liberty Cablevision and over-the-top providers. In recent years, fixed wireless providers, such as VPNet, started offering residential voice and internet solutions that compete directly with wireline offerings,²⁶ and the recent rollouts of residential fixed wireless offerings by Verizon and T-Mobile offer a window into a future where mobile carriers become significant players through fixed wireless offerings.²⁷ In this context, the notion that residential customers have no choice other than PRTC's voice telephony offerings—or that competition in the retail residential segment is dependent on the UNE and Resale Obligation—has no factual support.

The business segment in Puerto Rico is even more competitive. In 1999 PRTC reported 248,781 single line and multi-line switched access lines in ARMIS 43-10. According to the PRTB, there were 190,388 total business wireline connections in Puerto Rico as of December 2018.²⁸ PRTC reported **[[begin highly confidential information]]** **[[end highly confidential information]]** business switched access lines in the PRTC December 2018 Form 477, which would give it less than **[[begin highly confidential information]]** **[[end highly confidential information]]** percent of total business wireline connections if the PRTB's statistics are used as reference.²⁹ As of June 30, 2016—the last year for which Commission data on total wireline connections in Puerto Rico is publicly available—PRTC had 110,000 business switched access lines out of 225,000 total business wireline connections, and the data show that PRTC's share of total business wireline connections has *decreased* consistently since 2009 and has stayed below 50 percent since 2014.³⁰ In this highly competitive market, AT&T has traditionally been an important competitor. So has Liberty Cablevision, which recently highlighted its continued growth in the business segment both in terms of large and small/medium sized businesses,³¹ fiber-based providers that are providing the high-capacity fiber-based offerings that business customers favor, and fixed wireless providers that rely on point-to-point microwave service. Puerto Rico's importance as a hub for undersea cables between the U.S. and South America has resulted in CenturyLink and Cable and Wireless competing for Puerto Rico traffic. As in the residential segment, the notion that business customers in Puerto Rico have no choice other than PRTC's voice telephony offerings—or that competition in the retail residential segment is dependent on the UNE and Resale Obligation—has no factual support.

²⁶ See <https://www.vpnet.net/residencial/>.

²⁷ See <https://www.verizonwireless.com/5g/home/>; <https://www.t-mobile.com/news/home-internet-pilot>.

²⁸ See TRB 2018 Report at 3.

²⁹ See PRTC December 2018 FCC Form 477.

³⁰ See FCC June 2017 Voice Telephone Services Report, Table: Nationwide and State-Level Data for 2008-Present.

³¹ See Michelle Kantrow-Vázquez, *Liberty Puerto Rico Reports 3Q18 Growth, Driven by 22K New Customers*, News Is My Business (Nov. 9, 2018) (<https://newsismybusiness.com/liberty-reports-customers/>).

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B. Expanded Data on the Role of UNEs and Resale Obligation in the Competitive Landscape in Puerto Rico

In this state of maturing competition and technological transformations, the UNE and Resale Obligation has become irrelevant. PRTC previously had shared data with the Commission that highlighted this obvious trend:

- *[[begin highly confidential information]]* *[[end highly confidential information]]*;
- Total UNE Loops leased from PRTC decreased by 33 percent from 2008 to 2017, which compares with a 28 percent decrease during the same period nationwide;
- Liberty Cablevision, which is PRTC’s largest competitor, *[[begin highly confidential information]]* *[[end highly confidential information]]*;
- AT&T and Optivon—*[[begin highly confidential information]]* *[[end highly confidential information]]*;
- WorldNet continues to cling to a business model that is based on access to UNEs—and, not surprisingly, has resisted major changes to UNE mandates and other forbearance efforts since 2003.³²

In response to questions posed by staff of the Wireline Competition Bureau in the meeting that took place on November 8, 2018, PRTC has conducted an additional analysis of its wholesale billing data to provide the Commission an expanded perspective on the role that the UNE and Resale Obligation is playing in Puerto Rico. Four points stand out—all of which reinforce PRTC’s showing that the UNE and Resale Obligation have become irrelevant to competition in Puerto Rico.

First, PRTC’s billing data shows that the use of UNE loops in Puerto Rico has decreased dramatically. As of November 2018, only *[[begin highly confidential information]]* *[[end highly confidential information]]* carriers out of the 14 carriers that have interconnection agreements with PRTC were leasing UNE loops: *[[begin highly confidential information]]*

[[end highly confidential information]]. Using data from the PRTB

³² See PRTC November 2018 *Ex Parte*.

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as reference, this combined total represents only *[[begin highly confidential information]]* *[[end highly confidential information]]* percent of the 703,000 total wireline (ILEC and non-ILEC) connections in Puerto Rico as of December 2018. This extremely limited role of UNEs is confirmed by the Commission's own data.³³ *[[begin highly confidential information]]*

[[end highly confidential information]].

