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June 11, 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*<sup>1</sup> 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 blue ink signature, likely of Eduardo R. Guzman, written over a horizontal line.

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<sup>1</sup> *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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Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. d/b/a Claro ("PRTC") hereby responds to the ex parte letters that WorldNet Telecommunications, Inc. ("WorldNet") filed in the instant proceeding on March 1, 2019, and on April 22, 2019 (together, the "WorldNet Ex Parties").<sup>1</sup> As explained in more detail below, the arguments in the WorldNet Ex Parties are either supported by little more than sweeping generalizations and unsubstantiated rhetoric or are refuted by data that PRTC already has submitted in the instant proceeding, particularly in the ex parte letter that PRTC filed on April 26, 2019 ("PRTC April Ex Parte"). As was the case before the WorldNet Ex Parties were filed, there is no record-based justification to exclude Puerto Rico from any forbearance relief that the Commission may grant in response to the Petition for Forbearance that USTelecom – The Broadband Association filed on May 4, 2018 in the instant proceeding ("Petition").<sup>2</sup>

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<sup>1</sup> Letter from Richard Davis, Counsel to WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-141 (filed Mar. 1, 2019) ("WorldNet March Ex Parte"); Letter from Richard Davis, Counsel to WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-141 (filed Apr. 22, 2019) ("WorldNet April Ex Parte").

<sup>2</sup> Petition for Forbearance of USTelecom – The Broadband Association, *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 (filed May 4, 2018).



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# **I. UNREFUTED DATA CONTRADICTS WORLDNET’S ARGUMENT THAT PUERTO RICO IS AN OUTLIER WHEN IT COMES TO THE STATE OF COMPETITION**

The threshold argument in the WorldNet March Ex Parte is that PRTC’s showing that Puerto Rico is not an outlier when it comes to competition “defies credulity.”<sup>3</sup> WorldNet argues that PRTC purportedly has 62 percent of “wireline market share in Puerto Rico”<sup>4</sup> and that Puerto Rico in economic terms “bears no resemblance to any other US market, presenting utterly unique issues,” including the “historical government bankruptcy, sustained negative economic growth, nationally unrivaled unemployment levels, a shrinking tax base due to material population losses, and historical hurricane damages.”<sup>5</sup> WorldNet makes a similar argument in the WorldNet April Ex Parte, claiming that Puerto Rico “is a market still dominated by the historical monopoly,” and relying again on Puerto Rico’s “economic crisis” to justify excluding Puerto Rico from the forbearance relief requested in the Petition.<sup>6</sup>

There are two fatal problems with WorldNet’s argument. First, it is not supported by data or empirical evidence—and it is, in fact, contradicted by data in the record of this proceeding that WorldNet has ignored. Second, it is based on the flawed assumption, which has been disproven in this proceeding, that challenging economic conditions somehow will preclude what *already* has happened in Puerto Rico: the emergence of a competitive market and the switch away from services that depend on the UNE and Resale Obligation.

## **A. WorldNet’s Argument Is Not Supported by Facts**

WorldNet’s theory that Puerto Rico is an outlier is based on rhetoric, not facts. While PRTC has relied on extensive public data from the Commission and the Puerto Rico Telecommunications Bureau (“PRTB” or “Bureau”), in addition to producing its own internal wholesale data, WorldNet’s approach in this proceeding has consisted of making sweeping statements and failing to submit *any* data of its own to respond to the sizeable amount of data that PRTC has submitted and/or relied on in this proceeding. The result: more than one year after the Petition was filed, WorldNet has not refuted any of the data that PRTC has presented in this proceeding; has not shown that any of the data that PRTC has presented is inaccurate; and has not submitted any proprietary data to support its theory that Puerto Rico is an outlier when it comes to competition and the irrelevancy of the UNE and Resale Obligation. Indeed, WorldNet has not submitted for the record of this proceeding such basic data as the number of UNE loops that it leases from PRTC; the number of UNE dedicated transport facilities that it leases from PRTC; its share of total residential wireline connections and total business wireline connections in Puerto Rico; or the number of Business Data Services (“BDS”) facilities that it leases from

<sup>3</sup> WorldNet March Ex Parte at 2.

<sup>4</sup> WorldNet April Ex Parte at 3.

<sup>5</sup> WorldNet March Ex Parte at 2.

<sup>6</sup> WorldNet April Ex Parte at 3; *id.* at 6.

