

May 24, 2019

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
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:

WorldNet Telecommunications, Inc. (“WorldNet”) respectfully submits this ex parte letter in response to the ex parte letter filed in this docket by the Puerto Rico Telephone Company, Inc. (“PRTC”) on April 26, 2019. In its letter, PRTC responds to purported inquiries made by Commission staff in meetings with PRTC representatives. Specifically, PRTC provides what it claims are updated statistics about the Puerto Rico telecommunications market, arguing that these statistics are evidence of a competitive market, as well as a market in which UNE and resale competitors play a diminishing and immaterial role. WorldNet has already rebutted these PRTC contentions in previous submissions to the Commission in this proceeding, and the purportedly updated statistics provided by PRTC in its current submission add nothing more to the issue. Because of the importance of this proceeding to Puerto Rico, however, WorldNet feels compelled to provide a brief response.

First, the import of PRTC’s statistics about its purported loss of wireline subscribers over the past few years continues to be undercut by one undisputed fact: based on the FCC’s own data, PRTC controls nearly two-thirds of the Puerto Rico wireline market. By any measure, including in comparison to virtually every other US jurisdiction (compared to which PRTC’s market domination is some 14 percentage points higher than the average), that is not the thriving competitive market that PRTC claims.

And moreover, there is one statistic that bears on all these proceedings: 100%. That is the percentage of Uniendo funds that PRTC proposes to reserve to itself. That would just cement PRTC’s already substantial market dominance in Puerto Rico. With market dominance coming in and the lion’s share of additional Federal support money now requested, PRTC hardly needs regulatory relief to unbundle UNEs. PRTC wants to say here that it does not have market dominance, yet in Uniendo it points to its ubiquitous presence as the reason why it should get 100% of the support.

Second, none of the data provided by PRTC was included with the USTelecom petition.

To this end, in accordance with the Commission's own rules, none of the data provided by PRTC in its letter (at this very late date), even if it shows what PRTC claims it does (which it does not), is properly considered in the Commission's adjudication of the USTelecom petition – which must be based solely on what was provided in the petition as originally filed.¹ In fact, it is far from clear that PRTC has any standing to seek relief in this proceeding. It has not filed an independent petition, and is not a member of USTelecom. Liberty Cablevision of Puerto Rico, which notably has joined WorldNet in opposing forbearance relief in Puerto Rico on multiple grounds, made the standing point in detail in its filings at the early stage of this proceeding.²

Third, PRTC, again, makes no real attempt to address the proverbial elephant in the room when it comes to evaluating the anticipated effect of forbearance on Puerto Rico – i.e., the fact that, economically, Puerto Rico currently bears no resemblance to any other US market (e.g., a historic government bankruptcy, sustained negative economic growth, nationally unrivaled unemployment levels, a shrinking tax base due to material population losses, and historic hurricane damages).³ These are issues that fundamentally undercut or, at the very least, require focused special consideration of the validity of the basic assumptions underlying the entirety of the USTelecom petition as applied to Puerto Rico.⁴ Simply put, and no matter what any party asserts about the merits of forbearance anywhere else, no one can argue that the market disruption will not be overwhelming in Puerto Rico. Companies will be forced to migrate entire operations, complex network arrangements, and economic and investment models, if, and we emphasize if, they are able to survive. These efforts will surely take them away from the critical tasks of hurricane recovery, restoration, and planning, something this Commission has emphasized as a priority and an effort the objective Puerto Rico Regulatory Board has said in this proceeding is critically needed from CLECs. PRTC, again, effectively ignores these points.

Fourth, PRTC's claim that "eliminating the UNE and Resale Obligation would not affect competition negatively" because of the purportedly small number of providers in Puerto Rico utilizing these facilities and services to provide telecommunications in Puerto Rico is utterly simplistic and wrong. It is entirely misleading and inappropriate to measure the impact of forbearance based on the number of UNE or resale competitors or the raw percentage of the telecommunications market that they hold.

To begin with, as documented in WorldNet's other submissions in this proceeding, forbearance will undoubtedly impact thousands of Puerto Rico residents and businesses, by denying to them their chosen communications services and/or service providers and, in some cases, requiring them to incur forced, unwanted service transition burdens and costs. Just as providers will endure major market disruption, so too will end user customers. Many businesses who have come to rely on their chosen provider will themselves spend time shifting

¹ See 47 C.F.R. § 1.54(b).

² See 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, Comments of Liberty Cablevision of Puerto Rico, LLC at 5-8 (filed Aug. 6, 2018).

³ See, e.g., 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, Comments of WorldNet Telecommunications, Inc. at 5-10 (filed Aug. 6, 2018).

