

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**REPLY COMMENTS SUBMITTED ON BEHALF OF
THE TELECOMMUNICATIONS REGULATORY BOARD
OF PUERTO RICO**

INTRODUCTION

COMES NOW the Telecommunications Regulatory Board of Puerto Rico (“Board”) to file reply comments in the above captioned proceeding. On May 4, 2018, USTelecom – The Broadband Association (“USTelecom”) filed a petition for forbearance from multiple sections of the Telecommunications Act of 1996 (“Act”) pursuant to 47 U.S.C. § 160(c).¹ On or before August 6, 2018 multiple interested parties filed initial comments. Among the parties filing initial comments were several state regulatory commissions and two telecommunications providers operating in Puerto Rico.² Having

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, May 4, 2018; and USTelecom modification of its proposed transition plan, WC Docket No. 18-141, June 21, 2018 (collectively, referenced as “Petition”).

² Comments of the California Public Utilities Commission, WC Docket No. 18-141, August 6, 2018 (“CA PUC”), Comments of the Michigan Public Service Commission, WC Docket No. 18-141, August 6, 2018 (“MI PSC”), Comments of the Public Utilities Commission of Ohio, WC Docket No. 18-141, August 3, 2018 (“OH PUC”), Comments of the Pennsylvania Public Utility Commission, WC Docket No. 18-141, August 6, 2018 (“PA PUC”), Comments of Liberty Cablevision of Puerto Rico LLC, WC Docket No. 18-

reviewed the Petition and initial comments in this proceeding, the Board recommends the Federal Communications Commission (“FCC”) deny the Petition in its entirety or at least deny the Petition insofar as it pertains to the Commonwealth of Puerto Rico.

The Petition to remove necessary Section 251 duties from incumbent local exchange carriers (“ILECs”) is overly broad and fails to address market-specific data analysis following the FCC’s own precedent in granting forbearance from ILEC duties in the Qwest Forbearance Petition for the Phoenix Arizona MSA.³ Moreover, due to the particular geographic location of Puerto Rico and the frequency with which weather significantly degrades telecommunication networks, the public interest is not served by eliminating vital access to ILEC facilities under 47 U.S.C. § 251(c) that promote and further competition in the Commonwealth.

FORBEARANCE PETITION GENERALLY

The Petition specifically requests forbearance from ILEC duties found in 47 U.S.C. § 251(c), which includes, *inter alia*, competitor access to ILEC network elements on an unbundled basis and priced using the FCC’s TELRIC methodology, and the ability to access retail services at prices less ILEC avoidable costs for providing such services.

A primary reason USTelecom cites for support of its Petition is the allegation that such requirements are “burdensome” and have outlived their usefulness in promoting

141, August 6, 2018 (“Liberty”), and Comments of WorldNet Telecommunications, Inc. (“WorldNet”), WC Docket No. 18-141, August 6, 2018.

³ *In the Matter of 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, FCC 10-113 (rel. June 22, 2010) (“Qwest Phoenix MSA Forbearance Order”).

the goals of the Act. Moreover, USTelecom argues that relief from these statutory duties will allow ILECs to invest more in critical infrastructure.

The Board agrees with the CA PUC and supports “initiatives that assist with the transition to fiber and that enhance competition.”⁴ Further, the Board agrees with the CA PUC that the Petition has provided little evidence that the removal of these ILEC duties will attain these goals. The Board believes that granting the Petition will erode the competitive marketplace extant in Puerto Rico to the detriment of the public interest and safety of its citizens.⁵

The Board agrees with the PA PUC and the MI PSC that “there is insufficient granularity in the data submitted by the Petitioners to justify its forbearance request regarding the ILEC-specific unbundling and resale statutory mandates.”⁶ In order for any petition for forbearance to proceed, the Board recommends that market-specific evaluations be conducted. In the event that such an examination is requested, the Board has at its disposal confidential market information that may be helpful. The Board is willing to actively participate in a proceeding specific to the Commonwealth if the FCC desires to examine Puerto Rico markets.

⁴ CA PUC at 2.

⁵ See *generally* Comments of Liberty and Comments of WorldNet.

⁶ PA PUC at 3, 7-10 and MI PSC at 2: (“While there may be areas of the country where competition will still thrive without access to UNEs or resale the MPSC does not believe that this applies to the entire country”).

FORBEARANCE REQUIREMENTS

Two prongs of forbearance under 47 U.S.C. §160(a) are that the FCC determine that continued enforcement is (1) not necessary for the protection of consumers, and (2) is consistent with the public interest. The Board observes that there is insufficient evidence for the first prong relative to Puerto Rico and considerable argument against the second prong. Regarding the latter, the Board's experience is that in times of disaster and significant infrastructure damage, the ability for competitors to use unbundled network elements, priced using the FCC's TELRIC methodology, in the process of network restoration and repair provides considerable stability in the market and advances the public interest. The Board does not have any comfort that commercial agreements adopted between the parties can provide the same level of stability, in terms of availability of network elements and their prices, in times of infrastructure disasters.⁷ Thus, the Board observes that the public interest of the Commonwealth of Puerto Rico is preserved and advanced by retaining the ILEC duties both in times of calm and in times of storm.

Regarding the first prong addressing consumers, the Board observes that §251(c) duties imposed on Puerto Rico Telephone Company (the ILEC serving the Commonwealth) play a critical role in fostering and enabling competition throughout various Puerto Rico markets.⁸ Not having these tools available in Puerto Rico will impair the ability of consumers to benefit from a competitive market where they would enjoy robust competition among service providers.

⁷ The Public Utilities Commission of Ohio observes that providing services on a commercial basis would result in competitors paying "on average much higher commercial wholesale rates for UNE equivalents" (OH PUC at 4).

⁸ See *generally* Comments of Liberty and Comments of WorldNet.

The Board recommends the FCC deny the USTelecom petition insofar as it pertains to Puerto Rico because it fails to ensure that these two prongs are satisfied. If the FCC desires to examine further specific Puerto Rico markets, the Board recommends a market-based examination to determine that “there is sufficient competition to ensure that, if [the FCC] provide[s] the requested relief, [PRTC] will be unable to raise prices, discriminate unreasonably, or harm consumers.”⁹

A market-based approach would address the first prong required for forbearance. As for the second prong related to the public interest, the Board recommends a very high threshold be set to ensure that in times of disaster and recovery, competitors would have access to network elements at TELRIC prices to ensure that consumers will be able to access vital communication services.

CONCLUSION

The Board recognizes the marketplace for telecommunications evolves. It also recognizes efforts to achieve statutory goals warrants occasional review. However, the Petition to remove critical ILEC duties within the Commonwealth of Puerto Rico is not supported by evidence or argument. The Board respectfully submits that the FCC should deny the USTelecom Petition for Forbearance from 47 U.S.C. §251(c) duties for the Commonwealth of Puerto Rico. The Board observes that these duties are vital to the continued development of competition and to ensure the availability of critical network services in times of disaster and recovery.

⁹ Qwest Phoenix MSA Forbearance Order at 21. The Board observes that markets in Puerto Rico may be best addressed at the *municipio* or municipal level, rather than with larger metropolitan statistical areas (7 in Puerto Rico) that may not capture the critical market characteristics in the Commonwealth.

The Telecommunications Regulatory Board of Puerto Rico appreciates the opportunity to provide these reply comments for the FCC's consideration and is available for further discussion as warranted.

Respectfully Submitted,

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