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ORAL EX PARTE PRESENTATION SUMMARY*

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Puerto Rico Telephone Company, Inc.

CC Docket No. 96-98
CC Docket No. 99-68

This memorandum summarizes an oral ex parte presentation made by attorneys for Puerto Rico Telephone Company, Inc. ("PRTC") to the Commission's staff in the proceedings addressing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 96-98 & CC Docket No. 99-68. The presentation was made in a meeting attended by Tamara Preiss and Rodney McDonald of the Commission's Common Carrier Bureau.

In the presentation, PRTC's attorneys described a recent Puerto Rico interconnection arbitration in which the Telecommunications Regulatory Board of Puerto Rico ("Board") accepted PRTC's proposal to compensate an interconnecting party for carrying ISP-bound traffic delivered by PRTC by dividing the end-user revenues earned by PRTC and the interconnecting party for that traffic. PRTC's attorneys summarized the arguments advanced by PRTC in that interconnection arbitration, which arguments are set forth fully and in detail on pages 8-12 of the Arbitrator's Report and Order in that proceeding. At the request of the Commission's staff during the presentation, PRTC's attorneys provided a copy of the Arbitrator's Report and Order, additional copies of which are attached hereto.

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* Two copies of this memorandum have been submitted to the Office of the Secretary for each of the referenced proceedings pursuant to Section 1.1206(b)(2) of the Commission's Rules, 47 C.F.R. § 1.1206(b)(2).

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
TW-A325
Washington, DC 20554

Re: Oral Ex Parte Presentation -
CC Docket No. 96-98
CC Docket No. 99-68

Dear Ms. Salas:

Puerto Rico Telephone Company, Inc. ("PRTC") hereby gives notice of an oral ex parte presentation in the above-referenced proceedings. The arguments delivered in that presentation are summarized in the attached memorandum.

PRTC's presentation was made to individuals in the Commission's Common Carrier Bureau.

Two copies of the memorandum are submitted with this letter for each of the above-referenced proceedings pursuant to Section 1.1206(b)(2) of the Commission's Rules, 47 C.F.R. § 1.1206(b)(2).

Sincerely,

Joe D. Edge

Enclosures

cc: Tamara Preiss, Esq.
Rodney McDonald, Esq.

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GOVERNMENT OF PUERTO RICO
TELECOMMUNICATIONS REGULATORY BOARD OF PUERTO RICO

SPRINT COMMUNICATIONS COMPANY L.P. and **PUERTO RICO TELEPHONE COMPANY** Petitioners.	CASE NUMBER: JRT-99-AR-0001 RE: Petition for Arbitration pursuant to Section 47 U.S.C. 252(b) of the Federal Communications Act and Article 5(b), Chapter III, of the Puerto Rico Telecommunications Act – interconnection rates, terms and conditions

ARBITRATOR'S REPORT AND ORDER

Veronica M. Ahern
Arbitrator
NIXON PEABODY LLP
One Thomas Circle, N.W. – Suite 700
Washington, DC 20005
Phone: (202) 457-5300

September 28, 1999

EXECUTIVE SUMMARY

Non-Pricing Issues

Issue No. 1: PRTC's proposed language shall not be included.

Issue No. 4: Sprint's proposed language shall not be included.

Issue No. 6: Traffic originated in Puerto Rico and bound for an ISP shall be considered interstate traffic not subject to reciprocal compensation. PRTC's proposed division of reviews system, whereby PRTC and Sprint share 9.7 cents per call, with a credit applied for any amount billed to the ISP by the terminating carrier, shall be adopted.

Issue No. 10: PRTC shall, upon the request of Sprint, be required to remove its brand from operator and directory assistance services.

Issue No. 18: The Board will initiate a rulemaking including workshops in which industry-wide performance standards, reporting requirements, and penalties and incentives will be established. In the interim, I reject Sprint's Category 1 Direct Measures of Quality and accept PRTC's proposal (1) to provide specific reports measuring how well it is performing with regard to certain functions relating to its service to Sprint; (2) to follow its existing CLEC and resale carrier manuals; and (3) to memorialize the determinations of the PRTC-Sprint Implementation Team in the existing PRTC CLEC and resale carrier manuals. In addition, I require that PRTC report information concerning PRTC's provisioning of its services to itself.

