

REDACTED-FOR PUBLIC INSPECTION

**Before the
Federal Communications Commission
Washington, D.C. 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)	

REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

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Puerto Rico Telephone Company, Inc. (“PRTC”), by its attorneys, hereby replies to comments filed in response to the Petition for Forbearance of USTelecom – The Broadband Association (hereinafter, “Petition”), which was filed on May 4, 2018. The Petition requests forbearance pursuant to section 10(c) of the Communications Act, 47 U.S.C. § 160(c), from various obligations that apply to incumbent local exchange carriers (“ILECs”) and regional Bell operating companies under sections 251 and 271 of the Communications Act. These reply comments address Category 1, as identified in the Commission’s Public Notice of August 8, 2018, which refers to the obligations imposed on incumbent local exchange carriers to offer unbundled network elements (“UNEs”) under section 251(c)(3) and the obligation to offer retail telecommunications services for resale at wholesale rates under section 251(c)(4), along with the application of the requirements of section 251(c)(2) as it relates to those obligations.¹

PRTC supports the Petition and agrees with the basic principles that (1) the unbundling and resale obligations that apply to ILECs under section 251(c) were not meant to be permanent;

¹ See *Pleading Cycle Established for Comments on USTelecom’s Petition for Forbearance from Section 251(c) Unbundling and Resale Requirements and Related Obligations, and Certain Section 271 and 272 Requirements*, Public Notice, WC Docket No. 18-141 (rel. May 8, 2018).

(2) the market for the telecommunications services that ILECs offer is competitive; (3) the reliance on UNEs and telecommunications services resold under section 251(c) has decreased considerably while competition and non-ILEC wireline connections have flourished; and (4) the unbundling and resale obligations of section 251(c) are no longer necessary under these circumstances and their continued application would harm consumers and competition. In these comments, PRTC replies to the comments filed by WorldNet Telecommunications, Inc. (“WorldNet”) and Liberty Cablevision of Puerto Rico LLC (“Liberty”), both of which are providers of telecommunications services and other offerings in Puerto Rico and filed comments opposing the Petition on various grounds.²

I. EXECUTIVE SUMMARY

PRTC supports the Petition and agrees with the showing made by USTelecom that the conditions in the telecommunications market across the United States are such that the ILEC unbundling and resale obligations under section 251(c) are not necessary to ensure just and reasonable rates and terms or to protect consumers, and, in fact, both competition and consumers would be harmed by the continued application of these outdated obligations.

PRTC also urges the Commission to reject the request made by Liberty and WorldNet to exclude Puerto Rico from any grant of forbearance from the unbundling and resale obligations of section 251(c). The claim that Puerto Rico must be treated differently from the rest of the United States clashes with the facts. This exclusionary approach is inconsistent with the Commission’s practice since at least 2013 of including Puerto Rico in grants of forbearance and other deregulatory relief, including forbearance petitions filed by USTelecom on behalf ILECs and the

² Comments of Liberty Cablevision of Puerto Rico LLC, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket 18-141 (filed Aug. 6, 2018) (“Comments of Liberty”); Comments of WorldNet Telecommunications, Inc., *id.* (filed Aug. 6, 2018) (“Comments of WorldNet”).

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recent actions related to business data services, where the Commission did not treat Puerto Rico differently from other jurisdictions in the United States.

It is also inconsistent with data showing that the Puerto Rico telecommunications market is similar to the national telecommunications market when it comes to the key factors highlighted in the Petition. As in the rest of the United States, the Puerto Rico telecommunications market has experienced a precipitous drop in ILEC switched access lines, a significant increase in the non-ILEC share of total business and residential wireline connections, and a marked movement by consumers away from wireline connections to mobile connections and other internet-based alternatives. Puerto Rico also is similar to the rest of the United States when it comes to CLEC reliance on UNEs and the resale of ILEC telecommunications service, which has decreased sharply in Puerto Rico during the last ten years. In short, far from showing that it is an outlier, the experience in Puerto Rico confirms that competition in the telecommunications market is thriving as the reliance on UNEs and the resale of telecommunications services continues to decline sharply.

The remaining arguments by WorldNet and Liberty do not support, much less compel, the extraordinary remedy of excluding Puerto Rico from the forbearance requested in the Petition. First, and contrary to what Liberty claims, USTelecom has standing to request forbearance under section 10(c) of the Communications Act on behalf of ILECs that are members of the organization as well as non-member ILECs—an issue that was addressed and resolved by the Commission in 2013.

Second, neither the economic conditions in Puerto Rico nor the fact that Puerto Rico has received high-cost support compel treating Puerto Rico differently when it comes to forbearance from the unbundling and resale obligations of section 251(c). While the economic conditions in

Puerto Rico undoubtedly are challenging, the long-term investment and the replacement of legacy networks with next-generation broadband networks that Puerto Rico will require in the future leave a very limited role, if any, for UNEs, the resale of TDM-based telecommunications services, and copper facilities. Further, while PRTC has received high-cost support, the amounts allocated on a per location basis do not make Puerto Rico an outlier, and the actions by Liberty itself belie the notion that UNEs and resale are needed to serve these high-cost areas. Under these circumstances, and particularly when the current economic conditions are taken into account, it would be bad policy to insist on an antiquated regulatory regime that diverts investment from next-generation networks to the repair and maintenance of increasingly outdated facilities and services.

II. USTELECOM HAS STANDING TO SEEK FORBEARANCE

Liberty argues in its comments that USTelecom lacks standing to request forbearance on behalf its members and cannot request forbearance for non-members, such as PRTC.³ The Commission, however, already ruled on this issue in 2013. Faced with similar arguments, the Commission in that proceeding held that USTelecom had standing under section 10(c) of the Communications Act to seek forbearance on behalf of its members and that the request extended to non-members as well.⁴ The Commission explained that to seek “relief under section 10(c), a petitioner need not be a ‘telecommunications carrier’ itself if it represents a ‘class of telecommunications carriers.’”⁵ The Commission also rejected the claim that USTelecom’s standing to seek forbearance excluded non-members of the organization, finding that as long as the rules at issue in the forbearance petition applied “to services ‘offered by’ the class of carriers

³ Comments of Liberty at 5-8.

⁴ See *United States Telecom Association Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, 28 FCC Rcd 2605, 2607 (2013).

⁵ *Id.* at 2608.

represented by USTelecom” section 10(c) “permits the forbearance to apply to telecommunications services offered by other carriers as well.”⁶ The Commission added:

Where the section 10 forbearance criteria are met based on factors common to an entire class, it would be less consistent with the goal of establishing a "a pro-competitive, deregulatory *national* policy framework" and would place a greater burden on both the industry and on agency resources to, for example, require individual carriers within a class that are not members of the organization or group that filed a section 10(c) forbearance petition granted by the Commission to subsequently file their own petitions seeking identical relief for identical reasons.⁷

The Petition in the instant proceeding plainly requests forbearance on behalf of a class of telecommunications carriers, *i.e.*, ILECs, which includes PRTC, and it focuses on services that PRTC is compelled to offer because of its classification as an ILEC. USTelecom has standing under these circumstances to request forbearance on behalf of non-member ILECs like PRTC.

