

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

**COMMENTS OF  
WORLDNET TELECOMMUNICATIONS, INC.**

WorldNet Telecommunications, Inc. (“WorldNet”) submits these comments in response to the petition for forbearance filed by USTelecom on May 4, 2018 (“UST Petition”).

**Summary**

WorldNet is a CLEC<sup>1</sup> that represents one of, if not the only, competitive alternative for many small businesses in a devastated Puerto Rican economy. As we continue our efforts to help our customers rebuild from the devastation of Hurricane Maria, we are now faced with the challenge of persuading a Commission leadership that has expressed its general support for deregulation that a petition to “deregulate” is a bad idea. A number of parties have already identified for the Commission several reasons why the particular “deregulation” sought in the UST Petition will have a negative impact on the economy, particularly for the job engine of the US economy—small businesses. This includes the simple fact that the UST Petition seeks to achieve

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<sup>1</sup> WorldNet is a 22-year-old competitive telecommunications, cloud computing, and technology services company located in and serving the island of Puerto Rico. WorldNet has about 150 employees and serves around 3,000 business customers (many with multiple locations) in Puerto Rico, making it the third largest provider of fixed telecommunications services in Puerto Rico (behind PRTC and AT&T). WorldNet has deployed a state of the art IP-based broadband/telecommunications network that has “raised the bar” for standards of quality for all of Puerto Rico. To get where it is today, WorldNet followed the “script” envisioned by Congress in the Telecommunications Act of 1996. WorldNet was among the first local services resellers in Puerto Rico, was the first UNE-based provider in Puerto Rico, and has now invested more than \$40 million to build next-generation infrastructure, including an IP-based softswitch, numerous collocations, and select fiber and fixed-wireless deployments. Importantly, WorldNet stepped up immediately and strongly in the immediate aftermath of Hurricane Maria to reconnect customers, including fire departments, security agencies, and more.

through the blunt instrument of a one-size-fits all forbearance petition (that will create significant market disruption) an end that is already being achieved steadily and organically through existing Commission rules that relieve ILECs of UNE obligations (i.e., deregulate) where actual market demand has justified ILEC investment of next-generation facilities.<sup>2</sup> In other words, the UST Petition seeks to do what is already being achieved in a much smarter, reasonable, and appropriate way.

The purpose of WorldNet's comments here, however, is not to echo legal and policy arguments made by others or to parse the national conclusions and data presented in the UST Petition. Rather, the purpose of WorldNet's comments are to impress upon the Commission what WorldNet believes is an obvious conclusion to be made in this proceeding. Specifically, whether or not the UST Petition makes sense for the country at large, there is one US jurisdiction where the UST Petition currently makes no sense at all: Puerto Rico.

Puerto Rico was just devastated by two powerful hurricanes. And, the current state of Puerto Rico's economy and communications markets also distinguish it from any other US jurisdictions. These conditions, taken together, undercut the fundamental assumptions that drive the one-size-fits-all UST Petition. From an economic perspective, the Commission has already recognized by its own actions on several fronts that Puerto Rico is in unparalleled crisis. Not only is Puerto Rico still recovering from two devastating hurricanes, it also now faces a historically unrivaled fiscal crisis and a stagnant economy that is seeing virtually none of the growth now enjoyed in the mainland US. Quite simply, now is not the time to add the disruption of removing

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<sup>2</sup> As others have already noted, existing Commission rules already give ILECs the same effective "deregulation" that is requested in the UST Petition in a much more targeted, market-driven manner by relieving ILECs of unbundling obligations in locations where the market has actually justified ILEC investments in next-generation facilities. Moreover, the existing rules do this without the significant market disruption that the UST Petition necessarily contemplate. In short, the existing rules let actual investment demand drive deregulation, not macroeconomic, one-size-fits-all assumptions that often create as many market distortions as they portend to solve.