Pricing Issues

The FLM version 5.0 shall be adopted with the following modifications:

1. Adopt the thirteen (13) changes reported by Mr. Blessing in his letters to Mr. Meredith, dated August 25, 1999 and September 2, 1999.
2. Modify depreciation factors for CWF, COE and Support Plant to reflect a levelized annual factor for the three-year contract period.
3. Modify the return factors for CWF, COE and Support Plant to reflect the existence of depreciation reserves.

4. Modify the maintenance expense, network support & general support, network operations, and corporate operations factors by reducing them to account for efficiency. The factors are to be reduced by 10 percent.
5. Change the support plant factor from 11.77 percent to 11.11 percent.

Issue No. 19: Transport and termination/unbundled switched usage rates shall be determined according to the modified FLM version 5.0.

Issue No. 20: PRTC shall produce forward-looking costs for unbundled dedicated transport consistent with the FLM version with adjustments within 90 days. In the interim, PRTC may provide unbundled dedicated transport based on its FCC tariff.

Issue No. 23: PRTC shall provide FLM-based results for the STP port within 90 days. During the interim period, PRTC may provide this element based upon the FCC tariff.

Issue No. 24: The FLM method of banding, with modifications, is adopted.

Issue No. 26: Based on the modified FLM, the NID rate should be $2.06 per month.

Motion to Strike: I granted PRTC's Motion to Strike Attachment One to Sprint's Post-hearing Memorandum ("Holmes Memorandum") with the exception of Items Three and Four, and subpart three of Item Five.

GOVERNMENT OF PUERTO RICO
TELECOMMUNICATIONS REGULATORY BOARD OF PUERTO RICO

SPRINT COMMUNICATIONS COMPANY L.P. and **PUERTO RICO TELEPHONE COMPANY** Petitioners.	CASE NUMBER: JRT-99-AR-0001 RE: Petition for Arbitration pursuant to Section 47 U.S.C. 252(b) of the Federal Communications Act and Article 5(b), Chapter III, of the Puerto Rico Telecommunications Act – interconnection rates, terms and conditions

ARBITRATOR'S REPORT AND ORDER

BACKGROUND

This case involves a dispute between the Puerto Rico Telephone Company ("PRTC") and Sprint Communications Company, L.P. ("Sprint") over Sprint's request to interconnect with PRTC for purposes of providing competitive local exchange telephone services.

Pursuant to Section 252(b) of the Communications Act of 1934, as amended, ("Communications Act") and Chapter III, Article 5(b) of the Puerto Rico Telecommunications Act of 1996 ("Puerto Rico Act"), on June 4, 1999 PRTC filed a petition for arbitration with the Telecommunication Regulatory Board of Puerto Rico (the "Board"). On June 7, 1999, Sprint filed its own petition for arbitration raising some of the same issues but also raising new issues. By order dated July 1, 1999, the Board appointed the undersigned to serve as the Arbitrator of this dispute and delegated to the Arbitrator authority to issue this Order.

On August 18, 19, and 20, 1999, a hearing was held before the undersigned Arbitrator and the Board. PRTC presented the testimony of Paul R. Zielinski, Roberto A. Correa, and David C. Blessing. Testifying on behalf of Sprint were Paul D. Reed, David T. Rearden, and John A. Holmes. Each of the witnesses was cross-examined. Douglas Meredith of John Staurulakis, Inc., serving as economic advisor to the Board and J. Breck Blalock of Nixon

Peabody LLP, serving as legal advisor to the Board, conducted additional examination of the witnesses on behalf of the Board.

In addition to the hearing transcript, the record includes each of the parties' petitions for arbitration, responses thereto, various motions and responses, multiple data requests and responses thereto, prefiled direct testimony, deposition transcripts, post-hearing briefs and exhibits.