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PRTC and other providers. Nor has WorldNet presented any historical data showing changes over time to its customer base or the total number of UNE loops and UNE dedicated transport that it has leased from PRTC. WorldNet’s preference for arguing in generalities speaks volumes in this context.<sup>7</sup>

WorldNet’s contention that PRTC has 62 percent of “wireline market share in Puerto Rico”<sup>8</sup>—the only statistic to which WorldNet cites in the WorldNet Ex Partes to support its “outlier” theory—does little to make up for its dependence on rhetoric or to support its theory that the UNE and Resale Obligation are necessary to promote competition in Puerto Rico today.

First, the Commission should be wary of generic references to the “wireline market” in Puerto Rico and WorldNet’s careless use of the term “monopoly.” At a time when fixed wireless, mobile and over-the-top offerings are routinely used by customers as replacements for wireline services—and when younger demographics increasingly do not have a wireline connection at all—focusing exclusively on the number of total wireline connections provides an incomplete picture of the competitive options that consumers have and the extent to which consumers already are relying on options that do not depend on the UNE and Resale Obligation. Not only is WorldNet precluded from seriously arguing that Puerto Rico is an exception to this trend given the undisputed data that PRTC has submitted and/or referred to in this proceeding, but it is no longer possible to speak of a PRTC “monopoly” in Puerto Rico when it comes to how consumers choose to communicate with others and how they connect to the internet.

Second, WorldNet’s argument appears to be based on outdated data for total wireline connections in Puerto Rico.<sup>9</sup> What WorldNet does not mention is that PRTC’s switched access lines have continued to drop since 2016 (when they stood at 494,000) to the point where, as of December 31, 2018, they had fallen to **[[begin highly confidential information]]**  
**[[end highly confidential information]]**.<sup>10</sup> And data from the PRTB show that PRTC’s share of total wireline connections has continued to fall as well: as of March 31, 2019, the Bureau reported 672,857 total wireline connections (including VoIP) in Puerto Rico, out of which only **[[begin highly confidential information]]**  
**[[end highly confidential information]]** were PRTC switched access lines.<sup>11</sup> In sum, examining total

<sup>7</sup> The notion that PRTC has focused on “cherry-picked stats,” WorldNet March Ex Parte at 2, rings particularly hollow under these circumstances. PRTC has shared and explained the import of voluminous amounts of data in this proceeding, even when some of the data at first glance did not appear to benefit PRTC’s position in this case. The contrast with WorldNet’s approach is stark.

<sup>8</sup> WorldNet April Ex Parte at 3.

<sup>9</sup> Although it does not provide a citation, WorldNet appears to be relying on data from the Commission for June 30, 2016, the most recent period for which the Commission has released Puerto Rico data, *see* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Voice Telephone Services: Status as of June 30, 2017*, Nationwide and State-level Data for 2008-Present (rel. Nov. 2018) (“*FCC Voice Telephone Services Report as of June 30, 2017*”).

<sup>10</sup> *See* PRTC April Ex Parte at 2.

<sup>11</sup> *See* Puerto Rico Telecommunications Bureau, *Estadísticas de la Industria de las Telecomunicaciones en Puerto Rico* (March 2019); Puerto Rico Telephone Company, Inc. d/b/a Claro, Form TRB-200-M (Mar. 2019). PRTC is



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wireline connections *today* lends support to a conclusion that does not favor WorldNet’s “outlier” theory: that there is a competitive market in Puerto Rico that is quickly turning even more competitive as switched access lines, and particularly ILEC switched access lines, are replaced by other technologies and/or the services of non-ILECs that do not need the UNE and Resale Obligation to compete.

Third, WorldNet fails to mention that total wireline connections in Puerto Rico are comprised mostly of residential lines, a segment that WorldNet and other CLECs *ignored* for more than 20 years (notwithstanding the availability of the UNE and Resale Obligation—and, for a period, the UNE-P regime—during that time).<sup>12</sup> WorldNet cannot be allowed to complain that PRTC’s share of residential wireline connections is higher than the ILEC national average when WorldNet’s own business decision (and those of similarly situated CLECs) to ignore the residential segment for more than two decades contributed to that discrepancy. Nor can WorldNet seriously point to the residential segment to argue that the elimination of the UNE and Resale Obligation would affect competition negatively when it is undisputed that the UNE and Resale Obligation has played—and currently plays—*no meaningful role* in providing residential consumers the competitive options that they enjoy.<sup>13</sup>

Fourth, the WorldNet Ex Parties effectively leave undisputed the numerous other factual showings that PRTC has made to demonstrate that Puerto Rico is very much aligned with the rest of the United States when it comes to the critical question in this case: whether the UNE and Resale Obligation is necessary *today* to promote competition. To illustrate:

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relying on data from the Puerto Rico Bureau in this instance because for reporting periods after June 30, 2016, the Commission has released Puerto Rico wireline data that includes only PRTC connections.