III. THE COMMISSION HAS NOT TREATED PUERTO RICO DIFFERENTLY WHEN IT COMES TO DEREGULATORY EFFORTS

Both WorldNet and Liberty rely heavily on the claim that forbearance should not extend to Puerto Rico, even if the Petition is granted as to the rest of the United States, on the theory that Puerto Rico is unique and must be treated differently. In Liberty’s case, it notes that “PRTC has long been a recipient of substantial amounts of High Cost and [Connect America Fund] support” and points to “the high level of poverty and corresponding lower telephone penetration levels in Puerto Rico.”⁸ WorldNet points to what it calls the “present disaster of Puerto Rico’s economic situation,” which includes the effects of Hurricanes Irma and Maria, “Puerto Rico’s unprecedented fiscal situation,” and an “economy [that] has been in decline for last decade with continued negative growth forecasted for the next few years.”⁹

⁶ *Id.*

⁷ *Id.* The Commission also noted that while it had never previously expressly held that a trade association had standing to bring a forbearance petition, there was a long history of implied standing through the grant of forbearance petitions brought by trade associations. *See id.* at 2608 n.26.

⁸ Comments of Liberty at 13-15.

⁹ Comments of WorldNet at 5-7.

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This exclusionary approach to Puerto Rico is unfounded, and it is the wrong approach from a public policy perspective. First, it clashes with the fact that the Commission has *not* treated Puerto Rico differently—much less excluded Puerto Rico altogether—from recent nationwide forbearance and deregulatory efforts. In 2013, when the Commission ultimately granted USTelecom’s request to forbear independent ILECs from application of the separate affiliate requirement of section 64.1903 of the Commission’s rules, the Commission ruled that Puerto Rico was covered by the nationwide forbearance in lieu of the temporary waiver that it had been granted in 2010.¹⁰ In 2015, when the Commission granted USTelecom’s request to forbear from the requirement to unbundle 64 kbps voice channel where an ILEC retires copper in fiber loop overbuilds and the obligation to provide access to newly-deployed entrance conduit at regulated rates under section 251(b)(4), it did not exclude Puerto Rico from the nationwide forbearance grant.¹¹

Two years later, in the Business Data Service (“BDS”) proceeding, the Commission applied to Puerto Rico the *same* “competitive market test” that it applied to the rest of the United States to assess the availability of competition in the provision of last-mile service.¹² This test revealed that each county in Puerto Rico was competitive.¹³ And the Commission did not exclude Puerto Rico from its decision in that proceeding to refrain from applying ex ante regulation to packet-based business data services, TDM-based services providing bandwidths in

¹⁰ *In re Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, 28 FCC Rcd 7627, 7700 (2013) (“2013 Petition of USTelecom”).

¹¹ *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*, 31 FCC Rcd 6157, 6190-95 (2015); *id.* 6201-04.

¹² *Wireline Competition Bureau Publicly Releases Lists of Counties Where Lower Speed TDM-Based Business Data Services Are Deemed Competitive, Non-competitive, or Grandfathered*, WC Docket Nos. 16-143, 05-25; RM-10593 (May 15, 2017).

¹³ *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, 3503 (2017) (“BDS Order”).

excess of a DS3, and TDM-based transport services. This consistent inclusion of Puerto Rico in nationwide forbearance and deregulatory efforts is inconsistent with the notion that the Puerto Rico market must be treated differently in this case.

Second, that Puerto Rico has received insular high-cost support under the Commission's Connect America Fund to expand access to broadband to unserved areas does not mean that competition in the Puerto Rico telecommunications market is not robust or that Puerto Rico must be treated differently when it comes to eliminating antiquated regulations that treat the ILEC differently. The level of federal high-cost support that price cap carriers (such as PRTC) receive is determined based on census block-level cost estimates derived from the Commission's Connect America Cost Model. Under Connect America Fund Phase II, census blocks are eligible for high-cost support if their estimated average cost falls between the upper and lower cost benchmarks established by the Commission. Insular carriers, such as PRTC, had the option to accept a support amount equal to their then frozen level, but limited to building and/or operating broadband facilities in census blocks where there is no unsubsidized competitor.¹⁴

The claim that this framework is somehow reflective of unique competitive conditions in Puerto Rico, or that justifies retaining the obligation to unbundle and resell, is wrong on several fronts. As the table below illustrates, the amount of high-cost support per customer location that was assigned to PRTC is comparable to (and in some instances lower than) that of other price cap carriers in the United States:

¹⁴ *Connect America Fund*, Report and Order, 29 FCC Rcd 15644, 15662-3 (2014).

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TABLE 1: FEDERAL HIGH-COST: OFFERED SUPPORT PER LOCATION			
PRICE CAP CARRIER	TOTAL PRICE CAP LOCATIONS	OFFER OF SUPPORT TO PRICE CAP CARRIER	OFFERED SUPPORT PER LOCATION
CBT	883,146	\$2,229,130	\$2.52
VZN	37,078,199	\$143,924,996	\$3.88
HTC	606,068	\$4,424,319	\$7.30
ATT	67,606,340	\$493,793,534	\$7.31
CENT	27,673,706	\$514,334,045	\$18.59
FAIR	1,978,318	\$38,193,437	\$19.31
PRTC	1,670,444	\$36,053,856	\$21.59
FRON	11,459,485	\$283,401,855	\$24.73
CONS	515,475	\$13,922,480	\$27.01
WIND	4,251,768	\$178,779,068	\$42.05
MTC	21,790	\$2,627,177	\$120.57
<i>Sources:</i> PRTC Frozen Support: https://www.usac.org/about/tools/fcc/filings/2018/Q4/HC01 PRTC Locations: https://docs.fcc.gov/public/attachments/DOC-326199A1.xlsx Other Carriers: https://www.fcc.gov/wcb/CAM_4.3_Results_Final_042915.xlsx			

This belies the notion that the high-cost support allocated to PRTC is so unusual as to justify treating Puerto Rico as an outlier when it comes to forbearance.

Moreover, the suggestion that access to UNEs and resale under section 251(c) is necessary to allow CLECs to deploy their own facilities in high-cost areas in Puerto Rico is contradicted by the conduct of the CLECs themselves since the enactment of section 251(c).¹⁵

¹⁵ See Comments of Liberty at 13 (“The same factors that justify the provision of such support make it much more likely that a competitor will find it economically unviable to construct parallel, competing facilities – at least for many portions of the ILEC’s footprint. Specifically, the CLEC’s costs, like the ILEC’s, will be unusually high, which will make it much more challenging for a CLEC to compete by means of constructing its own alternative network rather than by relying, at least in part, on UNEs and discounted resale.”).