The record indicates that both parties have negotiated in good faith to arrive at terms and conditions of interconnection and resale. Even after petitions for arbitration were filed, the parties were successful in negotiating certain outstanding issues. From the time the petitions were filed to the conclusion of the hearing, the parties reduced the number of outstanding issues from twenty-seven to eleven. I commend the parties on their good faith and professionalism in the conduct of this proceeding.

ORDER

I. NON-PRICING ISSUES

A. ARBITRATION ISSUE NO. 1: Reliance on the Federal Communications Act and the Puerto Rico Telecommunications Act (Sections 2.0 and 2.7)

Statement of the Issue. PRTC has proposed language providing that, "[n]otwithstanding any other provision of the agreement, nothing in the Agreement is intended to change, reduce or enlarge the rights and obligations of either party established by the Communications Act and the Puerto Rico Act or the rules, regulations and orders issued thereunder."[1] Sprint objects to the inclusion of this language.

Sprint's Position. Sprint objected to this language on two grounds: (1) the language creates ambiguity by adding a new meaning to the entire Draft Interconnection Agreement ("Agreement") not contemplated by Sprint before the language was proposed;[2] and (2) the language creates a loophole for PRTC to take advantage of changes in the laws applicable to the Agreement. Furthermore, Sprint argues that the parties' intent to comply with the

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[1] PRTC proposes to add this language to the end of Section 2.0 ("Scope of Agreement"). PRTC also proposes to insert, in the first sentence of Section 2.7 ("Parity of Service"), the phrase -- "and subject to the provisions of the Communications Act and the Puerto Rico Act."

[2] Sprint also focused on the timing of when PRTC proposed this language, and suggests that the last minute timing of the proposed inclusion of this language indicates that PRTC did not negotiate in good faith. *See* Sprint Post-hearing Br. at 6, 9; Reed's Direct Testimony at 6, lines 21-27. However, Sprint did not provide any support for such an inference.

Communications Act, the Puerto Rico Act and orders and rules of the Board was evident during the negotiation process and is set forth in a "WHEREAS" clause of the Agreement.[3]

Sprint offered the testimony of Paul R. Reed in support of its position. Mr. Reed testified that the proposed language is not necessary to confirm or clarify the parties' intent or obligations because those issues are already addressed in the Agreement's preamble. He also provided two recent examples of how the proposed language makes the contractual obligations of the parties ambiguous. Testifying that the latest change in the collocation rules occurred just in time to be incorporated into the Agreement, Mr. Reed speculated that, had the change not been incorporated, PRTC could have claimed, under the proposed language, that Sprint was not in compliance with the applicable laws.[4]

PRTC's Position. PRTC claims that this language ensures that the Agreement does not create obligations beyond what is required by law. PRTC argues that, if the Board rejects PRTC's proposed language, then extra-legal obligations could be imposed on PRTC. According to PRTC, its proposed language should be accepted because (1) it confirms the intent of the parties to comply with applicable laws; (2) it resolves ambiguity in the Agreement; and (3) it prevents PRTC from being obligated to provide Sprint more than required by the applicable interconnect laws.[5]

Paul R. Zielinski provided testimony supporting PRTC's position. Mr. Zielinski's testimony focused on the policy reasons for the proposed language. He testified that the proposed language would confirm the parties' intent to set forth rights and obligations with respect to resale, interconnection, and the purchase of unbundled network elements in a manner that adheres to the federal and Puerto Rico laws. Furthermore, Mr. Zielinski asserted that the proposed language would "address any ambiguity that might arise if one party interprets a

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[3] That recital in the Agreement provides:

> Whereas the Parties intend the rates, terms, and conditions of this Agreement, and the performance of their obligations hereunder, to comply with the Communications Act of 1934, as amended, the orders and rules of the Federal Communications Commission ("FCC"), the Puerto Rico Telecommunications Act of 1996, and the orders and rules of the Telecommunications Regulatory Board of Puerto Rico.

[4] Direct Examination of Reed at 495, lines 20-24, to 496, lines 1-2.

