

July 23, 2019

**VIA ELECTRONIC FILING**

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

**Re: WC Docket No. 18-141**

Dear Ms. Dortch,

On July 22, 2019, a new ex parte submittal from Puerto Rico Telephone Company (“PRTC”) was posted to the Commission website (“Submittal”). Given the short notice and time frame, WorldNet has not had the opportunity to carefully review the filing, nor look at all at the confidential data submitted in this filing. Accordingly, WorldNet’s failure to rebut any specific point should not be interpreted to mean WorldNet’s agreement with such point. With that being said, WorldNet respectfully disagrees with the contentions and claims made in this PRTC Submittal, including for all the reasons previously set forth on this record. WorldNet reiterates its position that the circumstances in Puerto Rico post-Hurricane, as well as the ongoing economic instability on the island, continue to warrant and justify special consideration for Puerto Rico by the Commission regarding loops, including among other things, either a carve out, or, in the alternative, an extended sunset period similar to or longer than the Commission has already authorized for transport. WorldNet here briefly addresses some additional specific points raised in PRTC’s latest filing.<sup>1</sup>

PRTC contends that UNEs and copper based loops are not important to the Puerto Rico telecommunications market place. Undisputed record evidence shows PRTC is wrong. First, evidence shows that given the economic situation now, many Puerto Rico small businesses do not want, and cannot afford, services beyond UNE copper loops. As the Declaration of David Bogaty dated June 23, 2019 (“Bogaty Dec.”) shows, “...in the current economic climate of Puerto Rico, many Puerto Rico businesses do not need and are not looking for the extraordinary bandwidth and speeds of fiber-based technologies. They are looking for right-sized, functional, reliable and affordable communications services...” Further, given the unique circumstances of a horrific hurricane event and possibly more to come, copper UNE loops play an important role in hurricane response. In fact, “with the recurring threat of hurricanes... hospitals and other emergency service providers, specifically want copper-based services so that their services still function during power outages.” Bogaty Dec. The independent Puerto Rico Telecommunications Bureau has similarly stated that the hurricane and competitive conditions in

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<sup>1</sup> This filing is submitted as a reply to PRTC’s ex parte submission, as contemplated in 47 C.F.R. § 1.1203(c) and 47 C.F.R. § 1.1206(b)(2)(iv).

Puerto Rico compel the retention of UNE loops as an option. In its most recent filing (dated February 12, 2019—“Board Filing”), it states, undercutting PRTC’s assertion of a fully competitive marketplace, “[t]here are many areas in Puerto Rico that have not yet experienced robust competition.” The Board goes on to state that “[f]oreclosing the UNE/TELRIC avenue for such areas would impede the benefits of competition for these areas and would likely hamper competitive activity...” This is consistent with FCC data showing PRTC still controlling 62% of the wireline telecommunications marketplace. Further, the Board observes the unique hurricane situation in Puerto Rico by noting, “[t]he Board continues to affirm that the public interest is not served by granting the Petition [for forbearance] ... when infrastructure is damaged by adverse weather conditions, it is vital to have access to other networks upon which services can be provisioned in a timely manner and at established TELRIC rates.”

WorldNet believes it is incorrect to think that forbearance will not lead to price increases. The initial US Telecom petition acknowledged price increases would result from forbearance, and PRTC’s latest filing does nothing to dispel that concern. Yet price increases on an essential service are the *last* thing that Puerto Rico businesses need right now. “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)...” PRTC Submittal. Foreclosing other copper based UNE options flies in the face of evidence that shows that many Puerto Rico businesses neither want, nor can afford, such higher priced services right now.

Further, a commercial option for copper loops on a wholesale basis, as PRTC has put forth in its Submittal, is belied by the *reality* of its actions. According to the Bogaty Dec., “[o]verall, in my experience, there has been, and continues to be, a very real and important market demand and place in Puerto Rico for the services that WorldNet provides using UNEs and resale. WorldNet has actively tried to secure its service to this market by inviting PRTC to propose, and actively proposing to PRTC, commercial arrangements for WorldNet’s continuing access to the facilities that WorldNet is now using as UNEs and for resale. *PRTC has rebuffed these efforts, summarily refusing WorldNet’s proposals and declining to make its own offer of commercial terms for these facilities.*” Bogaty Dec. (emphasis added).

PRTC seeks to diminish WorldNet’s role in the Puerto Rico marketplace as a way of diminishing the impact of UNE loops. As WorldNet has explained in its previous filings in this proceeding, PRTC’s simplistic recitation of line counts belies the reality of what providers, like WorldNet, have meant, and still mean, to Puerto Rico’s telecommunications market. In point of fact, WorldNet has been for 23 years among the market leaders as a major player generally and in opening the market and specifically in pushing for quality services based upon measurable standards of performance. WorldNet has been in the forefront of advanced services such as IP, and technology such as cloud. PRTC claims that “DS0 Loop Forbearance would not have any impact on the majority of Puerto Rico consumers.” This does not at all reflect the disproportionately essential and positive impact WorldNet as a UNE loop provider has had on the market. Using UNEs as set forth in the Telecommunications Act (and, importantly, as also provided in Puerto Rico’s Law 213, its own version of the Telecommunications Act), WorldNet believes it has helped cause the improvement of services to all end users, even beyond those served by WorldNet, by forcing across the board improved service quality standards for wholesale installations, repairs, and other services. The same can be said about pricing—

WorldNet has fought hard to keep in check wholesale pricing, and, has often been another competitive bidder on proposals to provide telecommunications services in Puerto Rico. WorldNet as a UNE loop provider has, in short, helped provide essential market discipline.