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As mentioned above, high-cost frozen support traditionally has been limited to census blocks where there are no unsubsidized competitors. In Puerto Rico this means census blocks where Liberty and WorldNet made the conscious decision to by-pass deployment of their own facilities despite their ability to access UNEs and resell telecommunications services at wholesale rates. If Liberty and WorldNet did not use UNEs or resale at wholesale rates to provide service in these areas during the last twenty-two years, it is hard to argue that the prospective elimination of the unbundling and resale obligation would impact competition in those same areas.

Finally, the Commission should be wary of attempts to point to the current conditions in Puerto Rico as a justification to deprive the people of Puerto Rico (and the Puerto Rico economy) of the benefits that come with eliminating antiquated regulatory disparities in a market as dynamic and critical to economic development as the telecommunications market. That the economic situation in Puerto Rico has been challenging for more than a decade is not news to the Commission. Nor is it a secret that Puerto Rico requires assistance to restore service, reconstruct its networks, and expand broadband after the devastation brought by Hurricanes Irma and Maria; indeed, PRTC has made this point in the *Uniendo a Puerto Rico Fund and Connect USVI* proceeding, as did Liberty, WorldNet, other providers, the government of Puerto Rico, and the Telecommunications Regulatory Board of Puerto Rico.

A post-hurricane, economically sustainable Puerto Rico will require a top-flight telecommunications infrastructure to create jobs and compete in the global economy, and it will need to ensure that Puerto Ricans of all socioeconomic levels and in all corners of the island can reap the benefits that come from having access to broadband today. Even with assistance from the Commission and the federal government, this transformation will require long-term private investment in the next-generation networks and modern technologies—whether fixed or mobile,

landline or wireless—that can replace legacy networks and deliver the fast-paced services that the Puerto Rico consumer is demanding and requires. These goals are wholly consistent with the Commission’s policy objectives, which recognize that the telecommunications technology transition is moving towards the termination of the TDM services that were the bedrock of legacy networks¹⁶ and seek to “enable carriers to more rapidly shift resources away from maintaining outdated legacy infrastructure and services and towards the construction of next-generation broadband networks brining innovative new broadband service.”¹⁷ UNEs, resale, and the copper facilities on which the 20th century telephone networks were based are going to play a very limited role, if any, in that transition and in the long-term reconstruction of the Puerto Rico telecommunications infrastructure. Faced with these long-term challenges, insisting on an outdated regulatory regime that diverts investment from next-generation networks and towards the repair and maintenance of the legacy network of the 20th century is bad policy and, ultimately, counterproductive.

IV. THE PUERTO RICO MARKET IS COMPETITIVE AND COMPARABLE TO THE REST OF THE U.S. FOR PURPOSES OF GRANTING THE PETITION

Liberty and WorldNet rely heavily on the claim that the Puerto Rico telecommunications market is not sufficiently competitive to argue that Puerto Rico should be excluded from any forbearance grant.¹⁸ As the Commission is aware, however, a forbearance analysis is conducted on the “geographic basis requested by the petitioner unless the record indicates compelling reasons to narrow it.”¹⁹ The Petition seeks nationwide forbearance, and there is no compelling

¹⁶ See, e.g., *BDS Order*, 32 FCC Rcd at 3472.

¹⁷ *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 32 FCC 11128, 11130 (2017).

¹⁸ See Comments of Liberty at 19-20; WorldNet Comments at 10-11.

¹⁹ *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Memorandum Opinion and Order, 23 FCC Rcd 11729, 11739 (2008); see also *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, WC Docket 04-223, Memorandum Opinion and Order, 20 FCC

reason to narrow that request to exclude Puerto Rico. Indeed, and as showed below, a more careful look at the data for the Puerto Rico telecommunications market illustrates that there are no grounds to narrow the geographic basis of the Petition, much less to treat Puerto Rico differently from the rest of the United States.

A. The Voice Telephony Market in Puerto Rico Is Competitive

The Puerto Rico voice telephony market shares the key characteristics that the Petition identified as critical for the granting of forbearance for Category 1, (1) including a precipitous drop in ILEC switched access lines, (2) a significant increase in the non-ILEC share of total residential and business wireline connections, and (3) a marked movement by consumers away from wireline connections to mobile connections and other alternatives. Far from showing that Puerto Rico is an outlier, the data show that competition in Puerto Rico, like in the rest of the U.S., would *not* be negatively impacted by the elimination of the unbundling and resale obligations of section 251(c).

First, the data show that the number of ILEC switched access lines has dropped precipitously in Puerto Rico. In 2000 there were approximately 1,299,291 ILEC switched voice lines in Puerto Rico; by 2016 that number had dropped to 494,000—a reduction of 62 percent.²⁰ PRTC internal data reveals that a further reduction of more than *[[begin highly confidential*

Rcd 19415,19428 (2005); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, As Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket 06-109, Memorandum Opinion and Order, 22 FCC Rcd 16304, 16320 (2007); *Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket 06-172, Memorandum Opinion and Order, 22 FCC Rcd 21293, 21304 (2007).

²⁰ Compare Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, *Local Telephone Competition: Status as of December 31, 2000*, Table 6: End-User Lines Served by Report Local Exchange Carriers (as of December 31, 2000) (May 2001) (“*FCC 2001 Local Telephone Competition Report*”), and Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Voice Telephone Services: Status as of December 31, 2016*, Table: Nationwide and State-Level Data for 2008-Present (Feb. 2018) (“*FCC December 2016 Voice Telephone Services Report*”).

information]] *[[end highly confidential information]]* switched access lines took place from 2016 to 2017, which would mean that ILEC switched voice lines in Puerto Rico have decreased more than *[[begin highly confidential information]]* *[[end highly confidential information]]* since 2000.²¹ This significant reduction in ILEC switched access lines in Puerto Rico marks a clear shift by consumers away from ILEC offerings in a market where they plainly have other options. It is also close to the nationwide reduction of 74 percent (from 186 million to 49 million) in ILEC switched access lines from 2000 to 2016.²² In this sense, Puerto Rico is not the outlier that WorldNet and Liberty paint it to be.

Second, the data show that during that same eight-year period non-ILEC wireline connections in Puerto Rico increased substantially. Non-ILEC wireline connections (which include both switched access lines and interconnected VoIP lines) increased from 210,000 in 2008 to 312,000 in 2016—an increase of more than 48 percent.²³ During that same period of time non-ILEC wireline connections increased by 42 percent at the national level (from 44,206,000 to 62,976,000)—a rate of increase slightly *lower* than the one in Puerto Rico.²⁴ WorldNet and Liberty ignored these critical facts that contradict their narrative.