⁴ Perhaps most importantly, USTelecom, the petition in this proceeding, has also not meaningfully addressed these special circumstances presented in Puerto Rico.

telecommunications arrangements (and paying higher costs) instead of attempting to resuscitate an economy that has been in free fall for some ten years (with no real recovery in sight for ten more years that would not depend on major U.S. government subsidies). The loss of UNE and resale obligations may even lead to the complete loss of providers that depend on these obligations to reach customers, with the attendant immediate impact of, among other things, significant job losses and potentially millions of dollars in stranded investment. Puerto Rico's economy is, even more than a year after the 2017 hurricanes, struggling. It is simply not in a position, even if just in the short term, for thousands of residents and businesses to absorb price increases on critical communications services, the cost and burden of a forced transition to new services and/or new providers, job losses, or stranded investment.

In addition, as also already documented in WorldNet's other submissions, it is a fallacy that the naked number of UNE or resale providers and/or the percentage of the market that they serve indicate the scope of the role that they play in the Puerto Rico market. From an investment standpoint, WorldNet itself has made over \$40 million of investments in next-generation and broadband facilities, including, state-of-the-art IP-based switching facilities, fiber, and fixed wireless. It compliments those facilities based investments with UNEs. From a service standpoint, WorldNet is innovating with things like cloud-based solutions, including hosted telephony, virtual servers, and data analytics. Indeed, WorldNet was one of the first providers in Puerto Rico to invest in and utilize an IP-based network. And, for years, PRTC refused IP-based interconnection with WorldNet, based on the somewhat startling admission that it lacked the capability to do so.⁵ On top of all of this, WorldNet has also been an industry leader in Puerto Rico to improve telecommunications service quality, if not the industry leader. Historically, Puerto Rico has struggled (to put it mildly) with service quality issues, with Puerto Rico consumers never enjoying near the same level of service made available to consumers in the US mainland. In 2004, WorldNet single-handedly took action to change this by proposing for its interconnection agreement with PRTC a detailed list of improved performance standards for PRTC, along with associated liquidated damages. PRTC opposed these changes, based on the contention that, in effect, the standard should be whatever PRTC has already set up its systems and process to do. On this basis, PRTC challenged WorldNet's proposals all the way to the United States Court of Appeals for the First Circuit. Undaunted, WorldNet, a smaller company forced to litigate this and multitude of other issues just to survive, ultimately prevailed, establishing new, much higher benchmarks for service in Puerto Rico.⁶ Absent UNE based competition, this achievement would not have occurred. And, in the wake of this history, it borders on the absurd that PRTC is now arguing (or that the Commission should even consider) that, in addition to giving PRTC a "right-of-first refusal" to hundreds of millions of dollars of

⁵ See, e.g., In the Matter of WorldNet Telecommunications, Inc. Petition for Arbitration Pursuant to Section 47 U.S.C. 252(b), JRT-2010-AR-0001, Report and Order at Appendix B, Issue 87 (Sept. 2, 2010) ("WorldNet Position: WorldNet should be able to interconnect with PRTC using IP signaling to the extent it is technically feasible. PRTC Position: PRTC does not have an internet protocol ("IP") switch, and neither PRTC tandem has IP trunking. Resolution: According to PRTC witness Correa, PRTC does not have an IP switch at present and PRTC does not have an IP connection to anyone . . . In the event that PRTC activates an IP switch with this capability, WorldNet may request the use of IP signaling during the term of this ICA.").

⁶ See WorldNet Telecommunications, Inc. v. Puerto Rico Telephone Company, Inc., 497 F.3d 1 (1st Cir. 2007) (affirming as lawful the Board's approval of WorldNet proposals for stricter service performance standards for PRTC that required a superior level of service than that provided by PRTC to its own end user customers and for liquidated damages associated with such standards).

Uniendo a Puerto Rico funding from the Commission, PRTC should also be relieved (through forbearance) of all obligations to share what is, and will probably continue to be, a largely publicly-funded network with those that have actually done the most to improve telecommunications service quality in Puerto Rico over the past two decades.

In its current letter, PRTC has tried to cast WorldNet as unduly litigious in its efforts to improve PRTC's service in Puerto Rico. But, that is the pot calling the kettle black. The reality in Puerto Rico over the past twenty years has been that PRTC made sure that litigation was the only way to improve PRTC service quality or to obtain PRTC's compliance with some of the most basic requirements of federal and Puerto Rico law. PRTC baldly seeks to lay blame at WorldNet's feet for the hundreds of issues presented in the interconnection agreement arbitration proceedings between PRTC and WorldNet, but conveniently omits the fact that each proceeding was premised by PRTC demanding that WorldNet accept hundreds of pages of completely new and unreasonable contract provisions - a fact that was proven by the Regulatory Board's ruling in WorldNet's favor on the vast majority of them. Indeed, PRTC's proposals demonstrably fell short of basic federal and Puerto Rico legal obligations, and they actually undid previously negotiated, and even arbitrated, provisions and arrangements. PRTC also omits the fact that, in these arbitrations, WorldNet prevailed on the vast majority of issues, and that in other proceedings as well, PRTC was consistently found to have been in violation of interconnection agreement obligations, as well as federal and Puerto Rico legal requirements.⁷ Yes, the price of UNE and resale competition in Puerto Rico has been litigation, but it is completely misleading for PRTC to lay the blame for this on anyone but itself. As a company owned initially by the government, then Verizon, and now Carlos Slim, PRTC has not hesitated to force much smaller companies like WorldNet to litigate in order to maintain a presence in the local