Second, the vast majority of non-ILEC lines are *not* served by CLECs that rely on UNEs or resale. Based on PRTC's billing data from November 2018, PRTC was leasing *[[begin highly confidential information]]* *[[end highly confidential information]]* UNE loops (DS0 and DS1 loops) at that time. According to the PRTB, as of December 2018 there were 703,000 total wireline connections in Puerto Rico. After excluding PRTC's *[[begin highly confidential information]]* *[[end highly confidential information]]* switched access lines and *[[begin highly confidential information]]* *[[end highly confidential information]]* VoIP wireline connections (as reported in the PRTC December 2018 Form 477), that leaves approximately *[[begin highly confidential information]]* *[[end highly confidential information]]* non-ILEC wireline connections. UNE loops represent less than *[[begin highly confidential information]]* *[[end highly confidential information]]* percent of these non-ILEC wireline connections. Moreover, Liberty Cablevision claimed as recently as February 2019 that it had 197,500 customers receiving voice services in Puerto Rico,³⁴ which represents more than *[[begin highly confidential information]]* *[[end highly confidential information]]* percent of total non-ILEC wireline connections. In sum, wireline connections by non-ILEC providers make up more than *[[begin highly confidential information]]* *[[end highly confidential information]]* percent of total wireline connections in Puerto Rico, while those provisioned by UNE loops amount to less than *[[begin highly confidential information]]* *[[end highly confidential information]]* percent of that total. As the number of wireline connections continues to decrease in Puerto Rico and those provided by the ILEC decreases at an even faster rate, it is plain that Puerto Rico is not a jurisdiction that is relying on the UNE and Resale Obligation as an alternative to ILEC wireline services.

Third, the diminishing importance of UNEs and the resale obligation is further confirmed by examining the percentage of revenue generated by PRTC's wholesale department. The wholesale department is responsible for managing PRTC's business relationships with other carriers, and its clients include CLECs, wireless providers, interexchange carriers, broadband providers and private network operations. These clients obtain services through regulated sources, such as PRTC's local and federal tariffs and interconnection agreements under section 251 of the Communications Act, as well as commercial agreements that are not subject to tariffing or *ex ante* rate regulation. Using November 2018 as a sample month, revenue generated from UNEs represented only *[[begin highly confidential information]]* *[[end highly confidential information]]*

³³ Compare Puerto Rico Telephone Company, Inc., FCC Form 477 (data as of December 31, 2004), with Puerto Rico Telephone Company, Inc., FCC Form 477 (data as of December 31, 2018).

³⁴ See Liberty Latin America Ltd., Annual Report (Form 10-K) at I-6 (Feb. 21, 2019); see also Petition to Deny of Liberty Cablevision of Puerto Rico LLC at 2, *In the Matter of Applications of T-Mobile US, Inc. and Sprint Corp.*, WT Docket No. 18-197 (Aug. 27, 2018) (claiming that Liberty had 189,000 VoIP customers).

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confidential information] percent of total revenue of PRTC’s wholesale department, and revenue from the resale of telecommunications services represented only *[[begin highly confidential information]]* *[[end highly confidential information]]* percent of total wholesale revenue. The data are shown in Table 3 below:

Table 3

[[begin highly confidential information]]

[[end highly confidential information]]

Fourth, non-ILEC providers in Puerto Rico already have decidedly moved away from the use of UNEs and the resale of PRTC telecommunications services. Table 3 shows that this is true in the aggregate: as of November 2018, more than *[[begin highly confidential information]]* *[[end highly confidential information]]* percent of PRTC wholesale revenue comes from services *other* than UNEs and the resale of PRTC telecommunications services. Looking at the behavior of individual carriers only reinforces that point. As of November 2018, PRTC had interconnection agreements (entered into pursuant to section 251 of the Communications Act) with fourteen carriers in Puerto Rico. Out of these fourteen carriers, only *[[begin highly confidential information]]* *[[end highly confidential information]]* were leasing UNEs, and *[[begin highly confidential information]]* *[[end highly confidential information]]* of these *[[begin highly confidential information]]* *[[end highly confidential information]]* were leasing only dedicated transport at *de minimis* amounts (less than \$1,000 combined per month). As Table 4 shows, *[[begin highly confidential information]]* *[[end highly confidential information]]* has been leasing some UNE loops and unbundled dedicated transport, but its use and impact is limited: out of the more than *[[begin highly confidential information]]* *[[end highly confidential information]]* in monthly revenue that *[[begin highly confidential information]]* *[[end highly confidential information]]* generates for PRTC, only *[[begin highly confidential information]]* *[[end highly confidential information]]* percent corresponds to UNEs. Liberty Cablevision of Puerto Rico LLC, the incumbent cable company and PRTC’s largest island-wide competitor, *[[begin highly confidential information]]*

[[end highly confidential information]]. The same can be said of other important players in Puerto Rico (such as PREPA Networks, AeroNet, Critical Hub Networks, and VPNet) that are offering fiber and wireless-based services in Puerto Rico *[[begin highly confidential information]]*

[[end highly confidential information]]. The point is plain: even before the USTelecom Petition was filed, non-incumbent providers in Puerto Rico were deciding on their own to reduce their use of UNEs at the same that their share of total wireline connections in Puerto Rico increased.