competitive communications choices from Puerto Rico, with the resulting price increases (even if just in the short term as USTelecom has (dubiously) contended) for already struggling Puerto Rico consumers and small businesses, potential job losses, and forced service transitions to providers and services that Puerto Rico consumers may not even want or need. Puerto Rico is simply not currently in a position to absorb another market hit. Nor should Puerto Ricans be forced to accept on faith that these additional jolts to an already struggling, hurricane-ravaged economy will be rectified in the long-term by increases in ILEC investments that are anywhere near what is envisioned in the UST Petition (which is based on national economic analyses that do not appear to account for the specific and inherently different investment opportunities, priorities, and expectations that Puerto Rico's current economic conditions create). Indeed, those investments today, as a result of the hurricanes, would appear to be based more on the triage of restoring and solidifying basic services rather than any investments withheld based on legal requirements.<sup>3</sup>

Similarly, from a telecommunications market perspective, the data and assumptions that underlie the relief sought in the UST Petition also do not even remotely reflect the current realities in Puerto Rico. Puerto Rico has a level of ILEC market dominance, and does not have nearly the amount of wireline competition, as that portrayed in the UST Petition for the US at large. Wireline communications in Puerto Rico are still dominated by the ILEC. In addition, where the UST Petition portrays UNE and resale competition as a failed experiment that has had little to no impact in advancing communications markets, nothing could be farther from the truth in Puerto Rico. UNE and resale competition has played (and can and should play) an unparalleled role in the Puerto Rico communications market, serving as the primary catalyst in Puerto Rico for manifest service

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<sup>3</sup> See, e.g., In the Matter of The Uniendo a Puerto Rico Fund and Connect USVI Fund, WC Docket Nos. 18-143, 10-90 & 14-58, Comments of the Puerto Rico Telephone Company, Inc. at 6 (July 26, 2018) ("contending that the current focus of its investment efforts is service restoration and hardening").

quality improvement (despite extraordinary ILEC resistance) and service innovations, including, among other things, cloud computing technologies. UNE and resale competition in Puerto Rico has also been the source of millions of dollars of investment in next-generation facilities. In Puerto Rico, UNE and resale providers, like WorldNet, are not standing in the way of a better communications service future for Puerto Rico; they have been leading the way.

Puerto Rico is different. Whatever resolution the Commission makes in this proceeding with regard to the mainland US, the forbearance requested in the UST Petition is not appropriate now or any time in the foreseeable future for Puerto Rico. The UST Petition should be denied as to Puerto Rico. Alternatively, if the Commission somehow determines to grant forbearance from UNE and resale obligations in Puerto Rico, such forbearance should be delayed significantly to give ample time for Puerto Rico's economic climate to improve to a point where it can fairly absorb the immediate impact of such forbearance.

## **Comments**

### **I. The Forbearance Standard**

Section 10 of the federal Telecommunications Act of 1996 ("Act") provides that, in order to grant the UST Petition to forbear from enforcing federal UNE and resale requirements, the Commission must determine that:

- (1) enforcement . . . is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement . . . is not necessary for the protection of consumers; and
- (3) forbearance . . . is consistent with the public interest.<sup>4</sup>

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<sup>4</sup> See 47 U.S.C. § 160(a).

In evaluating whether a rule is “necessary” under the first two prongs of the forbearance test, the Commission considers whether a current need exists for a rule.<sup>5</sup> In particular, the current need analysis assists in interpreting the word “necessary.”<sup>6</sup> For these two prongs of the test, the D.C. Circuit has concluded that “it is reasonable to construe ‘necessary’ as referring to the existence of a strong connection between what the agency has done by way of regulation and what the agency permissibly sought to achieve with the disputed regulation.”<sup>7</sup>

USTelecom, as the petitioner, has the burden of proof to support its request for forbearance, including both the burden of production and the burden of persuasion.<sup>8</sup> This means that the Commission applies the forbearance standard to the arguments and evidence in the UST Petition and is under no obligation to consider other arguments that might support forbearance.<sup>9</sup>

## **II. Forbearance Should not be Granted for Puerto Rico**

### **A. Forbearance is not appropriate for Puerto Rico in light of Puerto Rico’s current economic crisis.**

The Commission should not grant forbearance for Puerto Rico because it would not be consistent with the public interest element of the forbearance test in light of Puerto Rico’s recent hurricane devastation and extraordinary economic situation. The present disaster of Puerto Rico’s economic situation, in primary part, is the product of three historic, well-publicized problems.

