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July 19, 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,

/s/ Eduardo R. Guzmán

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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 July 17, 2019 Puerto Rico Telephone Company, Inc. d/b/a Claro (“PRTC”) participated in a telephone call with Randy Clarke, Acting Legal Advisor for Wireline and Public Safety to Commissioner Geoffrey Starks. Additionally, on July 18, 2019 PRTC participated in a telephone call with Arielle Roth, Wireline Legal Advisor to Commissioner Michael O’Rielly. Participating on behalf of PRTC in both telephone calls were Francisco Silva, General Counsel, PRTC; David Blessing, outside economic consultant to PRTC; and the undersigned. During the telephone calls, PRTC explained that the Commission should grant forbearance to price-capped incumbent local exchange carriers (“ILECs”) from the obligation to offer telecommunications services for resale under section 251(c)(4) of the Communications Act (“Avoided Cost Resale”) and from the obligation to unbundle voice-grade copper loops (“DS0 Loops”). PRTC also urged the Commission to extend any such forbearance to Puerto Rico on the same terms that it is granted in the rest of the United States. Below, is a summary of PRTC’s presentation during the telephone calls.

First, PRTC stressed that DS0 Loop Forbearance would not have any impact on the majority of Puerto Rico consumers. As a threshold matter, only one carrier in Puerto Rico—*[[begin highly confidential information]]* *[[end highly confidential information]]*—leases DS0 Loops from PRTC. Since *[[begin highly confidential information]]* *[[end highly confidential information]]* does not serve the residential segment, these consumers would be unaffected by DS0 Loop forbearance. On the business side, only a small fraction of business customers are served by the DS0 Loops that *[[begin highly confidential information]]* *[[end highly confidential information]]* leases and that would be subject to forbearance. According to public statements that *[[begin highly confidential*

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information]] *[[end highly confidential information]]* has made in this proceeding, it has 3,000 small and medium-sized business and government customers.¹ To put things in perspective, this means that *[[begin highly confidential information]]* *[[end highly confidential information]]* serves less than 7 percent of the total number of small businesses in Puerto Rico² and, based on the Commission’s data, approximately 5 percent of total business wireline connections in Puerto Rico.³ The vast majority of business customers in Puerto Rico, including the majority of small and medium-sized businesses, would be completely unaffected by any transition away from the use of DS0 Loops.

Second, PRTC explained that no small or medium-sized business consumer in Puerto Rico would lose access to voice or broadband services if the Commission grants forbearance as to Avoided Cost Resale and DS0 Loops. Puerto Rico’s telecommunications business segment is competitive: PRTC has lost almost fifty percent of its business wirelines since 1999; as of November 2018, more than fifty percent of the business wireline connections in Puerto Rico were non-ILEC wireline connections; and an overwhelming majority of these non-ILEC business wireline connections are served by carriers that do not lease any DS0 Loops.⁴ Moreover, in Puerto Rico small and medium-sized businesses have various competitive options for voice and broadband service—none of which depends or relies on the provisioning of DS0 Loops or Avoided Cost Resale. Liberty, the cable company that provides broadband services in 76 percent of census blocks in Puerto Rico, offers VoIP along with broadband services to these consumers. At least three fixed wireless providers, including VPNet, AeroNet, and Neptuno Networks, likewise offer VoIP and broadband services to these consumers. And more traditional competitive LECs such as AT&T and Optivon also offer services to business customers in Puerto Rico mostly through the use of their own facilities.

In short, the range of options that are available to small and medium-sized businesses in Puerto Rico—and would continue to be available if the Commission grants forbearance—is not different from that would be available post-forbearance to small and medium-sized businesses in the rest of the United States. If, notwithstanding this data, the Commission remains concerned that some areas are not subject to competition, adopting a competitive market test and limiting forbearance to areas where there is competition would address that concern both in Puerto Rico and the rest of the United States. If the Commission considers adopting such a measure, PRTC suggests adopting a variation of the competitive market test that the Commission adopted for the when it decided to forbear TDM (DS3 and DS1) channel terminations from *ex ante* price regulation.⁵

¹ *[[begin highly confidential information]]*

[[end highly confidential information]].

² Publicly available data indicates that there are approximately 40,000 small businesses in Puerto Rico, *see, e.g.*, <https://www.sba.gov/sites/default/files/advocacy/2018-Small-Business-Profiles-Puerto-Rico.pdf>.