Table 4

[[*begin highly confidential information*]]

[[*end highly confidential information*]]

That leaves [[*begin highly confidential information*]] [[*end highly confidential information*]]—out of the more than 35 carriers in Puerto Rico authorized to provide telecommunications services—that continues to make use of UNEs in any noticeable way: [[*begin highly confidential information*]] [[*end highly confidential information*]]. But [[*begin highly confidential information*]] [[*end highly confidential information*]] conduct confirms the trend toward of irrelevancy of the UNE regime. [[*begin highly confidential information*]] [[*end highly confidential information*]] own use of UNE loops has *decreased* from [[*begin highly confidential information*]] [[*end highly confidential information*]] in 2004 to less [[*begin highly confidential information*]] [[*end highly confidential information*]] as of November 2018—a [[*begin highly confidential information*]] [[*end highly confidential information*]] percent decrease. This reduction in [[*begin highly confidential information*]] [[*end highly confidential information*]] UNE loops took place at the same time that PRTC was losing switched access lines at a rapid pace and PRTC’s share of total wirelines decreased. Indeed, during that same time mobile subscriptions increased by 11 percent and non-ILEC wireline connections increased by 47 percent. These undisputed facts contradict the claim that only with the UNE obligation in place can there be competition in the Puerto Rico telecommunications market.

C. Impact of the elimination of the UNE and resale obligation on different segments of the telecommunications market

The additional data set forth above only reinforces PRTC’s previous showing that the elimination of the UNE and resale obligation would not impact competition negatively in Puerto Rico. At the wholesale level, the elimination of the UNE and resale obligation would not have a negative effect because that there is significant competition for wholesale services, other players in Puerto Rico are offering fiber-based alternatives that compete with PRTC’s circuit-based UNE offerings (without relying on UNEs at all), and PRTC itself already is leasing more tariffed and non-tariffed services than UNEs. The dedicated transport facilities that PRTC offers as a UNE can be replaced with PRTC circuit-based non-tariffed offerings (*i.e.*, special access), PRTC non-tariffed IP-based fiber offerings, Liberty Cablevision’s IP-based offerings through its hybrid fiber coax facilities, IP-based fiber offerings from providers such PREPAnet, AeroNet, CenturyLink, and fixed microwave solutions offered by fixed wireless providers. This is

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consistent with the Commission's finding in the *BDS Order* that there is competition nationwide in the offering of packet-based and circuit-based transport services—a finding that did not exclude Puerto Rico.

The same is true for the UNE DS-1 loops that **[[begin highly confidential information]]** **[[end highly confidential information]]** currently leases from PRTC (which represent **[[begin highly confidential information]]** **[[end highly confidential information]]** percent of total UNE loops leased by **[[begin highly confidential information]]** **[[end highly confidential information]]**). The Commission in the *BDS Order* found that there was competition for DS1 and DS3 channel terminations in every county in Puerto Rico precisely because there are circuit-based and fiber-based alternatives to the last-mile facilities offered by PRTC and other carriers. In this competitive environment, eliminating the UNE and Resale Obligation would not affect a market where most providers already have moved to fiber-based tariffed and non-tariffed circuit-based alternatives that are offered outside the framework of section 251 of the Communications Act.

A similar forecast can be given when looking at the retail segment. The residential retail segment in Puerto Rico would not be affected by forbearance because it has *never* relied on UNEs or resale. As PRTC has shown—and no stakeholder has disputed—traditional CLECs such as WorldNet ignored residential customers from the outset even though they had access to UNEs and the resale telecommunications services at highly subsidized rates. The competition that has arisen in the segment—and which will only continue to grow in light of new technologies and generational shifts—is due not to the UNE and Resale Obligation, but to (1) cable companies such as Liberty Cablevision and wireless broadband providers offering VoIP without needing access to UNEs and (2) the fact that the Puerto Rico consumer has long decided that mobile offerings are an alternative to fixed offerings, particularly when it comes to voice. Eliminating the UNE and Resale Obligation thus should have no impact whatsoever on this segment.