<sup>12</sup> WorldNet has admitted as much, *see, e.g.*, Comments of WorldNet Telecommunications, Inc. at 3, *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket No. 18-143, WC Docket No. 10-90, WC Docket No. 14-58 (July 26, 2018) (“WorldNet does not have the subscriber counts that these other providers have, largely because of WorldNet’s focus on nonresidential, business consumers.”); *accord* Letter from Richard Davis, counsel to WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2, WC Docket No. 18-143 (May 24, 2019). As PRTC has shown, the residential consumer today has competitive options ranging from VoIP service offered by the incumbent cable company, Liberty Cablevision, over-the-top providers of interconnected VoIP, and fixed wireless and mobile options, *see* PRTC April Ex Parte at 7-8; *id.* at 13. In a sign of the extent of this competition, which does not depend on the UNE and Resale Obligation, from 2008 to 2017 PRTC’s residential switched access lines decreased by more than 34 percent, while non-ILEC residential wireline connections (including VoIP) increased by 47 percent from 2008 to 2016 (the last year for which the Commission has released data for non-ILEC residential wireline connections in Puerto Rico), *see* PRTC April Ex Parte at 7.

<sup>13</sup> Liberty Cablevision and the fiber-based and wireless-based providers that compete in the residential segment do not lease UNEs from PRTC or resell PRTC telecommunications services under section 251(c). And as PRTC has noted, during the last nine years PRTC’s residential switched access lines have decreased by 34 percent while non-ILEC residential wireline connections (including VoIP) have increased by more than 47 percent, *see* PRTC April Ex Parte at 7.

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- As in the rest of the United States, ILEC switched access lines in Puerto Rico have decreased significantly since 2000;<sup>14</sup>
- As in the rest of the United States, Non-ILEC wireline connections (including VoIP) have increased in Puerto Rico at a rapid pace since 2008;<sup>15</sup>
- As in the rest of the United States, ILEC business switched access lines in Puerto Rico have experienced a significant reduction since 2008;<sup>16</sup>
- As in the rest of the United States, the ILEC's share of total business wireline connections in Puerto Rico has dipped below 50 percent;<sup>17</sup>
- The number of mobile subscriptions as a share of total voice connections in Puerto Rico as of 2016 is comparable to that at the national level;<sup>18</sup>
- The ratio of mobile to wireline subscriptions in Puerto Rico as of 2016 is comparable to that at the national level;<sup>19</sup>
- As in the rest of the United States, there is a competitive market in Puerto Rico for replacements to DS1 and DS3 UNE dedicated transport;<sup>20</sup>

<sup>14</sup> See PRTC April Ex Parte at 4. PRTC's switched access lines decreased by more than 62 percent between 2000 and 2016; during that same time, ILEC switched access lines at the national level decreased by 74 percent, *see FCC Voice Telephone Services Report as of June 30, 2017*, Nationwide and State-level Data for 2008-Present.

<sup>15</sup> See PRTC April Ex Parte at 5 (explaining that non-ILEC wireline connections have increased by 47 percent between 2008 and 2016). During that same time, non-ILEC wireline connections at the national level increased by 42 percent, *see FCC Voice Telephone Services Report as of June 30, 2017*, Nationwide and State-level Data for 2008-Present.

<sup>16</sup> Between 2008 and 2016, ILEC business switched access lines in Puerto Rico decreased by 40 percent, compared with 50 percent at the national level, *see FCC Voice Telephone Services Report as of June 30, 2017*, Nationwide and State-level Data for 2008-Present.

<sup>17</sup> By the end of 2016, the ILEC share of total business connections in Puerto Rico stood at 48 percent, *see* PRTC Reply Comments at 14-15, while the ILEC share of total business connections at the national level stood at 45 percent, *see also FCC Voice Telephone Services Report as of June 30, 2017*, Nationwide and State-level Data for 2008-Present. Data from the Form 477 that PRTC filed in March 2018 suggests that PRTC's share of total business wireline connections had decreased to **[[begin highly confidential information]]** **[[end highly confidential information]]** percent as of December 2018, *see* PRTC April Ex Parte at 8.