Third, Puerto Rico has a robust, competitive, and still-growing mobile telephony market. As in the rest of the United States, the mobile telephony market has exploded in Puerto Rico during the last two decades. There were 3,327,000 mobile connections in Puerto Rico in 2016, an increase of more than 250 percent when compared to the 926,448 mobile connections

²¹ See PRTC Form 477, Dec. 31, 2017.

²² See Petition at 8.

²³ See *FCC December 2016 Voice Telephone Services Report*, Table: Nationwide and State-Level Data for 2008-Present.

²⁴ *Id.*

reported in 2000.²⁵ The data show that during the same eight-year period when ILEC switched access lines decreased, the shift from wireline connections to mobile connections took place in Puerto Rico at roughly the same pace as at the national level: total mobile telephony lines at the national level increased by 31 percent between 2008 and 2016, while in Puerto Rico they increased by 23 percent during that same period.²⁶ A similar story emerges when looking at mobile connections as a share of total voice connections: mobile telephony connections represented 80 percent of total voice connections (mobile connections plus switched access connections and interconnected VoIP connections) at the national level in 2016, while in Puerto Rico they represented 74 percent of total voice connections.²⁷ In total, by the end of 2016 there were nearly four times as many mobile connections in Puerto Rico as wireline connections—a ratio of mobile-to-fixed *higher* than that at the national level.

Fourth, Puerto Rico has a competitive business data services market. The Commission found that the markets for packet-based business data services and TDM-based services above DS3, along with the market for TDM-based transport market, are competitive nationwide—a finding that did not exclude Puerto Rico.²⁸ The Commission also found that every county in Puerto Rico was competitive for purposes of end user channel termination.²⁹

These facets, which Liberty and WorldNet ignored in their comments, have critical implications for any review of the state of competition in the broader Puerto Rico

²⁵ Compare *FCC December 2016 Voice Telephone Services Report*, Table: Nationwide and State-Level Data for 2008-Present and *FCC 2001 Local Telephone Competition Report*, Table 9: Mobile Wireless Telephone Subscribers.

²⁶ See *FCC December 2016 Voice Telephone Services Report*, Table: Nationwide and State-Level Data for 2008-Present.

²⁷ *Id.*

²⁸ *BDS Order*, 32 FCC Rcd at 3499-3527.

²⁹ *Id.*; see also *Wireline Competition Bureau Publicly Releases Lists of Counties Where Lower Speed TDM-Based Business Data Services Are Deemed Competitive, Non-competitive, or Grandfathered*, WC Docket Nos. 16-143, 05-25; RM-10593 (May 15, 2017).

telecommunications market and the need for the unbundling and resale obligations of section 251(c). As an initial matter, they underline that in the market for high-capacity transmission facilities, which are essential components of the wholesale and business telecommunications market, the Puerto Rico market is not different from the rest of the U.S. They also confirm that non-ILECs in Puerto Rico have access to services that are viable replacements for unbundled dedicated transport in a competitive environment. These include the Ethernet and packet-based services that, as the Commission has recognized, are replacements for TDM-based services,³⁰ and TDM-based transport, which is “the ‘low-hanging fruit’ of the business data services circuit” and an alternative for non-ILECs that still rely on unbundled dedicated transport.³¹ In sum, in Puerto Rico, as in the rest of the United States, there is competition in the business data services market that offers replacements for many unbundled network elements, especially unbundled dedicated transport.

Fifth, the data show that PRTC does not have a majority share of the business wireline market—and has not had a majority share since 2013.³² Ten years ago, PRTC served 57 percent of total business wireline connections in Puerto Rico—a figure that already foretold that the era of ILEC “dominance” was coming to end in Puerto Rico.³³ Since 2009, PRTC’s share of total business wireline connections consistently decreased and fell below 50 percent in 2014, as is shown in Table 2 below. PRTC’s business wireline connections decreased from 166,000 in 2008 to 108,000 in 2016, a drop of 38 percent, and they decreased again from 2016 to 2017. For the

³⁰ See *BDS Order*, 32 FCC Rcd at 3471 (explaining that not only are “[c]ustomers of TDM-based services switching to packet-based services,” but the latter are “substitutes and in the same product market” as the former and “[t]here is no evidence suggesting Ethernet customers are switching to DS1s and DS3s.”).

³¹ *Id.* at 3495-3498.

³² As used in these reply comments the term of “business wireline” corresponds to what the Commission’s Form 477 data designates as “business and government-grade service.”

³³ See *FCC December 2016 Voice Telephone Services Report*, Table: Nationwide and State-Level Data for 2008-Present.

sake of comparison, in 2016 the non-ILEC share of the business wireline market at the national level was 45 percent, while in Puerto Rico it was 49 percent.³⁴ This plain evidence of a thriving competitive market in the business market belies the notion that the Puerto Rico market is not as competitive as the rest of the U.S.

TABLE 2: BUSINESS AND GOVERNMENT-GRADE SERVICE IN PUERTO RICO								
	2009	2010	2011	2012	2013	2014	2015	2016
ILEC Lines	153,000	192,000	180,000	153,000	142,000	117,000	109,000	108,000
ILEC Share	68.6%	58.9%	58.4%	53.5%	52.4%	47.6%	47.4%	49.1%
Source: <i>FCC December 2016 Voice Telephone Services Report</i> , Table: Nationwide and State-Level Data for 2008-Present								

Sixth, the data show that PRTC has suffered a significant reduction in its number of residential wireline connections.³⁵ In 2000, ILEC residential wireline connections totaled 1,208,341, but today that number stands at 395,000—a reduction of more than 66 percent.³⁶ From 2008 to 2016 that number decreased by 33 percent (from 589,000 to 395,000), at the same time that non-ILEC residential wireline connections *increased* by 137 percent—from 84,000 to 199,000.³⁷ Data from the Telecommunications Regulatory Board of Puerto Rico suggest that this increase in the non-ILEC share was driven by subscriptions to interconnected VoIP, which in 2016 constituted 33 percent of residential wireline connections in Puerto Rico—more than

³⁴ See *FCC December 2016 Voice Telephone Services Report*, Table: Nationwide and State-Level Data for 2008-Present.

³⁵ As used in these reply comments the term of “residential wireline” corresponds to what the Commission’s Form 477 data designates as “consumer-grade service.”

³⁶ *FCC 2001 Local Telephone Competition Report*, Table 6. This number also corresponds to ILEC residential switched voice lines, since there were no ILEC interconnected VoIP lines in Puerto Rico reported to the Commission.

³⁷ See *FCC December 2016 Voice Telephone Services Report*, Table: Nationwide and State-Level Data for 2008-Present.

twice the 15 percent share that it had in 2009.³⁸ These conditions are consistent with a competitive market that while in evolution, already exhibits the type of facilities-based competition that renders antiquated (and counterproductive) the continued obligation to provide UNEs and resell retail services under section 251(c).