[5] PRTC's Post-hearing Br. at 4; Zielinski's Direct Testimony at 20, lines 6-8.

provision in a manner that expands the other party's obligations under the [Agreement] beyond what the law would otherwise require."[6]

Decision

The language that PRTC has proposed should not be included in the agreement because (1) it affects the responsibilities of the Board and (2) it gives each party the ability to rewrite the terms of the Agreement.

I turn first to the responsibilities of the Board. The Communications Act provides that state public utility commissions have the responsibility to approve or reject interconnection agreements.[7] Inclusion of the proposed language would mean that an agreement could change substantially after its approval by the Board. This defeats the purpose of Section 252(e) and deprives the Board of its opportunity to approve an agreement that may differ materially from a prior agreement. This is inconsistent with the Communications Act. The Board -- not the parties -- must decide what the law is and must approve any agreement.

The proposed language also allows either party unilaterally to rewrite the Agreement. This would not be in the best interests of consumers, and it may not further the policy of competitive entry.

A unilateral ability to change the terms of a contract, negotiated in good faith by the parties, approved by the Board pursuant to Section 252(e), and available for public inspection, is not consistent with principles of contract law, the Communications Act or the consumer protection provisions of the Puerto Rico Act. Therefore, I reject PRTC's proposed language.

B. ARBITRATION ISSUE NO. 4: Audits (Section 2.31)

Statement of the Issue. Sprint has proposed language providing that either party may conduct an audit, described as a comprehensive review of services performed on network functions and elements provided under the Agreement.

Sprint's Position. Sprint claims that its proposed language[8] is necessary to validate PRTC's compliance with its duties and obligations under the Agreement. Sprint argues that the

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Zielinski's Direct Testimony at 20, lines 6-8.

47 U.S.C. § 252(e).

Sprint proposes the following language (Section 2.31 of the Agreement, in pertinent part):

proposed audit provisions are justified because: (1) PRTC has limited experience providing service to CLECs -- or in a competitive environment; (2) the results will help PRTC improve performance and potential for cost reductions; (3) the alternate compliance mechanism -- filing a complaint with the Board -- is "absurd;" and (4) similar language is included in other Sprint interconnection agreements.[9]

In support of its position, Sprint offered the testimony of Paul D. Reed. Mr. Reed testified that, among other things, the audit is intended to improve the joint processes that Sprint and PRTC would use to provide service, repairs and billing. According to Mr. Reed, such improvement through auditing is crucial given PRTC's lack of experience in providing service to CLECs in a competitive environment.[10] Mr. Reed testified that Sprint's proposed audit language was specific and limited, as evidenced by guidelines that (1) provide sixty (60) days notice of the subject of the audit, (2) identify who pays for the audit and any special costs, and (3) require that normal business function not be interrupted. Furthermore, Mr. Reed claimed that in his experience audits involve very few people and are very short in duration. Thus, he believed that filing complaints with the Board regarding noncompliance, would be very impractical, put a burden the Board, and be very time consuming and expensive.[11]

<u>PRTC's Position</u>. PRTC asserted that the proposed audit provisions would permit a substantial and generalized audit right that is unacceptable because: (1) it is too broad; (2) such a broad audit right would be available for future CLECs to include in their interconnection agreements with PRTC as permitted under the "pick and choose" provisions of the

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2.31.1 As used herein, "Audit" shall mean a comprehensive review of services performed or network functions and elements provided under this Agreement. In order to verify the other Party's compliance with the provisions of this Agreement, either Party may conduct an audit of records, accounts and processes which contain information bearing upon the provision of the services performed or network functions and elements provided and performance standards agreed to under this Agreement. Such audit to be conducted no more frequently than once per twelve (12) month period. Each party shall bear its own expenses in connection with the conduct of an Audit. The reasonable cost of special data extraction required by either Party shall be paid for by such party.

2.31.2 Any Audit shall be performed as follows: (i) following at least sixty (60) days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) of a reasonable scope and duration; (iv) in a manner so as to not interfere with the audited Party's business operations; and (v) in compliance with the audited Party's security rules.