<sup>18</sup> As of 2016, mobile subscriptions represented 80 percent of total voice connections in Puerto Rico, while at the national level they represented 73 percent of total voice connections, *see* PRTC April Ex Parte at 5; *FCC Voice Telephone Services Report as of June 30, 2017*, Nationwide and State-level Data for 2008-Present.

<sup>19</sup> In 2016, the ratio of mobile to wireline connections in Puerto Rico was almost 4:1, *see* PRTC April Ex Parte at 5, while at the national level the ratio was 3:1, *see FCC Voice Telephone Services Report as of June 30, 2017*, Nationwide and State-level Data for 2008-Present.

<sup>20</sup> *See Business Data Services in an Internet Protocol Environment*, Report & Order, 32 FCC Rcd 3459 (2017) ("BDS Order").



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- In contrast to other jurisdictions in the United States, there is a competitive market in every municipality in Puerto Rico for replacements to DS1 and DS3 loops;<sup>21</sup>
- As in the rest of the United States, the number of UNEs that non-ILECs lease and the number of telecommunications services that non-ILEC resell has plummeted;<sup>22</sup>
- As in the rest of the United States, non-ILECs have shifted away decidedly from the use of UNEs to compete with PRTC;<sup>23</sup>
- As in the rest of the United States, the vast majority of non-ILEC lines in Puerto Rico are *not* served by carriers that rely on UNEs.<sup>24</sup>

The point is plain: WorldNet’s “outlier” theory is simply not supported when the totality of the relevant data is considered.

**B. Competition Has Flourished in Puerto Rico’s Telecommunications Market Despite the Challenging Economic Conditions**

WorldNet’s argument also is based on the faulty assumption that the economic challenges that Puerto Rico faces preclude the Puerto Rico telecommunications sector from being competitive and non-reliant on the UNE and Resale Obligation. In fact, the *opposite* is true.

While the challenging economic conditions in Puerto Rico have contributed to population loss and a reduction in total wireline connections (as the data that PRTC has shared with the Commission show), the data show that competition has thrived and that PRTC’s share of total wireline connections in Puerto Rico has decreased dramatically during that time. Data that WorldNet has ignored (even though it is publicly available) show that during the challenging economic times to which WorldNet alludes (1) it has been PRTC—not the non-ILECs—that has suffered disproportionately from reductions in switched access lines; (2) the non-ILEC share has continued to *increase* even as total wireline connections decrease; (3) mobile subscriptions have continued to *increase* and have clearly become a preferred method of communication; (4) the market for Business Data Services became competitive across the island; (5) PRTC’s share of total wireline connections in the business segment fell to—and have since stayed—under 50

<sup>21</sup> See *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 No. 16-143, WC Docket No. 05-25, RM-10593 (May 15, 2017).

<sup>22</sup> See PRTC April Ex Parte at 9; PRTC Reply Comments at 20-23.

<sup>23</sup> See PRTC April Ex Parte at 9-12.

<sup>24</sup> PRTC has estimated that less than 4 non-ILEC wireline connections in Puerto Rico rely on UNE loops, see PRTC April Ex Parte at 10. USTelecom has reported that well over 90 percent of non-ILEC wireline connections do not rely on the UNEs, see, e.g., Letter from Patrick R. Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom—The Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-141 (May 22, 2019).

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percent; and (6) customers and providers continue to move away from the TDM-based services available with UNEs and Resale in favor of wireless and VoIP technologies.<sup>25</sup>

Moreover, during these economically challenging times the switch away from services that depend on the UNE and Resale took off and has not been abated. During this time not only did the number of UNEs that PRTC leases decrease dramatically, but the number of non-ILECs that chose not to depend on the UNE and Resale Obligation multiplied, as did their investment in their own fiber-based, hybrid coax fiber-based, and wireless-based infrastructure—a bet on the future of telecommunications of Puerto Rico that does not depend on the UNE and Resale Obligation.

In sum, during the challenging economic conditions that WorldNet claims preclude a transition away from the UNE and Resale Obligation two things have happened the completely contradict WorldNet’s theory: (1) carriers have prepared for and have transitioned to business models that do not depend on the UNE and Resale Obligation and (2) customers have voluntarily switched to services that do not rely on the UNE and Resale Obligation. Puerto Rico undoubtedly is facing challenges as it recovers from Hurricanes Irma and Maria, but the ability to transition to a world without the UNE and Resale Obligation is *not* one of them.<sup>26</sup>

## II. **WORLDNET OVERSTATES THE IMPORT OF THE LIMITED OBJECTIONS THAT HAVE BEEN FILED TO THE EXTENSION OF FORBEARANCE RELIEF TO PUERTO RICO**

WorldNet also points to the objections to the Petition voiced by Liberty Cablevision and the PRTB to argue that parties with “on-the-ground experience and knowledge of Puerto Rico, including providers and regulators, including the dominant cable company, have advised the Commission that UNE and resale forbearance is a bad for Puerto Rico in its current state.”<sup>27</sup> WorldNet is overstating its case.