Despite the clear inroads made by interconnected VoIP in the Puerto Rico market in a very short amount of time, the ILEC share of wireline connections is the one segment in which the Puerto Rico experience may look different at first glance from the experience at the national level. As of 2016 the ILEC share of total wireline connections in Puerto Rico stood at 61.8 percent, or 504,000 ILEC lines compared with 312,000 non-ILEC lines.³⁹ The ILEC share of total wireline connections has decreased steadily since 2008, when it stood at 78 percent, and it will likely fall again 2017, since PRTC's wireline connections decreased to *[[begin highly confidential information]]* *[[end highly confidential information]]*.⁴⁰ Even with that significant reduction, however, the percentage of ILEC wireline connections in Puerto Rico still is higher than the percentage of ILEC wireline connections at the national level, which stands at 48 percent.

Liberty and WorldNet latch on to this statistic to argue that competition in the Puerto Rico market is too different from the rest of the nation to justify forbearance from the unbundling and resale obligations of section 251(c).⁴¹ Their argument, however, proves too much—and *not* in a manner that supports treating Puerto Rico differently.

³⁸ Telecommunications Regulatory Board of Puerto Rico, *Estadísticas de la Industria de las Telecomunicaciones y Televisión por Cable en Puerto Rico* at 15-16 (2016) (“TRB 2016 Report”), https://docs.google.com/viewerng/viewer?url=http://www.jrtpr.pr.gov/estadisticas/2016-Estadisticas.pdf&hl=en_US.

³⁹ See FCC December 2016 Voice Telephone Services Report, Table: Nationwide and State-Level Data for 2008-Present.

⁴⁰ See *id.*; PRTC Form 477, Dec. 31, 2017.

⁴¹ Comments of WorldNet at 12; Comments of Liberty at 9 (arguing that “by the end of 2018, PRTC will command control of two thirds (2/3) of the total fixed voice market (residential and business) (i.e., 67% of the total 762,758 lines). PRTC notes that it is unclear where the 67 percent figure comes from. The report from the

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As a threshold matter, there is a simple explanation for the higher ILEC share of wireline connections in Puerto Rico: traditional CLECs in Puerto Rico ignored the residential wireline market for more than twenty years. The ILEC share of the broader wireline market in Puerto Rico is largely driven by the state of the residential wireline market. The non-ILEC share of the latter stands at 33 percent as of 2016, but that is only because, for all their talk about competition, the traditional CLECs in Puerto Rico have never been interested in the residential market (despite having access to UNEs and the resale of PRTC retail lines), having preferred instead to focus on the more lucrative business market. The share of the residential wireline connections that non-ILECs have today is the result of inroads made by interconnected VoIP providers, which in Puerto Rico tend to be facilities-based providers, such as Liberty and fixed wireless providers, which historically have not relied on UNEs or the resale of PRTC residential retail lines to double their share of the market. CLECs like WorldNet have no standing to complain about the state of competition in a market that they have long ignored, and neither Liberty nor WorldNet can credibly claim that competition in the residential market would be affected by forbearance when neither UNEs nor resale have played a role in the rapidly increasing non-ILEC share of that market.

Moreover, the narrow focus on residential wireline connections is of limited value when trying to understand the state of the broader market of telephony services available to non-business consumers in Puerto Rico. As Verizon explained in its comments, non-business consumers today have numerous options when it comes to voice offerings that replace the

Telecommunications Regulatory Board of Puerto Rico to which Liberty cites does not provide any breakdown of total fixed voice lines by ILEC and non-ILEC. Publicly available data from the Commission for 2016, the last year for which said data is available, shows that the ILEC share of total wireline connections was 62 percent, not 67 percent. *See FCC December 2016 Voice Telephone Services Report*, Table: Nationwide and State-Level Data for 2008-Present.

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traditional residential wireline service.⁴² These include fixed and mobile wireless services that consumers are increasingly using as replacements for residential wireline service, and “non-voice offering such as texting, chatting, video calling, and countless other forms of social media communications” and video-calling applications on mobile devices.⁴³ The impact of this mobile/wireless substitution is real—and it continues to grow. In addition to the data presented in the Petition, which shows that approximately 60 percent of telephone households will have abandoned wireline service,⁴⁴ a recent study by the National Center for Health Statistics revealed that in the second half of 2016 a majority of U.S. households did not have a landline telephone, but had at least one wireless telephone line—a group that included more than 70 percent of all adults aged 25-34 and of adults renting their homes.⁴⁵ Even a coalition of CLECs that filed comments opposing the Petition admitted that wireless substitution occurred in the residential market.⁴⁶

The suggestion that these substitution trends do not apply to Puerto Rico rings hollow.⁴⁷ From 2008 to 2016 wireline connections in Puerto Rico decreased by 150,000 at a time when mobile connections increased by 613,000 lines—a trend that has left Puerto Rico with almost four times as many mobile connections as wireline connections (compared to a ratio of three-to-

⁴² Comments of Verizon at 14-19, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Network*, WC Docket No. 18-141 (filed Aug. 6, 2018) (“Comments of Verizon”).

⁴³ *Id.* at 16-17.

⁴⁴ See Petition at 8.

⁴⁵ See U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2016* (May 2017), <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201705.pdf>.

⁴⁶ See Comments of ICG CLEC Coalition at 5, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Network*, WC Docket No. 18-141 (filed Aug. 6, 2018).

⁴⁷ Comments of Liberty at 8-9 (arguing that the notion that “fixed customers can now obtain basic telephone service from wireless, Voice over Internet Protocol (VoIP), cable, and other providers” is “wrong as applied to Puerto Rico”); Comments of Liberty at 15 (“Puerto Ricans . . . are therefore, on average, much more reluctant than consumers in the nation as a whole to trade their central-office-based, line-powered landline service from PRTC for either wireless service (cord-cutting) or VoIP service.”).

one at the national level).⁴⁸ During that same period, however, non-ILECs captured only 102,000 of the 251,000 wireline connections that the ILEC lost. When coupled with the dramatic increase in mobile connections during the same time, the trend lends further credence to the notion that at least some of these consumers abandoned their wireline connection for a mobile connection of some kind.

Some providers in Puerto Rico have admitted as much in the past. Centennial, a long-time Puerto Rico wireless provider and CLEC that operated from the mid-1990s until the mid-2000s (when it was acquired by AT&T), had been warning about the emergence and impact of wireless substitution in Puerto Rico more than ten years ago.⁴⁹ Liberty Latin America Ltd., the parent company of Liberty, has admitted that its residential customers may “switch from fixed to mobile services” and, referring specifically to the Puerto Rico market, that it “competes primarily with mobile broadband providers.”⁵⁰ These assertions, and specifically the acknowledgement that its primary competitors are *mobile* providers—and not wireline providers—are at odds with Liberty’s theory in this proceeding that the phenomenon of wireless substitution is “wrong” as applied to Puerto Rico.⁵¹

⁴⁸ *FCC December 2016 Voice Telephone Services Report*, Table: Nationwide and State-Level Data for 2008-Present; *see also* Comments of Verizon at 17 (“[T]her will be approximately three time as many wireless connections as wired voice connections in the country.”)