³ *See* Letter from Eduardo R. Guzmán, counsel to Puerto Rico Telephone Company, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, at 10 (Apr. 26, 2019) (“PRTC April Ex Parte”).

⁴ *See id.* at 8, 10.

⁵ *Business Data Services in an Internet Protocol Environment*, 32 FCC Rcd 3459, 3502-27 (¶¶ 94-144) (2017).

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Third, PRTC explained that forbearance would not preclude WorldNet from serving its current customers. As other carriers in Puerto Rico already do, WorldNet would be able to resell PRTC telecommunications services under section 251(b). WorldNet also would have the option of relying on fixed wireless and fiber facilities—whether deployed by itself or acquired from wholesale providers—much like every other non-ILEC in Puerto Rico already does. This would include a fixed wireless loop solution that PRTC has available for wholesale carriers as an alternative for analog DS0 loops. Moreover, if forbearance is granted, PRTC is willing to offer analog DS0 loops on a wholesale basis (based on commercial terms outside the context of section 251(c)) in areas where copper loops have not been retired per section 51.333 of the Commission’s rules.⁶ In short, forbearance would not prevent WorldNet from continuing to offer the same services that it offers today under the same conditions that apply to every other non-ILEC in Puerto Rico.

Fourth, PRTC expressed support for the 18-month transition period requested by USTelecom.⁷ As a threshold matter, the post-forbearance availability of facilities and services that are identical (from a provisioning and technical perspective) to those that would be subject to forbearance counsel against granting a transition period longer than the one requested in the Petition. That non-ILECs have known for years that they would not be able to rely on ILEC loops “forever”⁸—and have been subject to a regulatory regime that since 2015 has allowed for copper retirements based on no more than six-month notice—only lends additional support to the notion that a longer transition period is not necessary in this context.

PRTC also explained that the current situation in Puerto Rico does not justify granting a different transition period for Puerto Rico in this instance. As PRTC has shown, the competitive landscape in Puerto Rico—especially in the portion of the business segment that could be impacted by forbearance—is no different from that in the rest of the United States. This means that there is no basis for the proposition that a transition away from DS0 Loops and Avoided Cost Resale would lead to price increases; indeed, prices in the business segment in Puerto Rico are set by a competitive market served by providers that (except for a single carrier) do not use DS0 Loops to offer services and/or use Avoided Cost Resale only tangentially.

More importantly, the experience in Puerto Rico since Hurricane Maria has shown that DS0 Loops are unlikely to play any significant role in the reconstruction of networks and restoration of service. PRTC itself has recognized this in the post-Hurricane restoration plans that it has presented to the Commission, which show that the restoration of service will rely to a large degree on new technologies, not the continued use or expansion of DS0 Loops. Even in areas where the copper infrastructure did not suffer damage due to the Hurricane, PRTC’s long-term plans—which it has started to implement—call for the deployment of fiber and fixed wireless technologies to provide high-speed broadband (along with voice) to compete with cable,

⁶ 47 C.F.R. § 51.333.

⁷ Petition for Forbearance of USTelecom—The Broadband Association at 44, WC Docket No. 18-141 (May 4, 2018) (“Petition”).

⁸ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 32 FCC Rcd 11128, 11142 (2017).

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fixed wireless, and mobile providers. And PRTC's experience so far indicates that the other providers in Puerto Rico likewise are not treating DS0 Loops as key components of their reconstruction and restoration efforts. Indeed, today there still is only a single carrier that is leasing DS0 Loops or has expressed any interest in leasing DS0 Loops, and since the Hurricane the total number of UNE loops leased by non-ILECs has continued its marked downward trend—to the point where UNE loops represent less than 1 percent of total wireline and wireless connections in Puerto Rico.⁹ Under these circumstances, extending the transition period in Puerto Rico will only extend the life of the market disruptions inherent to the unbundling regime without having any discernible positive effect on the reconstruction of networks—all at a time when it is plain and undisputed that most providers in Puerto Rico are not using DS0 Loops to restore service.

Respectfully submitted,

/s/ Eduardo R. Guzmán

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cc: Randy Clarke
Arielle Roth

⁹ See PRTC April Ex Parte at 10. According to the FCC, there are 3.89 million total wireline and wireless connections in Puerto Rico. See <https://www.fcc.gov/voice-telephone-services-report>.