First, in late 2017, Hurricanes Irma and Maria struck Puerto Rico in rapid succession. In the Commission’s own recent assessment, these two massive storms “caused widespread devastation to Puerto Rico . . . destroying thousands of homes and causing near total destruction

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<sup>5</sup> See Protecting and Promoting the Open Internet, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling and Order, 30 FCC Rcd 5601, 5807-08, ¶ 436 (2015) (“Open Internet Order”).

<sup>6</sup> See id.

<sup>7</sup> See id.

<sup>8</sup> See id. at ¶ 438.

<sup>9</sup> See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks, Memorandum Opinion and Order, 31 FCC Rcd 6157, 6158 ¶ 8 (2015) (“2015 USTelecom Forbearance Order”).

of critical infrastructure.”<sup>10</sup> For various reasons, including the two economic challenges (noted below), a persistently unreliable power grid, the slow arrival of insurance money, and an increased exodus of Puerto Rico residents to the US mainland (estimated to be around 135,000 within the first six months following the hurricanes), this historic natural disaster has been followed by a markedly slow recovery.<sup>11</sup> Among other things, sources estimate that six months out from the hurricanes, as many as 7,000 of Puerto Rico’s small businesses remained closed. And, for those businesses that have been able to continue or to restore operations, analysts report huge challenges with tighter margins, fragile cash flows, and lingering concerns about a smaller and still rapidly shrinking Puerto Rico customer base.<sup>12</sup> This includes Puerto Rico’s telecommunications providers, who not only now face these same challenges, but also face the additional challenge of tackling the estimated \$1.5 billion in hurricane damage to Puerto Rico’s telecommunications infrastructure.<sup>13</sup>

Second, the Commonwealth of Puerto Rico is over \$120 billion in debt, a figure that includes \$74 billion in bond debt (an amount surpassed in the US only by the state of California) and \$49 billion in unfunded pensions.<sup>14</sup> Unable to pay these debts, Puerto Rico filed for federal bankruptcy protection pursuant to federal legislation that Congress was forced to create

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<sup>10</sup> See In the Matter of The Uniendo a Puerto Rico Fund and Connect USVI Fund, WC Docket Nos. 18-143, 10-90 & 14-58, Order and Notice of Proposed Rulemaking, FCC 18-57 at ¶ 1 (2018) (“Puerto Rico Funding Order”).

<sup>11</sup> See For Puerto Rico, the Return to Business as Usual is Slow, Arian Campo-Flores, The Wall Street Journal, <https://www.wsj.com/articles/for-puerto-rico-the-return-to-business-as-usual-is-slow-1521451800> (March 19, 2018) (“WSJ Article”).

<sup>12</sup> See id.

<sup>13</sup> See Puerto Rico Funding Order at ¶ 1.

<sup>14</sup> See, e.g., The Bankruptcy Case that Could Make or Break Puerto Rico, Jane Sasseen, WNYC News, <https://www.wnyc.org/story/new-york-bankruptcy-puerto-rico/> (June 4, 2018) (“WNYC Article”).

specifically to manage the unprecedented magnitude and complexity of Puerto Rico's unprecedented fiscal situation.<sup>15</sup>

Third, while other US jurisdictions have experienced steady economic growth over the past few years, Puerto Rico's economy has been in decline for last decade with continued negative growth forecasted for the next few years.<sup>16</sup> One recent source records the following startling facts about the current economy of Puerto Rico:

- **A Decade of Recession.** “Puerto Rico’s economy has been almost continuously in a recession for more than a decade . . . By the end of this year [2017], the economy is expected to have shrunk back to the size it was in 2000, while the US economy will be 35% larger.”<sup>17</sup>
- **Population Loss.** “Worsening Puerto Rico’s ability to grow its economy is its drastic decline in population. In 2016, the population was estimated to be just 3.4 million, down more than 10% since a peak of 3.8 million in 2004. By 2025, it is projected to fall below 3 million.”<sup>18</sup>
- **Low Incomes & High Cost of Living.** “Despite the typical household income in Puerto Rico being less than half of what it is in the poorest US state, the cost of living is exceptionally high, and more than 40% of people live below the US poverty line. A report last year found that the cost of living in Puerto Rico’s capital San Juan was 11.6% higher than the average US metropolitan area.”<sup>19</sup>
- **High Unemployment & Shrinking Labor Force.** “In August [2017], Puerto Rico’s unemployment rate was 10%, compared to 4.4% in the US . . . Worse still, the number of adults participating in the labor market is steeply declining. The labor force plummeted by 20% between 2006 and 2015. The labor force participation rate now stands at about 40%. About a quarter of the workforce are employed by the Puerto Rican government. For comparison, in the US the labor force participation rate is just under 63%.”<sup>20</sup>

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<sup>15</sup> See 48 U.S.C. Chap. 20. The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) is a 2016 federal law that established an oversight board, a process for restructuring debt, and expedited procedures for approving critical infrastructure projects in order to combat the Puerto Rican government-debt crisis.

<sup>16</sup> See Puerto Rico’s eye-popping economic situation, in charts, Eshe Neslon, Quartz, <https://qz.com/1091341/puerto-ricos-eye-popping-economic-situation-in-charts/> (September 30, 2017) (“Quartz Article”).

<sup>17</sup> See id.

<sup>18</sup> See id.

<sup>19</sup> See id.

<sup>20</sup> See id.

In short, as one recent article put it, “the economic situation of Puerto Rico would be entirely unrecognizable to people living elsewhere in the US.”<sup>21</sup>

In short, Puerto Rico is in crisis. For a number of reasons, forbearance for Puerto Rico at this time would be inherently inconsistent with the public interest element of the forbearance test and, accordingly, cannot be granted.

To begin with, the Puerto Rican economy, and in particular the small business community, is not in a position right now to absorb the impact of eliminating UNE and resale competition. The UST Petition itself acknowledges that forbearance from UNE and resale requirements would not be without some measure of immediate impact to communications markets, including, most notably, price increases for communications services.<sup>22</sup> Although not addressed in the UST Petition, forbearance from UNE and resale requirements could also lead to other significant market disruptions, including, for example, the loss by potentially thousands of Puerto Rico residents and business of their chosen communications services and/or service providers. By definition, since the market has shown that competitors were the customers’ first choice, including over and above the ILEC, then impeding, eliminating, or raising the cost of competition hurts telecommunications customers in Puerto Rico. Indeed, 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. As reflected in the data identified above, Puerto Rico is running on fumes right now. It is simply not in a position, even if just in the short term, to absorb price increases

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<sup>21</sup> See id.

<sup>22</sup> See UST Petition at 20 (“The other . . . customers, however, are assumed to experience a price increase equal to the cost increase experienced by the service providers; essentially, service providers choose to pass through the cost increase in full to . . . their customers . . . [with such customers] now paying a higher price for the same service (negative impact on surplus).”).



on critical communications services, the cost and burden of a forced transition to new services and/or new providers, job losses, or stranded investment. To impose these burdens on Puerto Rico in its current economic state is not consistent with the public interest element of the forbearance standard.

In addition, it is not fair or reasonable to assume that the immediate burdens of forbearance in Puerto Rico will be made up for by long term benefits, much less the level of long term benefits projected in the UST Petition for the country at large. Puerto Rico markets are, quite plainly, not currently the fertile ground for investment otherwise now found in the US. Among other things, Puerto Rico's bankruptcy hangs an enormous cloud of uncertainty over all Puerto Rico markets until, at a minimum, the federal bankruptcy court establishes and implements its plan for the financial future of Puerto Rico's government. Also, as also noted above, Puerto Rico's consumer base is shrinking and the income levels of those that remain are less than half of the poorest US state, creating tightening margins and declining revenues for Puerto Rico businesses, including its telecommunications providers. And, on top of all of this, Puerto Rico is now required to devote billions of dollars of its already scarce financial resources to rebuilding from last year's hurricanes. Taken together, these circumstances inherently and very strongly weigh against any assumption that forbearance from UNE and resale obligations will open a floodgate of new ILEC investment in broadband and next-generation facilities. Rather, these circumstances create, at a minimum, real and credible doubt about the realistic measure of future benefit that the UST Petition claims lies just on the other side of the immediate and extremely untimely market disruption and financial burdens that forbearance would cause in Puerto Rico. In WorldNet's view, this doubt over the impact of forbearance should be more than enough for the Commission to exclude Puerto Rico, at least for now, from any grant of the forbearance requested in the UST Petition.