⁷ See e.g., Puerto Rico Telephone Co. Inc. v. WorldNet Telecommunications, Inc., Civ. No. 14-1062 (SCC), Opinion and Order at 39 (D. Puerto Rico 2014) (confirming an arbitration award rendered in WorldNet's favor and requiring PRTC to pay WorldNet's attorneys' fees by finding that "Rule 44.1(d) of Puerto Rico's Rules of Civil Procedure require the imposition of fees against a party 'has acted obstinately or frivolously' . . . Here, as noted above, I find that PRTC has been obstinate: it has repeated losing arguments . . . despite having previously lost on the same issues in two other fora. Those arguments were, moreover, largely frivolous and involved misconstruing the record of the arbitration. And the claims that PRTC made to this court were ones it had waived on multiple grounds. As such, I conclude that PRTC's primary purpose in filing its motion to vacate the Final Award was further delaying WorldNet's recovery. I therefore find that attorneys' fees and costs are warranted."); WorldNet Telecommunications, Inc. v. Puerto Rico Telephone Co. Inc., Case No. 50 494 T 00355 12, Final Award (Int'l Ctr for Dispute Resolution 10/24/13) (rejecting PRTC's attempt to charge tariff rates for UNEs and ordering the payment of damages and all arbitration costs); WorldNet Telecommunications, Inc. and Puerto Rico Telephone Co. Inc., Case No. JRT-INT-0036 (DS1-DS3), Order Granting Motion for Order to Provision DS1 and DS3 Orders (J.R.T.P.R. Aug. 1, 2012) (granting WorldNet's request for emergency relief by finding that PRTC was violating the parties' interconnection agreement and federal and Puerto Rico law by rejecting WorldNet DS1 and DS3 UNE orders).

telecommunications market.⁸ In short, while PRTC attempts to portray its legal and other costs over the years as the dire consequence of regulatory compliance, in reality, those costs are a more accurate reflection of a PRTC strategy to force litigation in order to attain reasonable interconnection arrangements

In short, WorldNet, and potentially other UNE and resale providers in Puerto Rico, have been the leading agents for much needed service quality improvements and the transition to and deployment of next-generation services. Unlike anywhere else, they have been a critical and necessary part of the Puerto Rico market in ensuring that ILEC practices have been just and reasonable, in protecting Puerto Rico consumers from an incumbent that has its origins as a state-owned monopoly, and in actively advancing the public interest in Puerto Rico. Although there is still much work to do, Puerto Rico's telecommunications markets simply would not be anywhere near as advanced as they are today without UNE and resale requirements. Damaging or removing competitors would be a giant step backwards in Puerto Rico's telecommunications market and a return to the "bad old days" when the giant sized incumbent called the shots, not in the interest of Puerto Rican consumers, but rather, in the interest of itself. It is utterly misleading and false for PRTC to now claim that the elimination of these unbundling requirements, through forbearance, would have no negative impact on Puerto Rico.

Respectfully submitted,

/s/ Richard Davis

Richard Davis

Outside Counsel

WorldNet Telecommunications, Inc.

⁸ PRTC's corporate parent, América Móvil, owned by Carlos Slim, is notorious for its litigiousness and monopolistic practices. See, e.g., Billionaire Carlos Slim's America Movil Given 65 Days To Comply With New Antitrust Measures, Dolia Esteves, Forbes, May 9, 2017 (<https://www.forbes.com/sites/doliaestevez/2017/03/09/billionaire-carlos-slimes-america-movil-given-65-days-to-comply-with-new-antitrust-measures/#23eeb9a3bc0d>) ("América Móvil always challenges everything. It's probably the most litigious company in Mexican history."); How Slim Got Huge, Brian Winter, FP, Oct. 12, 2009 (<https://foreignpolicy.com/2009/10/12/how-slim-got-huge/>) ("Slim has been widely accused of monopolistic practices"); Carlos Slim's America Movil Laughs At Mexico's Monopoly Busting, Brian Solomon, Forbes, July 9, 2014 (<https://www.forbes.com/sites/briansolomon/2014/07/09/carlos-slimes-america-movil-laughs-at-mexicos-monopoly-busting/#41d0454d3968>).