Other than WorldNet, the *only* Puerto Rico-based provider that to this day has opposed the extension to Puerto Rico of the forbearance relief requested in the Petition is Liberty Cablevision. Liberty has become PRTC’s most significant competitor even though ***[[begin highly confidential information]]***

<sup>25</sup> See PRTC April Ex Parte at 4-12.

<sup>26</sup> The Commission also should be wary of the implications of WorldNet’s argument that jurisdictions (or parts of a jurisdiction) where the economic conditions “bear[] no resemblance” to other parts of the United States necessarily are outliers when it comes to the propriety of forbearance from the UNE and Resale Obligation. As the Commission is well aware, the economic conditions of states in the United States (and geographic markets within a state) vary dramatically. The notion that jurisdictions that lag in terms of economic development, are facing fiscal challenges or demonstrate higher levels of poverty would automatically be considered outliers when it comes to the very different question of whether the state of competition in the telecommunications market in that jurisdiction has rendered the UNE and Resale Obligation unnecessary. The Commission should avoid this slippery slope.

<sup>27</sup> WorldNet March Ex Parte at 2.



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*[[end highly confidential information]]*, and it has not presented *any* data or evidence to rebut PRTC’s showings about the state of competition in Puerto Rico. That opposition to the Petition has come from the sole provider that clings to the UNE regime (*i.e.*, WorldNet) and a cable company that *[[begin highly confidential information]]* *[[end highly confidential information]]* (*i.e.*, Liberty Cablevision) is neither surprising nor remarkable. It hardly constitutes unbiased or special “on-the-ground” knowledge, especially when neither of these entities has provided any data to rebut PRTC’s well-supported showing that the UNE and Resale Obligation is irrelevant to competition in Puerto Rico today.

Moreover, while the PRTB has opposed the extension to Puerto Rico of the forbearance relief requested in the Petition, the Commission should consider two factors in determining how much weight to give to the PRTB’s position in this matter. First, the PRTB has not provided *any* data to support its claim that the UNE and Resale Obligation is necessary in the Puerto Rico market today (even though it has had plenty of opportunities to do).<sup>28</sup> Second, the timing of the PRTB’s filings in this case suggests that they were made based on an incomplete record, since at the time the PRTB may not have been aware that Liberty Cablevision *[[begin highly confidential information]]*

*[[end highly confidential information]]* or that the vast majority of non-ILEC lines in Puerto Rico today are not served by CLECs that rely on the UNEs and Resale Obligation. Third, the PRTB’s stated views conflict with those of at least one other statewide public official in Puerto Rico. Representative Jenniffer González-Colón, the sole representative of Puerto Rico in Congress, has expressed her disagreement with the proposal of “treating Puerto Rico differently from the rest of the state when it comes to the [Petition] and other nationwide deregulatory efforts that the [Commission] may be undertaking.”<sup>29</sup> The suggestion that there is a swell of opposition from parties with special knowledge of Puerto Rico is not supported by the record.

### III. DATA CONFIRM THAT WORLDNET IS THE ONLY PROVIDER CLINGING TO THE UNE AND RESALE OBLIGATION

WorldNet also objects to PRTC’s showing that it is clinging to an outdated business model and rejects that there this a “broader trend” in Puerto Rico toward fiber, arguing that it “defies the existing market” and “exists only in the imagination of those who argue it.”<sup>30</sup>

WorldNet’s argument is perplexing given the undisputed data that contradicts it. First, data that PRTC have shared with the Commission in this proceeding demonstrate that today

<sup>28</sup> See Letter from Eduardo R. Guzmán, counsel to Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-141 (May 14, 2019) (“PRTC May 14 Ex Parte”).

<sup>29</sup> Letter from Hon. Jenniffer González-Colón, U.S. House of Representatives, to Ajit Pai, Chairman, Federal Communications Commission, WC Docket No. 18-141 (Jan. 17, 2019).

<sup>30</sup> WorldNet March Ex Parte at 3.