The forbearance requested in the UST Petition is not consistent with the public interest in Puerto Rico and, therefore, does not satisfy the forbearance standard. The UST Petition makes no attempt to address or account for the impact of Puerto Rico's unparalleled economic situation, focusing instead almost exclusively on competitive market conditions. And, although Section 10(b) directs the Commission to consider whether forbearance will promote competitive market conditions as part of its public interest analysis under section 10(a)(3), the Commission has expressly recognized that Section 10 does not compel the Commission to treat a competitive analysis as determinative when it reasonably finds, based on the record, that other considerations are more relevant to our statutory analysis.<sup>23</sup> It is hard to imagine a more relevant condition than the extraordinary economic conditions in Puerto Rico. Moreover, that condition is a glaring hole in the UST Petition, and with the burden of proof squarely in USTelecom's court,<sup>24</sup> WorldNet submits that, as a matter of law, this omission precludes any finding that the UST Petition satisfies the public interest element of the forbearance standard.

**B. The data and assumptions in the UST Petition do not reflect the reality of the telecommunications markets in Puerto Rico.**

The Commission should also not grant forbearance for Puerto Rico because Puerto Rico's telecommunications markets are completely different from the national markets that the UST Petition portrays. Puerto Rico's wireline markets do not have the same level of competition as its counterpart jurisdictions in the US. Moreover, as a UNE and resale competitor that serves Puerto Rico, WorldNet is most assuredly not the passive, "asset light," pass-through provider

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<sup>23</sup> See 47 U.S.C. § 160; see also Open Internet Order, 30 FCC Rcd at 5808, para. 439 & n.1306 ("Section 10(b) does direct the Commission to consider whether forbearance will promote competitive market conditions as part of the public interest analysis under section 10(a)(3). . . . However, while a finding that forbearance will promote competitive market conditions may provide sufficient grounds to find forbearance in the public interest under section 10(a)(3), . . . nothing in the text of section 10 makes such a finding a necessary prerequisite for forbearance where the Commission can make the required findings under section 10(a) for other reasons." (internal citations omitted)).

<sup>24</sup> See Open Internet Order at ¶ 436.

characterized in the UST Petition generally. It has actively invested tens of millions of dollars in broadband and next-generation facilities. And, it has been (and continues to be) the pronounced market leader in improving telecommunications service quality (quite notably, over the ILEC's manifest objections) and innovation in Puerto Rico. Puerto Rico's wireline telecommunications market is not anything like the markets described in the UST Petition. The UST Petition does not satisfy any of the three elements of the forbearance test as applied to Puerto Rico.

**1. Puerto Rico does not have the same level of competition as the rest of the country.**

To begin with, as noted above, Puerto Rico does not have anywhere near the same level of wireline telecommunications competition portrayed in the UST Petition for the US at large. Competition in Puerto Rico has been late and slow to develop in comparison to other US jurisdictions. The ILEC in Puerto Rico ("PRTC") was a state-controlled monopoly until 1999 – a full three years after the federal Telecommunications Act of 1996 was passed.<sup>25</sup> Four years later, at the end of 2003, the Telecommunications Regulatory Board of Puerto Rico ("Board") filed a petition for waiver of the Commission's Triennial Review Order decision to eliminate local circuit switching as an unbundled network element.<sup>26</sup> In its petition, the Board informed the Commission that Puerto Rico was way behind the rest of the US in terms of telecommunications competition.<sup>27</sup>

According to the Board, over seven years after Congress passed the Act:

The record evidence reflects that CLECs in Puerto Rico are not "competing successfully" in providing switched services via collocation and backhaul transport (i.e., UNE-L). In fact, they are not competing at all. Not one CLEC in Puerto Rico is providing switched services using UNE-L. Indeed, the only CLEC to deploy its

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<sup>25</sup> See In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico for Enterprise Market Switching Impairment in Defined Puerto Rico Markets, CC Docket No. 01-338, p. 3 (filed Dec. 30, 2003) ("TRB Waiver Petition").