Sprint's Post-hearing Br. at 12-14.

Sprint's Post-hearing Br. at 13.

Direct Examination of Reed at 494, lines 17-24.

Communications Act and regulations; (3) the Agreement already includes mechanisms for ensuring compliance, including, among other things, a consensual, targeted audit function; and (4) the Board is available and specifically authorized by law to determine the proper scope of any necessary audit.[12]

According to PRTC's witness Paul Zielinski, the proposed audit right is too broad because it suggests that Sprint will be able to review any books and records that concern in any way the provision of unbundled elements, resale, any type of service or other activity for Sprint. Mr. Zielinski testified that, under Sprint's proposed language, if PRTC has a dozen outstanding interconnect agreements, then it could potentially have a dozen audits running simultaneously or in a series.[13] Sprint's witness, Mr. Reed, agreed with this possible outcome.[14]

Mr. Zielinski testified that PRTC is not opposed to all auditing; in fact, he recommended the use of a targeted audit function that would be voluntarily agreed to by the parties. PRTC argued that such a targeted audit option is included in the Agreement. PRTC also pointed out that there is no historical support for Sprint's fears concerning potential compliance problems; PRTC has not previously used such audit language and it has not been a problem.[15]

Decision

Sprint has not persuaded me that the proposed language provides a superior alternative to the current mechanisms for compliance.

If either party fails to comply with the terms of the Agreement, then there is a statutory remedy -- an independent, tailored review by the Board: "The Board shall have the authority to carry out inspections, investigations and audits, if necessary, to achieve the purposes [of the Puerto Rico Act]."[16] This remedy is in addition to contractual remedies already provided for and agreed upon by the parties.

The Agreement includes a series of remedial steps. Initially, there is the implementation team, "which is intended to 'develop and identify those processes, guidelines, specifications,

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[12] PRTC's Post-hearing Br. at 11-29.

[13] Redirect Examination of Zielinski at 124, lines 17-21.

[14] Cross-Examination of Reed at 517, lines 20-23.

[15] PRTC's Closing Argument at 875, line 24, to 876, lines 1-8.

[16] Puerto Rico Act, Chapter 2, Article 7(c).

standards and additional terms and conditions necessary to support the terms of this Agreement.'"[17] Moreover, PRTC has already agreed to provide certain reports indicating how it is performing "with regard to the activities most important to competitors."[18] Next, the Agreement calls for the parties to negotiate in good faith for thirty days regarding any disputes. In addition, the parties could agree to initiate an independent, targeted audit that focuses solely on the disputed issue. Finally, the parties could seek the Board's independent judgment on the appropriate scope and execution of any audit.

An additional contract remedy is unnecessary. Sprint proffers no explanation for why it contends that Board intervention is "absurd." This policy decision, however, has already been made by the Commonwealth of Puerto Rico in enacting the Puerto Rico Act. As PRTC highlights, in proposing to empower the parties to conduct comprehensive audits, Sprint is attempting to appropriate an essentially regulatory function in contravention of the Puerto Rico Act.[19] The Board should not open the door for Sprint, and future CLECs -- via the pick and choose option -- to engage in their own form of regulatory self-help.

Sprint's proposed audit mechanism is also inferior to the already available contractual and statutory remedies. The potentially infinite scope of the audits under Sprint's proposed language is unacceptable. I am not persuaded that there is any reliable or definitive limitation on the scope of the audit under Sprint's proposal, particularly considering Sprint's dual customer/competitor relationship with PRTC. As PRTC points out, interconnection agreements in other jurisdictions provide for audits that are of a much narrower scope because it is difficult for the audited party to give anyone complete open access to all of its books and records. For example, the Louisiana Public Service Commission in *Louisiana Public Service Commission Ex Parte, Opinion*, Docket No. U-22091, 1998 La. PUC LEXIS 33 (rel. April 27, 1998), ruled that the audit provisions of a resale tariff were unreasonable because they were not narrowly tailored. In that case, as here, the parties had a seller/customer and a competitive relationship. The Commission found, *inter alia*, that the audit provisions were anti-competitive because they were not appropriately narrowed given the dual relationship of the parties.[20]

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[17] PRTC's Post-hearing Br. at 23 (quoting the Agreement).