⁴⁹ *See, e.g.*, Comments of Centennial Communications Corp. at 6-7, *In re High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45 (Apr. 17, 2008) (“[T]he number of people using wireless as their sole or primary connection to the public network is increasing as well.”); Comments of Centennial Communications Corp. at 4, *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (Aug. 6, 2004) (“Over the past three years, Centennial has continued to improve its ‘basic’ wireless service to include better pricing plans and better coverage, such that most subscribers now find that this basic wireless service is itself a suitable substitute for basic landline service.”); Reply Comments of Centennial Communications Corp. at 10, *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (June 3, 2003) (“Centennial’s wireless customer MOUs far exceed the national average, proving that wireless increasingly is a substitute for wireline service in Puerto Rico.”)

⁵⁰ Liberty Latin America Ltd., Registration Statement (Form S-1) at 28 (filed Nov. 16, 2017), <https://www.sec.gov/Archives/edgar/data/1712184/000119312517345458/d425017ds1.htm>; *id.* at 82 (

⁵¹ Comments of Liberty at 8-9.

That wireless substitution is a reality in Puerto Rico is further confirmed by data from a recent survey conducted by Estudios Tecnicos, Inc. on behalf of the Sales and Marketing Executives Association of Puerto Rico (SME).⁵² The survey shows that 15 percent of internet users in Puerto Rico have access to the internet even though they do not have a wireline internet access connection at home, and that 42 percent of internet users in Puerto Rico use a mobile internet access connection even when they are at home.⁵³ The survey also reveals that more than 86 percent of internet users in Puerto Rico who have a smartphone use social media and instant messaging applications, that these are also the applications that they access the most, and that more than 93 percent of internet users access the internet to communicate with other people—a trend consistent with Verizon’s observation that these services are increasingly replacing wireline services when it comes to how non-business consumers communicate today.⁵⁴ To suggest that the traditional wireline POTS service is separate and sheltered from the market for communications that includes these newer technologies flies in the face of clear contemporary trends driven by consumers, who already decided that these services are interchangeable.

B. Reliance on UNEs and Wholesale Resale Services by CLECs in Puerto Rico Has Decreased While Their Share of the Wireline Market Has Increased

The data also show that Puerto Rico has not been a stranger to a key trend identified in the Petition: a significant reduction in the number of UNEs that PRTC leases and retail lines that it resells while the non-ILEC share of the market continues to rise. This suggests a market that increasingly does not need—and already has successfully shifted away from—compelled and subsidized unbundling or heavily discounted resale of retail line to compete with the ILEC.

⁵² See Estudios Tecnicos, Inc. and Sales and Marketing Executives Association of Puerto Rico, 2018 Digital and Mobile Behavioral Study (2018).

⁵³ See *id.* at 37.

⁵⁴ *Id.* at 61-62; *id.* at 72.

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Four points best illustrate this trend. First, the number of lines resold by PRTC to CLECs in Puerto Rico under Section 251(c)(4) has dropped significantly during the last 10 years. The number of “wholesale”⁵⁵ lines resold by PRTC decreased from a high of *[[begin highly confidential information]]* *[[end highly confidential information]]*, and have been in a steady decline since 2014.⁵⁶ This trend is consistent with the national trend identified in the Petition, and confirms that resold lines constitute a small and shrinking portion of the telecommunications landscape in Puerto Rico.

Second, the number of unbundled local loops leased by PRTC to CLECs in Puerto Rico under Section 251(c)(3) has declined substantially. The total number of UNE loops leased by non-ILECs in Puerto Rico has decreased by *[[begin highly confidential information]]* *[[end highly confidential information]]*.⁵⁷ This decline is consistent with the nationwide trend discussed in the Petition, and it suggests that, like resale, unbundled local loops constitute a rapidly shrinking portion of the telecommunications landscape in Puerto Rico.

Third, the number of unbundled local loops and unbundled dedicated transport facilities that CLECs have been ordering in Puerto Rico has been decreasing steadily. PRTC’s internal records show that the total number of new CLEC orders for unbundled local loops and unbundled dedicated transport facilities submitted annually has decreased by more than *[[begin*

⁵⁵ FCC Form 477 defines “wholesale” lines as voice-grade equivalents “provided to unaffiliated service providers under resale arrangements including, among others, commercial agreements that replaced UNE-Platform and resold services such as local exchange, Centrex, and channelized special access.” In PRTC’s case, an overwhelming majority of these lines correspond to retail services resold under 251(c).

⁵⁶ Compare Puerto Rico Telephone Company, Inc. FCC Form 477, Dec. 31, 2004, and Puerto Rico Telephone Company, Inc. FCC Form 477, Dec. 31, 2017. *[[Begin highly confidential information]]* *[[end highly confidential information]]*.

⁵⁷ Compare Puerto Rico Telephone Company, Inc. FCC Form 477, Dec. 31, 2004, and Puerto Rico Telephone Company, Inc. FCC Form 477, Dec. 31, 2017. As used in this paragraph, the term “UNE loop” refers to the data in Form 477 corresponding to “UNE-L.”

highly confidential information]]

[[end highly confidential

information]]. During this same period, non-ILEC wireline connections *increased* by 19 percent and the ILEC share of total wireline connections *decreased*,⁵⁸ which suggests that the dramatic reduction in orders for new unbundled local loops and unbundled dedicated transport cannot be blamed on any ILEC dominance during that time. To the contrary, the trend suggests that, as the Commission has acknowledged, “the technology transition is moving towards the eventual termination of TDM service offerings altogether.”⁵⁹ Notably, and consistent with the Commission’s observation, PRTC’s leasing of packet-based transmission facilities during that period has increased sharply.

A closer look at the Puerto Rico CLECs that filed comments in this proceeding, which are predicting doom if Puerto Rico is not excluded from the forbearance requested in the Petition, shows that even in their case their ability to compete increasingly depends less and less—if at all—on UNEs and the resale of retail lines. WorldNet, which describes itself as “the third largest provider of fixed telecommunications services in Puerto Rico,”⁶⁰ *[[begin highly confidential information]]*

[[end highly

confidential information]]. Liberty, which purports to offer service in all but three municipalities in Puerto Rico⁶¹ and has become a major force in the wireline market as a provider of interconnected VoIP, has done so *[[begin highly confidential information]]*

⁵⁸ See *FCC December 2016 Voice Telephone Services Report*, Table: Nationwide and State-Level Data for 2008-Present.