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WorldNet is the *only* provider in Puerto Rico leasing UNEs at any noteworthy level. Only four providers are leasing UNEs at all: *[[begin highly confidential information]]*

*[[end highly confidential information]]*.<sup>31</sup> All the other providers in Puerto Rico are offering their services in Puerto Rico and competing aggressively without leasing a single UNE from PRTC. That leaves WorldNet as the outlier when it comes to the use of UNEs in Puerto Rico—a fact that WorldNet has not refuted based on any data.

Second, that same data show that providers in Puerto Rico have moved away decidedly from UNEs and have embraced non-UNE offerings, including fiber. As PRTC showed, the vast majority of non-ILEC lines in Puerto Rico today are *not* served by CLECs that rely on the UNE and Resale Obligation.<sup>32</sup> This shift is reflected at the wholesale level: 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, and non-ILECs are increasingly acquiring wholesale facilities (particularly fiber-based) from entities other than PRTC.<sup>33</sup> This move away from UNEs is a fact, not a product of PRTC’s “imagination.”

Finally, WorldNet’s statements questioning the trend away from circuit-based services is unfounded. The Commission has concluded that the market for Business Data Services in Puerto Rico is competitive,<sup>34</sup> and that competition comes from Liberty and its hybrid coax fiber network, providers of fiber-based facilities, and fixed wireless providers that offer point-to-point microwave connections (particularly for backhaul)—it does not come from providers that rely on circuit-based technologies. At the retail level, one of the primary factors behind PRTC’s long-term modernization plan, which relies on deploying fiber-to-the-home (“FTTH”) and high-capacity fixed wireless networks, is that its legacy circuit-based facilities increasingly fall short when it comes to competing in the residential and business segment with the offerings of its competitors, all of which are moving to new technologies to provide faster broadband services. The advent of 5G technology, which will allow any provider with access to wireless spectrum to compete with landline-based providers, will be even more transformative, especially to the extent

<sup>31</sup> 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’s Wholesale Services Department, only *[[begin highly confidential information]]* *[[end highly confidential information]]* percent corresponds to UNEs, *see* PRTC April Ex Parte at 12.

<sup>32</sup> *See* PRTC April Ex Parte at 10.

<sup>33</sup> *See id.* at 10-11.

<sup>34</sup> *See Business Data Services in an Internet Protocol Environment*, Report & Order, 32 FCC Rcd 3459 (2017); *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 No. 16-143, WC Docket No. 05-25, RM-10593 (May 15, 2017).



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that it accelerates wireless substitution.<sup>35</sup> That is the reality of the market in Puerto Rico and the competitive pressures that PRTC is experiencing today, not in a hypothetical future. If anything “defies the existing market,” it is WorldNet’s insistence on turning a blind eye to these changes.

#### **IV. WORLDNET’S SUGGESTION THAT THERE IS NO TRANSITION AWAY FROM COPPER IN PUERTO RICO IS CONTRADICTED BY THE FACTS**

WorldNet also questions whether “large-scale transitions to copper replacements” are taking place and argues that the supposed absence of this transition “belies any notion that all PRTC needs is relief from unbundling to unlock a dramatic deployment of advanced services in Puerto Rico.”<sup>36</sup> WorldNet’s assumptions and conclusions are flawed.

First, WorldNet’s argument fundamentally mischaracterizes the key question before the Commission in this proceeding. In considering the Petition, the question is not whether the ILEC “needs” forbearance to “unlock a dramatic deployment of advanced services,” but whether the enforcement of the UNE and Resale Obligation is necessary today to ensure that telecommunications services are offered at rates, terms, and conditions that are just and reasonable and not unjustly or unreasonably discriminatory, and whether its elimination would promote competitive market conditions.<sup>37</sup> That telecommunications services are offered today in Puerto Rico in a competitive environment, and that the UNE and Resale Obligation already has become irrelevant to that competitive environment, suggest that the UNE and Resale Obligation is not necessary under the applicable standard and should be subject to forbearance.