At the same time that PRTC understates the importance of WorldNet's contributions to telecommunications in Puerto Rico, PRTC overstates the scope of competitive options for loop facilities. Specifically, in its Submittal, PRTC purports to provide a laundry list of facilities-based competitors that purportedly serve Puerto Rico consumers with their own last-mile solutions. The implication from PRTC is that these providers constitute robust facilities-based competition to PRTC UNE copper loops. WorldNet believes, however, that with the exception of Liberty Cablevision (serving predominantly residential locations, and, which notably has opposed forbearance for UNE loops in Puerto Rico) and AT&T, the remaining providers in PRTC's list have relatively small, focused service footprints in Puerto Rico that simply do not add up to thriving competitive landscape that PRTC has tried to paint for the Commission.

PRTC claims that WorldNet would have options, if forbearance is granted, to serve its current customers. Such a statement is misleading. First, PRTC refers to resale under section 251(b). But, the pricing standard for such offerings is markedly different, likely much higher, and wholly untested among these parties. Given the years of disputes required to settle UNE loop prices to appropriately reflect governing law, it could reasonably be expected to consume considerable time and expense to get fair and reasonable pricing under 251(b). PRTC refers to a commercial agreement, yet, as the Bogaty Declaration shows, PRTC has rejected WorldNet's efforts to attain a commercial agreement for UNE loop substitutes.

PRTC suggests fixed wireless as an option for DS0 voice grade loops, when in fact, WorldNet customers have not found this option to be viable in price or quality. PRTC suggests that it would offer its own fixed wireless substitute, yet such an option for WorldNet has only just within the past few days been surfaced, and after summarily ending commercial negotiations for a copper substitute months before. With regard to the fixed wireless option mentioned in its Submittal, PRTC has only barely and recently mentioned this in the most general terms, without among other things any terms nor details to flesh out this suggestion. WorldNet has little basis right now to believe this will evolve into a viable copper substitute, particularly without the imperatives provided by a pending docket like this one.

Finally, WorldNet respectfully opposes PRTC's suggestion in its latest Submittal that a conditional forbearance be granted subject to a "competitive market test." In addition to muddying the waters of whether and when forbearance is granted, it could lead to disputes, delay, and uncertainty, none of which would help the Puerto Rican telecommunications market place right now.

As to an 18-month transition period as PRTC advocates, such would be woefully too short. Forcing anything close to such a short period would result in a distraction of WorldNet's resources to scramble for UNE loop options, instead of, concentrating on providing services to customers and hurricane recovery and restoration efforts. Pharmacies, health care and emergency services located outside of the metropolitan areas would be negatively impacted by such a short time frame to find alternatives.

UNE loops have, for over 23 years, been the law of the land both under U.S. federal law, and, under the laws of Puerto Rico. Cutting this obligation off through a forced-cut in a matter of *months* or even just a couple of years is wholly unjustified, and, not reflective of the complexity of the task to re-arrange loop networks and re-configure local loop installations. The Commission saw fit to extend the transition period for transport for all CLECs to three years, and for Puerto Rican CLECs to five years, and, absent a carve out entirely of Puerto Rico, the ubiquity of UNE loops and the wholly more complex and larger effort to replace those services cries out for a UNE loop sunset that is at least as long as that for UNE transport in Puerto Rico.

Moreover, PRTC fails to show why forbearance would be of any benefit to the Puerto Rico market. It claims that there are “market disruptions inherent to the unbundling regime” without citing any evidence in support and in fact offering points which undercut this summary contention. It indicates that it has already “presented to the Commission [plans] which show that the restoration of service will rely to a large degree on new technologies...” PRTC cites “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, fixed wireless, and mobile providers.” PRTC has already begun to replace copper with fiber. In short, it appears that ongoing unbundling regulation has not stopped PRTC from moving forward with the advanced services that presumably were the benefit of forcing forbearance in the first place.

Finally, nothing in PRTC’s Submittal rebuts the notion that the special circumstances in Puerto Rico, including economic and the hurricane, cry out for special consideration. In an environment marked by an economy and government in bankruptcy (including claw back actions to take back fees from scores of small and medium sized business vendors on the island who did business with the government), the devastating after effects of the hurricane, and overall market uncertainty, now is the absolute wrong time to dictate, or rush, a market impacting provision of essential telecom services. Forcing telecom carriers and businesses to re-configure their services in the midst of all this is simply not called for nor appropriate.

The Puerto Rico legislature has through Law 213 spoken, promoting competition through UNEs. The Puerto Rico Regulatory Bureau has spoken, making it clear in this proceeding that it opposes the relief requested by US Telecom. Even Liberty, highlighted by PRTC as a facilities based competitor, has spoken against the US Telecom petition and in favor of retaining UNEs. WorldNet respectfully requests that the Commission hear these voices.

The record is clear and justifies action by the Commission that is clean simple and strong—either carve out Puerto Rico from any mainland forbearance, or, in the alternative, grant an extended sunset period similar to or longer than the Commission has already authorized for transport.

Respectfully submitted,

/s/ Richard Davis

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