⁵⁹ *BDS Order*, 32 FCC Rcd at 3472.

⁶⁰ Comment of WorldNet at 1.

⁶¹ See Petition of Liberty Cablevision of Puerto Rico LLC for Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier at 6, WC Docket No. 09-197 (filed Dec. 7, 2016) (“Liberty ETC Petition”).

[[end highly confidential information]]. This conduct by two of PRTC’s largest competitors undermine their predictions of “chaos”⁶² and other calamities if the obligation to provide UNEs and resell lines is eliminated.

V. LIBERTY’S ADDITIONAL ARGUMENTS ABOUT THE PUERTO RICO MARKET ARE DISPELLED BY ACTUAL EVIDENCE

Liberty’s additional attempts to defend its exclusionary recipe by painting Puerto Rico as an atypical jurisdiction when it comes to the state of competition also fail. First, Liberty asserts that in Puerto Rico “most of the remaining 33% of the fixed voice market (residential and business) is served by CLECs that rely on UNEs or resale.”⁶³ Publicly available information and Liberty’s own statements contradict that assertion. Using 2016 data, the non-ILEC share of total wireline connections was 38 percent, not 33 percent.⁶⁴ In filings before the Commission at the end of 2016, Liberty asserted that it had more than 205,000 “fixed-line telephony subscribers.”⁶⁵ As explained above, however, *[[begin highly confidential information]]*

[[end highly

confidential information]]. This means that, by definition, at least *[[begin highly confidential information]]*

⁶² Comments of WorldNet at 11.

⁶³ Comments of Liberty at 11. Liberty’s contention that the non-ILEC share of total wireline connections is 33% appears to be inaccurate. Liberty admits that this number is not directly derived from the Commission’s data, but that instead it is derived from the “believe” that PRTC’s wireline connections increased in 2017 and 2018 because they had increased slightly from 2015 to 2016. Liberty is wrong. PRTC wireline connections *decreased* from 2016 to 2017 from *[[begin highly confidential information]]*

[[end highly confidential information]]. And since 2009 PRTC has experience a steady year-to-year *decline* in its share of total wireline connections, even in those years when it has seen a slight uptick in the total number of wireline connections. In sum, the non-ILEC share of total wireline connections was 38 percent in 2016, and it has likely increased since then, as it has done in every year since 2009. Liberty’s speculative non-ILEC share of 33 percent should be discarded.

⁶⁴ *FCC December 2016 Voice Telephone Services Report*, Table: State Level Subscriptions. The report shows 815,000 wireline connections (including switched access and interconnected VoIP connections), out of which 312,000 are classified as non-ILEC connections.

⁶⁵ Liberty ETC Petition at 6.

[[end highly confidential information]]—a number that would only increase if interconnected VoIP connections from fixed wireless providers are added. Liberty’s contention to the contrary has no actual support.

Second, Liberty argues that “VoIP substitution in Puerto Rico has been slower than elsewhere in the United States, representing only 25% of fixed voice lines.”⁶⁶ The source of this statistic is unclear, since the Commission’s reports do not identify the total number of Interconnected VoIP connections for Puerto Rico,⁶⁷ although data from the Telecommunications Regulatory Board of Puerto Rico does reveal that interconnected VoIP connections represent 26 percent of total wireline connections in Puerto Rico and 33 percent of residential wireline connections.⁶⁸ Regardless of which statistics are used, what Liberty fails to mention is that interconnected VoIP’s share of total wireline connections more than *doubled* between 2009 and 2016 (as has interconnected VoIP’s share of total residential wireline connections) and is likely to continue to rise, since Liberty serves an overwhelming percentage of these interconnected VoIP connections in Puerto Rico.⁶⁹ The slight delay in the widespread adoption in Puerto Rico of interconnected VoIP is best explained not by “reluctance” or other quirks of the Puerto Rico consumer, as Liberty suggests,⁷⁰ but by the fact that until 2012-2014 (when Liberty acquired the two other cable providers in the island), there was no cable company (or a CLEC, for that matter) with a willingness to invest and compete in the residential wireline market in Puerto Rico. If

⁶⁶ Comments of Liberty at 11.

⁶⁷ See *FCC December 2016 Voice Telephone Services Report*, Table: State Level Subscriptions.

⁶⁸ See *TRB 2016 Report* at 15-16.

⁶⁹ See Liberty ETC Petition at 6. As shown earlier, Liberty claimed that it had over 205,000 voice telephony customers in Puerto Rico, *id.*, and has explained that it uses VoIP to provide voice telephony service, see Liberty Cablevision of Puerto Rico LLC, Consolidated Financial Statements at 29, Dec. 31, 2017, http://www.lla.com/pdf/fixed-income/LCPR-Q4-2017-Report.pdf?sm_au=iVV4jflvZDRNNWnP.

⁷⁰ See Comments of Liberty at 13.

anything, the speed with which Liberty has acquired more than one-third of that market is a positive feature, and not a flaw, of the Puerto Rico market.

Third, Liberty attempts to mischaracterize the state of competition in Puerto Rico by alleging that the number of facilities-based providers in the island is “quite limited,” and then blaming PRTC for supposedly “systematically [driving] dozens of companies out of the Puerto Rican market.”⁷¹ As a threshold matter, the gist of Liberty’s theory is based on unsupported speculation about events that purportedly took place more than twenty years ago, immediately after PRTC had been privatized (after decades of government control) and when Liberty did not exist in its current form (*i.e.*, as an island-wide cable company that also offered telephony services). The import of these allegations from more than twenty years ago to try to understand a market that has been altered dramatically by technological changes that took hold only one decade ago is tenuous at best.

Regardless, a look at actual data again is illustrative, and serves to dispel Liberty’s narrative. The Commission’s data shows that while early in the 2000s there was only one non-ILEC provider in Puerto Rico, by 2008 there were thirteen non-ILEC fixed voice providers—a number that has since increased to twenty-six and has not dipped below thirteen at any time since then.⁷² On the mobile side, Puerto Rico has had at least five providers since 2001; today it has five, including national carriers AT&T, T-Mobile and Sprint.⁷³ Finally, it is worth noting that, according to the Public Notice that the Commission issued in *The Uniendo a Puerto Rico Fund and Connect USVI* on August 7, 2018, at least 8 non-ILECs in Puerto Rico certified that they

⁷¹ *Id.* at 17-18.

⁷² Compare FCC 2001 Local Telephone Competition Report, Table 9, and FCC December 2016 Voice Telephone Services Report, Table: State-Level Provider Counts.

⁷³ See *id.*

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were facilities-based fixed providers and had customers as of June 2017.⁷⁴ That number does not include the mobile providers that, as explained above, have become a viable alternative for non-business customers in Puerto Rico. Nor does it include all the wireless internet service providers (“WISPs”) that operate in Puerto Rico through their own networks.⁷⁵ Considering that, as the Commission has explained, “the impact of a second provider is likely to be particularly profound in the case of wireline network providers,”⁷⁶ the presence of this amount of facilities-based providers in a small island should be treated as a good sign, not a point of criticism.