<sup>26</sup> See *id.*

<sup>27</sup> See *id.* at 3-4 ("telecommunications competition has been slow to develop in Puerto Rico"); 4 ("competition in the local telephone market in Puerto Rico has been slow to develop, and robust, facilities-based competition has yet to take root"; "the [Puerto Rico] markets are more embryonic than corresponding markets on the mainland").

own local switches in Puerto Rico has been asking PRTC to provide the collocation necessary for a UNE-L based service platform for more than three years without success.<sup>28</sup>

Indeed, just last month, the Board submitted comments to the Commission, supporting its proposals for long-term federal hurricane assistance funding by noting “the small number of providers on the island.”<sup>29</sup>

UNE and resale-based competition has simply not had the same opportunity to establish itself and grow in Puerto Rico as it has in the remainder of the country. This, along with many other factors, including the extraordinary economic troubles now plaguing Puerto Rico, has left the Puerto Rico local voice markets still dominated by the ILEC. The FCC’s own subscriber data reports that, as of December 2016, PRTC provides 62% of all of the wireline voice subscriptions in Puerto Rico – a number that is 14 percentage points higher than the national ILEC average (i.e., 48%).<sup>30</sup> Current commercial reporting describes PRTC’s hold on the Puerto Rico local services market as “fixed-line market dominance,” noting further that in Puerto Rico’s local wireline market “competition is practically non-existent” and that “the incumbent holds a near monopoly over fixed lines in service.”<sup>31</sup> Moreover, where there were once three cable television companies presenting the potential for voice and broadband competition with PRTC, consolidation has now left only a single provider. This marked lack of competition in Puerto Rico sits in stark contrast to the level of competition that the UST Petition touts for the nation at large.

In addition, as a matter of Puerto Rico law, there is a standing presumption that “the incumbent local exchange carrier has control of the market in the rendering of local

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<sup>28</sup> See *id.* at 17 & 21.

<sup>29</sup> See *In the Matter of the Uniendo a Puerto Rico Fund and Connect USVI Fund*, WC Docket Nos. 18-143, 10-90 & 14-58, Comments of the Telecommunications Regulatory Board of Puerto Rico at 2 (filed July 26, 2018).

<sup>30</sup> FCC State-Level Subscription Counts, <https://www.fcc.gov/voice-telephone-services-report>.

<sup>31</sup> See *Puerto Rico Telecoms, Mobile and Broadband – Statistics and Analyses*, 15<sup>th</sup> Edition, Henry Lancaster, Buddecom at at 1, 10 & 32 (published December 18, 2017).

telecommunications services.”<sup>32</sup> According to Puerto Rico law, PRTC may petition the Board to rebut this presumption in order to seek relief from various regulations.<sup>33</sup> To date, however, PRTC has not done so, leaving Puerto Rico’s standing presumption of market control in full force and effect for Puerto Rico.

Again, one of the fundamental premises of the UST Petition does not in any way reflect the reality in Puerto Rico, inherently undercutting the resulting arguments in the UST Petition that any of the three elements of the forbearance standard have been met for Puerto Rico.

**2. CLECs have been the market leaders in improving service and bringing innovative next-generation services to Puerto Rico.**

Another one of the basic premises of the UST Petition that does not reflect the reality in Puerto Rico is that UNE and resale competitors are contributing little to voice and broadband markets. This could not be further from the truth in Puerto Rico. 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. 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, maintaining that it lacked the capability to do so.<sup>34</sup>

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<sup>32</sup> See 27 L.P.R.A § 269.

<sup>33</sup> See *id.*

<sup>34</sup> 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.”).