Second, and to the extent that it is relevant, WorldNet’s characterization of PRTC’s plans to deploy FTTH is misinformed. PRTC had developed plans to deploy FTTH and other technologies in Puerto Rico before Hurricanes Irma and María struck in September 2017. The Hurricanes, competitive pressures from Liberty and fixed wireless providers, and the Commission’s own broadband deployment initiatives have accelerated PRTC’s deployment of FTTH and fixed wireless facilities that can offer broadband speeds higher than those that could be offered through copper facilities. Indeed, PRTC already has deployed FTTH in areas where

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<sup>35</sup> PRTC already has announced to the Commission its plans to deploy a 5G fixed-wireless network, *see, e.g.*, Letter from Eduardo R. Guzmán, counsel to Puerto Rico Telephone Company, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, Attachment at 7, 11, WC Docket No. 18-240 (filed Mar. 29, 2019); *see also* Sharon Minelli Pérez, *Puerto Rico con Potencial de Convertirse en Pionero en la Tecnología 5G*, *El Nuevo Día* (Apr. 14, 2019) (<https://www.elnuevodia.com/negocios/empresas/nota/puertoricoconpotencialdeconvertirseenpioneroenlatecnologia5g-2487788>) (highlighting the plans by non-ILEC providers to offer 5G-based services to compete with landline offerings); T-Mobile US Q4 2018 Earnings Conference Call Transcript (Feb. 8, 2019) (explaining that incremental revenues from 5G would come from “more and more users picking wireless technologies instead of other technologies for their connectivity.”) (<https://www.fool.com/earnings/call-transcripts/2019/02/08/t-mobile-us-tmus-q4-2018-earnings-conference-call.aspx>).

<sup>36</sup> WorldNet March Ex Parte at 3.

<sup>37</sup> *See* 47 U.S.C. § 160(a)(1)-(3); *United States Telecom Ass’n v. FCC*, 825 F.3d 674, 727 (D.C. Cir. 2016); *see also* Petition at 20-21.

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PRTC's last-mile copper infrastructure was *not* damaged by the Hurricanes,<sup>38</sup> and already is deploying a fixed wireless network in remote and low density areas that CLEC's like WorldNet have traditionally ignored.<sup>39</sup> As to areas impacted by the Hurricanes, PRTC already has informed the Commission that it plans to use FTTH to restore telecommunications service to a large portion of its client base.<sup>40</sup> The notion that there is no large-scale transition away from copper is simply wrong.

Finally, PRTC notes that it is odd for WorldNet in particular to question the pace of this transition by PRTC, which requires massive capital investments and regulatory certainty, when WorldNet has led the charge during the last fifteen years in promoting the sort of burdensome regulatory measures and uncertainty that discourages investment. As PRTC has shown, WorldNet has a consistent history, dating back to at least 2003, of opposing deregulatory efforts before the Commission on the theory that Puerto Rico is never ready for such action.<sup>41</sup> WorldNet also has a history of advocating for the imposition of asymmetrical regulatory burdens that hinder investment in new technologies and promote regulatory uncertainty. For example:

- In 2010, WorldNet argued for the imposition a framework that attempts to delay (potentially protractedly) PRTC's ability to obtain unbundling relief under section 51.319(d) of the Commission's rules.<sup>42</sup> Instead of allowing PRTC to provide notice and invoke a transition period when unbundling relief is appropriate under the rules, WorldNet advocated for—and the PRTB imposed—a framework that requires

<sup>38</sup> See, e.g., *Claro announces 1<sup>st</sup> fiber optic infrastructure deployment to homes in Guaynabo*, New Is My Business (Mar. 15, 2019) (<https://newsismybusiness.com/claro-announces-1st-fiber-optic-infrastructure-deployment-to-homes-in-guaynabo/>).

<sup>39</sup> See, e.g., Letter from Eduardo R. Guzmán, counsel Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2, WC Docket No. 18-141 (Nov. 9, 2018).

<sup>40</sup> See Letter from Eduardo R. Guzmán, Counsel to Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 18-240 (May 3, 2019).

<sup>41</sup> See PRTC Reply Comments at 27-29; see also Letter from Lawrence Freedman, Counsel to WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 12-353 (filed Aug. 13, 2014) (opposing the elimination of the UNE-P regime in Puerto Rico on the theory that “unique circumstances in Puerto Rico” counseled for not including Puerto Rico in a “one size fits all” approach); Opposition of WorldNet Telecommunications, Inc. at 5, *Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules*, WC Docket No. 07-292 (filed Jan. 22, 2008) (opposing PRTC's request for conversion to price cap regulation because it was “not the time” to grant that relief”); Letter from David L. Bogaty, Chief Executive Officer, WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (July 13, 2015) (opposing changes to copper retirement rules by highlighting Puerto Rico's “struggling economy” and claiming that these reforms “could not come at a worse time for the citizens of Puerto Rico”).