The business retail segment is even more competitive and less reliant on the UNE and Resale Obligation. PRTC ceased to have a majority of business wirelines in Puerto Rico years ago, and businesses in Puerto Rico for years now have been relying on fiber-based, hybrid coax-based, and wireless-based alternatives. While WorldNet has suggested that businesses in Puerto Rico (particularly small and medium sized businesses) need copper loops, it has provided no data whatsoever to support that point, and PRTC's experience in the market suggests otherwise. PRTC's most significant competitors in the retail business segment are providers that either do not rely on UNEs at all or that make very limited use of UNEs, *e.g.*, **[[begin highly confidential information]]** **[[end highly confidential information]]**, fixed wireless providers, and fiber-based providers. The fact that Liberty Cablevision **[[begin highly confidential information]]** **[[end highly confidential information]]**—is seeing growth among small and medium sized business customers, along with fixed wireless providers and fiber-based providers,³⁵ also belies the

³⁵ See *supra*, note 31.

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suggestion that UNE loops are essential for competition in that segment. Since the carriers driving competition in the retail segment are those that already do not use UNEs, the elimination of the UNE and Resale Obligation would have a negligible effect, if any, on competition in that segment.

In sum, publicly available Commission data, publicly available PRTC data, and confidential internal PRTC data that is all part of the record of this proceeding overwhelmingly indicates that there is competition for telecommunications in Puerto Rico and that, as in the rest of the United States, that competition is being driven by technology, not the UNE and Resale Obligation. The data-driven story is compelling and has not been rebutted by any Puerto Rico stakeholder. PRTC is overwhelmingly leasing more non-UNE services than UNE services, and the overall number of UNEs that PRTC leases to other carriers has been going down steadily. PRTC's main competitors in all segments of the Puerto Rico telecommunications sector, including *[[begin highly confidential information]]* *[[end highly confidential information]]*, are providers that either lease no UNEs whatsoever or lease a *de minimis* amount. And the overwhelming majority of non-ILECs that currently operate in Puerto Rico either never relied on UNEs or decided on their own to move away from UNEs and use instead tariffed circuit-based services and fiber-based services. As in the rest of the United States, access to UNEs and the resale of retail telecommunications offerings stopped mattering as a material element of competition in Puerto Rico years ago, and only a single carrier has resisted the winds of change and still clings to an anachronistic UNE-based business model. In a market that already has rendered the UNE and Resale Obligation irrelevant, its elimination could not affect competition negatively in any noticeable way.

III. The Costs of the UNE and Resale Regime

At the November 2018 Meeting, the Commission's staff also inquired about the costs that UNE and Resale Obligation imposed on PRTC. There is a practical difficulty in calculating the costs that are specific to the UNE and Resale Obligation when the wholesale department that is in charge of administering that obligation also engages in separate tariffed and non-tariffed commercial relationships with the same carriers that lease UNEs and/or resell telecommunications services and carriers that do not lease such services. Still, PRTC has been able compile some information that should aid the Commission in getting a sense of the unreasonable costs that the UNE and Resale Obligation impose, at least in the case of Puerto Rico.

First, PRTC estimates that *[[begin highly confidential information]]* *[[end highly confidential information]]* percent of employee time from its wholesale department is spent on issues related to the *[[begin highly confidential information]]* *[[end highly confidential information]]* carriers that lease UNE loops: *[[begin highly confidential information]]* *[[end highly confidential information]]*. That compares to *[[begin highly confidential information]]* *[[end highly confidential information]]* percent of revenue generated by the leasing of UNEs and the resale of telecommunications services.

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Second, the UNE and Resale Obligation has compelled PRTC to spend millions of dollars in consultants and outside attorneys since 1996. In 2018, when no arbitration proceedings took place, PRTC spent approximately **[[begin highly confidential information]]**

[[end highly confidential information]] on outside consultants and attorneys to address disputes and other issues raised by carriers with interconnection agreements. This, at a time when **[[begin highly confidential information]]**

[[end highly confidential information]]. Dealing with WorldNet's overly litigious approach has been a key driver of these and other expenses. Between 2004 and 2011 WorldNet thrice invoked arbitration under section 252 of the Communications Act, and in the last two arbitration proceedings it submitted (combined) over 600 discrete issues for resolution in those proceedings. Those two arbitration proceedings cost PRTC in excess of **[[begin highly confidential information]]** **[[end highly confidential information]]** in legal fees. WorldNet also generates disputes and litigation (both at the administrative level and in other fora) at a volume and frequency that is completely disproportionate to the relatively low revenue it generates for PRTC's wholesale department (on average little more than **[[begin highly confidential information]]** **[[end highly confidential information]]** per month) and unlike any other non-ILEC in Puerto Rico—including those that have larger shares of total connections.

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For the reasons set forth above, in the USTelecom Petition, and in the PRTC Reply Comments, the USTelecom Petition should be granted and Puerto Rico should not be excluded from said grant of forbearance.

Respectfully submitted,



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