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 with service quality issues, with Puerto Rico consumers never really enjoying near the same level of service made available to consumers in the US mainland. In 2004, WorldNet 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 vigorously opposed these changes, challenging WorldNet's proposals all the way to the United States Court of Appeals for the First Circuit. Undaunted, WorldNet ultimately prevailed, establishing new, much higher benchmarks for service in Puerto Rico.<sup>35</sup>

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. This unique situation, again, undercuts each element of the forbearance standard as applied to Puerto Rico.

### **3. Forbearance will create significant market disruption in Puerto Rico.**

Another failing in the UST Petition is that it overlooks the full measure of market disruption and the resulting harm to consumers and the public interest that forbearance from UNE and resale

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<sup>35</sup> See WorldNet Telecommunications, Inc. v. Puerto Rico Telephone Company, Inc., 497 F.3d 1 (1<sup>st</sup> 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).

obligations would cause, especially in Puerto Rico. WorldNet provides telecommunications services primarily to about 3,000 Puerto Rico business customers. While the UST Petition is forced to suggest that WorldNet (and other CLECs like it) gained this customer base exclusively on lower prices made available by UNE and resale rules, the suggestion is simply not true. WorldNet earned its customer base not just by being lower in price than PRTC or other providers (which it is often not). WorldNet earned its customer base through innovation, better service and service offerings, more personalized customer service, and the ability to offer and provide service packages tailored specifically to the individualized demands of, predominantly, the small- and medium-sized businesses that are integral to Puerto Rico's continued recovery and future success. And, in the wake of the recent hurricanes, WorldNet did so by going to extraordinary lengths to get and keep its customers up and running, including by way of opening up WorldNet's corporate office space to customers whose own office spaces were not usable.

Simply put, 3,000 Puerto Rico businesses chose WorldNet for a reason, and in many cases, that reason was not just that WorldNet may have offered the lowest price. UNEs and resale obligations are what currently enable WorldNet to reach many of these customers. Option for WorldNet to continue service may exist if UNEs and resale are taken away, but in some cases viable options may not exist. In such cases, already struggling PRTC businesses will be forced into potentially costly transitions to providers and/or services that they never wanted. That is not consumer protection; nor is it in the public interest, especially for Puerto Rico. For this, as well as the other reasons discussed above, the UST Petition does not meet the forbearance requirements as applied to Puerto Rico. WorldNet urges the Commission to deny the UST Petition, at least as it is proposed to apply to Puerto Rico.

### **III. The Commission Should Not Preempt Puerto Rico from Enforcing its Own UNE and Resale Requirements**

Regardless of whether or not the Commission determines to grant the UST Petition, forbearing from federal UNE and resale requirements, WorldNet also urges the Commission not to preempt state authority to enact and/or implement their own UNE and/or resale requirements.

In WorldNet's view, preemption would be bad policy. States are inherently much better situated to evaluate whether competition in their individual markets has taken hold to an extent where UNE and resale obligations are no longer warranted or needed. Moreover, this is not a situation where the Commission is implementing new requirements that it believes will be good for the country at large, regardless of the nuances of each individual market. Rather, the Commission is being asked to dismantle a regulatory regime that, for over 20 years, has, in extremely varying degrees, woven its way into the fabric of each individual US telecommunications market. The uprooting of these requirements will invariably have consequences, and, in some cases, like Puerto Rico, the consequences will be markedly different and significant than in the rest of the country. Each state is in a much better position than the Commission to assess these consequences and, accordingly, as a matter of federal policy, each state should necessarily retain the authority to address such consequence, if it desires, with its own tailored requirements.

Puerto Rico is a perfect example of a jurisdiction in which the preservation of state authority to establish and/or apply its own UNE and resale requirements is both warranted and appropriate. As a matter of federal law and policy, WorldNet urges the Commission to preserve Puerto Rico's authority to do this.