<sup>42</sup> See *In re WorldNet Telecommunications, Inc.*, Report and Order, Appendix B, Case No. JRT-2010-AR-0001 (TRB Sept. 2, 2010).



participating in an administrative proceeding and obtaining an order from the PRTB before the transition period can start.<sup>43</sup>

- In 2011, when PRTC was proposing to break the cable monopoly of Liberty Cablevision by deploying IPTV service in Puerto Rico, WorldNet joined efforts to delay PRTC's deployment of this new technology and asked the local regulator to condition PRTC's ability to offer that innovative service on an decrease on UNE rates; this, even though the ability to offer video through a landline broadband network has *nothing* to do with interconnection under section 251 or the UNE and Resale Obligation.<sup>44</sup> PRTC prevailed against WorldNet's attempt to condition its IPTV deployment before the PRTB and the U.S. District Court for the District Court of Puerto Rico before the matter eventually was settled before the United States Court of Appeals for the First Circuit.<sup>45</sup>
- Only a few months ago, WorldNet advanced the theory that PRTC still was required to provide WorldNet access to a 64 kbps transmission path capable of voice grade service on PRTC fiber facilities that replace retired copper loops; this, even though the Commission in late 2015 granted all incumbent LECs forbearance from that obligation and did not grandfather existing interconnection agreements.<sup>46</sup>

Having consistently advocated against deregulation and for the imposition of asymmetrical regulatory burdens that discourage investment and add regulatory uncertainty, WorldNet has little standing to comment on any delays on PRTC's FTTH deployment.

## V. ELIMINATING AN OBLIGATION THAT ALREADY HAS BEEN RENDERED IRRELEVANT COULD NOT IMPACT COMPETITION NEGATIVELY

WorldNet also argues that granting forbearance would "hand additional market power" to PRTC and "would be a giant step backward."<sup>47</sup> This is yet another WorldNet theory that is contradicted by data and empirical evidence. Eliminating the UNE and Resale Obligation could not impact competition negatively because the UNE and Resale Obligation already has become irrelevant to competition in Puerto Rico. As PRTC has shown, it has become irrelevant to a wholesale market for transport and channel terminations above DS-1 capacity that the Commission has declared to be competitive across the entire island, as only a small fraction of

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<sup>43</sup> See *id.* WorldNet proposed a similar framework nationwide for copper retirements under section 51.332 of the Commission's rules, which the Commission rejected, see Reply Comments of WorldNet Telecommunications, Inc. at 8, *Technology Transitions Policy Task Force*, GN Docket No. 13-5 (Aug. 7, 2013).

<sup>44</sup> See Conditional Entry of Appearance and Request for Access to Confidential Information and Other Hearing Information, *In re Puerto Rico Telephone Co.*, Case No. JRT-2008-CCG-0002 (filed Aug. 8, 2011).

<sup>45</sup> See *Puerto Rico Telephone Co. v. Telecommunications Regulatory Board of P.R.*, Civil No. 11-1152 (D.P.R. Sept. 24, 2015).

<sup>46</sup> Response of WorldNet Telecommunications, Inc. at 2 n.1, *Copper Retirement Network Change Notification Filed by Puerto Rico Telephone Company, Inc. d/b/a Claro*, WC Docket No. 18-352 (filed Dec. 11, 2018).

<sup>47</sup> WorldNet March Ex Parte at 3.

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PRTC's wholesale revenues derive from the leasing of UNE dedicated transport.<sup>48</sup> And it has become irrelevant to a retail market where, as PRTC also has shown, (1) only one provider out of the more than 30 authorized to provide service in Puerto Rico relies on the UNE and Resale Obligation; (2) the leasing of UNEs has been decreasing consistently during the past five years; and (3) the vast majority of non-ILEC lines are not served by providers that rely on the UNE and Resale Obligation.<sup>49</sup> In other words, providers in Puerto Rico already have adjusted to, and are thriving in, a world without the UNE and Resale Obligation. Under these conditions, eliminating that which has become irrelevant would not move the needle, much less "hand additional market power" to PRTC. And as the market continues to evolve, landline providers will continue to rely more on fiber and, as T-Mobile already has predicted, will face increasing competition from wireless providers—all of which makes even more implausible the notion that eliminating the UNE and Resale Obligation would "hand additional market power" to PRTC.

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For the reasons set forth above, in the Petition, in the PRTC Reply Comments, and the ex parte communications that PRTC has filed in the instant proceeding, the USTelecom Petition should be granted and Puerto Rico should not be excluded from said grant of forbearance.

Respectfully submitted,



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<sup>48</sup> See PRTC April Ex Parte at 11-13

<sup>49</sup> See *id.* at 9-12.