Finally, Liberty is wrong when it argues that there are no “markets” in Puerto Rico “where demand for basic local telephone service is high, and the cost of deploying alternative facilities to provide service is low,” so that CLECs can compete without the use of “ILEC facilities.”⁷⁷ Indeed, Liberty’s own conduct disproves this claim. Liberty has built a network in Puerto Rico that, per its own declarations, covers all but three municipalities in Puerto Rico. It did so without Universal Service Fund support and *[[begin highly confidential information]]*

[[end

highly confidential information]]. That Liberty was able to deploy its extensive network under these conditions shows that there indeed have been “markets” in Puerto Rico where the balance between demand and cost is such to justify deploying facilities without access to UNEs or reselling telecommunications services at wholesale rates, the number of such markets will only continue to rise as fiber-based providers and fixed wireless providers continue to deploy their networks in Puerto Rico.

⁷⁴ *Wireline Competition Bureau Announces Stage 1 Restoration Funding for the Uniendo a Puerto Rico Fund and the Connect USVI Fund*, Public Notice, WC Docket Nos. 18-143, 10-90 (Aug. 7, 2018).

⁷⁵ The Wireless Internet Service Provider Association lists four entities in Puerto Rico as WISPs, none of which appear listed in the Stage 1 Public Notice: Aeronet Wireless Broadband LLC, IP Solutions, Inc., Optivon, Inc., and WIFI Services Caribbean, Inc.; see <http://www.wispa.org/Directories/Find-a-WISP>.

⁷⁶ *BDS Order* 32 FCC Rcd at 3513.

⁷⁷ Comments of Liberty at 5 n.8.

VI. THE COMMISSION SHOULD TAKE WITH A GRAIN OF SALT WORLDNET'S LATEST ATTEMPT TO RESIST DEREGULATORY EFFORTS

WorldNet, for its part, focuses keenly on the notion that “now is not the time” to move forward with forbearance and that the challenging economic conditions in the island mean that it is “not in a position right now to absorb the impact of eliminating UNE and resale competition.”⁷⁸ PRTC already has shown why excluding Puerto Rico from the forbearance requested in the Petition is amiss.⁷⁹ But an added consideration is in order when weighing WorldNet’s premise that “now is not the time” to implement in Puerto Rico forbearance from the unbundling and resale obligations of section 251(c): 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 not ready or that unleashing deregulatory force would harm competition. History has proven WorldNet wrong.

In 2003, WorldNet resisted attempts to dispose of the UNE-P regime, arguing that it was “necessary” for CLECs to compete in the “unique Puerto Rico market, and warning that the removal of the obligation to offer UNE-P would “seriously impair WorldNet’s ability to provider service in Puerto Rico.”⁸⁰ The Commission eventually eliminated UNE-P, and WorldNet’s predictions of gloom did not materialize.

Five year later, WorldNet opposed PRTC’s request for conversion to price cap regulation, arguing that it was “not the time to further deregulate PRTC” and predicting that granting PRTC special access pricing flexibility was going to have a “significant, negative impact on

⁷⁸ Comments of WorldNet at 2-3.

⁷⁹ See discussion, *supra* pp. 7-24.

⁸⁰ WorldNet Telecommunications, Inc.'s Ex Parte Comments in The Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers and Implementation of the Local Competition Provisions of Telecommunications Act of 1996, CC Docket Nos. 01-338; 96-98; 98-147 (filed Jan. 6, 2003).

competitors and the development of competition in Puerto Rico.”⁸¹ The Commission granted PRTC’s request despite WorldNet’s pessimistic prediction, and nine years later the Puerto Rico market—and particularly the business data service market that interstate cap regulation impacted the most—is competitive.

WorldNet was at it again after 2013, this time in the context of the IP transition and the deregulatory measures that the Commission has taken to promote that transition. WorldNet argued at the time that the “unique circumstances in Puerto Rico” counseled for not including Puerto Rico in a “one size fits all” approach.⁸² It then pointed to Puerto Rico being “on the brink of financial disaster” to argue that a regime that would allow ILECs only to give notice before retiring copper loops “could not come at a worse time,” predicting that “competition [would] suffer” and that “the entire economic development capacity of an already fragile economy in Puerto Rico [would] suffer too” if the Commission did not require “affirmative approval for the retirement of copper.”⁸³ The Commission rejected this approach and included Puerto Rico in all the reforms that it has enacted to promote the IP-transition. In the meantime, competition in Puerto Rico has continued to thrive.

Consistent with this fifteen-year old narrative, in this proceeding WorldNet is again opposing a deregulatory proposal by insisting that Puerto Rico is not ready and that competition will suffer if the Commission moves forward. This, even though WorldNet has had twenty-two

⁸¹ 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).

⁸² Letter of Lawrence R. Freedman, Counsel to WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket 12-353 (filed Aug. 13, 2014).

⁸³ Letter from David Bogaty, Chief Executive Officer of WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, FCC, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (July 13, 2015); Letter from David Bogaty, Chief Executive Officer of WorldNet Telecommunications, Inc., to Marlene H. Dortch, Secretary, FCC, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593 (filed June 16, 2015).

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years to jumpstart its way into competition using the benefits of the section 251(c) regime.

WorldNet has, by all accounts, succeeded in that effort, but it did so aware that the unbundling and resale obligation of section 251(c) were not going to last forever. Indeed, the Commission could not have made it clearer when it recently reminded CLECs that they “could not have been operating under the impression that they would be able to rely on incumbent LEC networks forever in the ‘race to build next generation networks’ envisioned by the Commission.”⁸⁴

WorldNet’s latest appeal to its long-standing practice of opposing deregulation based on Puerto Rico’s uniqueness should be rejected.

VII. CONCLUSION

For the reasons set forth above and in the Petition, the Commission should grant the request for forbearance from the unbundling and resale obligations of section 251(c) and should not exclude Puerto Rico from any such grant of forbearance. There are no grounds to narrow the geographic basis of the forbearance that the Petition requests, and the efforts by WorldNet and Liberty to paint Puerto Rico as an outlier are disproven by a closer look at the Puerto Rico telecommunications market, which exhibits the key characteristics underlying the national market that form the basis of the Petition.

Respectfully submitted,

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⁸⁴ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 32 FCC Rcd 11128, 11142 (2017); *BDS Order*, 32 FCC Rcd at 3472 (“[T]he technology transition is moving towards the eventual termination of TDM service offerings altogether.”); *id.* at 3476 (“Moreover, with incumbent LECs increasingly retiring their copper-based infrastructure, the question also arises as to the extent to which UNEs will remain available in the future.”).

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