#### **IV. The Commission Should Deny the UST Petition or, In the Alternative, Make Exception and/or Special Accommodation for Puerto Rico**

As noted above, WorldNet concurs with other commenters that it would be bad law and bad policy to grant the UST Petition. As reflected in WorldNet's comments here, however, it would be especially devastating and inappropriate for Puerto Rico now or any time in the foreseeable future. Puerto Rico is different, and, to the extent the Commission somehow determines to grant the UST Petition, at a minimum, WorldNet urges the Commission to grant WorldNet either a full exception from forbearance and/or a special accommodation for Puerto Rico in the form of an extended transition period for forbearance and/or the preservation of Puerto Rico authority to continue to require UNEs and resale until it determines that Puerto Rico markets are ready for a transition away from them.

As explained above, the relief that WorldNet now requests is imminently warranted. On top of this, the law is clear that the Commission has the full legal authority to consider Puerto Rico's special circumstances and inherent market differences,<sup>36</sup> as well as to grant special exemption or accommodation for Puerto Rico if the UST Petition is granted for other parts of the country.<sup>37</sup>

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<sup>36</sup> The UST Petition contends that "[a] showing that the provisions at issue are 'outdated and harmful as a general matter' permits a finding that the requirements 'are entirely unnecessary in all geographic markets.'" See UST Petition at 21. In doing so, the UST Petition seems to suggest that the Commission can rule without any consideration of the conditions in individual markets or jurisdictions. That is not true. The Commission precedent cited in the UST Petition provides only that nationwide forbearance can be granted based on "considerations that we find to be common nationwide." See Open Internet Order at ¶ 439 & n.1306.

<sup>37</sup> See, e.g., Lifeline and Link Up Reform and Modernization et al., WC Docket Nos. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4082-4093, paras. 335-60 (2016) ("2016 Lifeline Order") (establishing conditional forbearance from Lifeline voice obligations in targeted areas where certain competitive conditions are met.); Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622, 8622 (2010) ("Qwest Phoenix Order") (ruling on a forbearance petition for Phoenix, Arizona by considering how competition varied within localized areas in the Phoenix market); Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, WC Docket No. 04-223, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("Qwest Omaha Forbearance Order"), aff'd, *Qwest Corp. v. FCC*, 482 F.3d 471 (D.C. Cir. 2007) ("Qwest v. FCC") (granting forbearance for only for certain wire centers when relief was sought for a larger geographic area).

## Conclusion

If one wished to create a list of the most damaging body blows to inflict on the Puerto Rican economy, a United States jurisdiction plainly and publicly in the throes of multiple fiscal and natural disasters, then, damaging or destroying the competitive telecommunications market would be at or near the top of that list given how critical its telecommunications infrastructure and service industry is to its economic foundation and hurricane recovery. Poorer service, higher costs, and reduced innovation (the likely results of reduced competition) are not the recipes for stimulating recovery and investment in Puerto Rico. And, impairing or losing telecommunications options does not help future hurricane and disaster response efforts.

Chairman Pai has spearheaded the Commission's commitment to Puerto Rico's recovery, with special funding for both the short-term recovery and long-term future for Puerto Rico's telecommunications networks.<sup>38</sup> The Chairman and other Commissioner's should be lauded for much of what they have done in getting funding and other support to the island in time of need. But, respectfully, granting the UST Petition in Puerto Rico would be a step backward from these goals. Now is simply not the time to sweep Puerto Rico blindly into national findings in a general effort to deregulate. WorldNet respectfully, and strongly, urges that whatever is done in the mainland US, Puerto Rico be exempted from the scope of any relief granted under the UST Petition or, at a minimum, provide special accommodation for Puerto Rico.

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<sup>38</sup> See In the Matter of The Uniendo a Puerto Rico Fund and Connect USVI Fund, WC Docket Nos. 18-143, 10-90 & 14-58, Order and Notice of Proposed Rulemaking, FCC 18-57, Statement of Chairman Ajit Pai (2018) ("Puerto Rico Funding Order") (commenting that, in the aftermath of the 2017 hurricanes, "[r]ebuilding and expanding networks would require more support. That's where the FCC comes in. Ever since the 2017 hurricane season, our energies have been focused on responding to the aftermath of the storms—namely, ensuring the recovery and strengthening of communications networks. My proposal this past March to create the Uniendo a Puerto Rico Fund and the Connect USVI Fund was the centerpiece of this approach, and I'm glad my colleagues have now approved it.").

Respectfully submitted,

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