[18] PRTC's Post-hearing Br. at 24.

[19] PRTC's Post-hearing Br. at 29.

[20] 1998 La. PUC LEXIS at *37; *Cf.* Cross-Examination of Zielinski at 66, lines 17-24, to 67-68, lines 1-9.

In light of these considerations, Sprint did not adequately explain how the proposed language actually limited the scope of the review. It is my conclusion that the audited party could be subjected to a needlessly broad, intrusive and possibly endless review by its competitor.

Moreover, Sprint's proposed language does not require the use of an independent auditor. Given the relationship of the parties, common sense dictates that audits be performed by a neutral third party, who would not be tempted to exercise its auditing authority for tactical advantage, harassment, or to gain inappropriate access to competitively sensitive information.

For all of these reasons, Sprint's proposed audit language should not be included in the Agreement.

C. ARBITRATION ISSUE NO. 6: **Internet traffic (Section 3.1.3)**

Statement of the Issue. The parties disagree as to whether traffic that is originated in Puerto Rico and bound for an Internet service provider ("ISP") in Puerto Rico is subject to reciprocal compensation, and, if not, what other form of compensation is appropriate.

Sprint's Position. Sprint maintains that Internet traffic should be treated as local traffic and subject to the reciprocal compensation provisions of Section 251(b)(5) of the Communications Act. Although Sprint concedes that the FCC recently held that ISP-bound traffic is largely interstate, it argues that the FCC nevertheless left the Board free to find that reciprocal compensation should apply.[21] Sprint shows that a number of states have ruled that Internet traffic is local in nature and subject to reciprocal compensation.[22] Further, Sprint claims that, because the FCC treats ISP-bound calls as if they were local for interstate access charge purposes, it would be anomalous to use a different intercarrier compensation regime than the one applied to local calls.[23] Sprint also claims that, if the Board does not endorse reciprocal compensation, then there is no alternative compensation mechanism available since PRTC's proposal is arbitrary and not cost based.

PRTC's Position. PRTC maintains that the FCC's recent declaratory ruling regarding ISP-bound traffic prohibits the Board from requiring reciprocal compensation. PRTC further maintains that it is unclear to what degree the Board has the authority to impose any arrangement

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[21] Sprint's Post-hearing Br. at 19.

[22] *Id*

[23] *Id* at 22.

upon the pricing for ISP-bound interstate traffic, but that, if the Board does order a pricing arrangement to apply to this traffic, then it must be consistent with the Communications Act. In particular, PRTC maintains that Section 201 of the Communications Act and the FCC's rules relating to ISP-bound traffic require the Board to adopt a division of revenues method of compensating for ISP-bound traffic terminated using the other party's facilities. Specifically, PRTC proposes that the following language be included in the Agreement:

> Internet traffic is interstate traffic. Until the FCC establishes a means of determining the amount of intercarrier compensation for ISP-bound traffic, compensation for such traffic shall be based upon a division of revenues as follows: compensation for traffic delivered to an ISP shall be paid by the carrier whose customer originates the call in the amount of 50% of the amount billed by the originating carrier for such call. Any amount billed by the terminating carrier to the ISP for delivery of such traffic shall be credited against such payments by the originating carrier and the net amount remaining shall be paid by the originating carrier.

PRTC devoted approximately twenty-eight pages of its post-hearing brief to supporting its proposal. PRTC's legal arguments in support of its proposal can be summarized as follows.

First, the FCC has definitively declared that this mixed traffic is largely interstate, requiring the conclusion that traffic to ISPs is interstate. For this reason, a state commission may not now conclude that, in the absence of an agreement, reciprocal compensation arrangements will apply to ISP traffic without conflicting with this FCC decision.

Second, to the extent that the FCC concluded that state commissions may impose inter-carrier compensation mechanisms for ISP traffic, the FCC also emphasized that any such mechanisms must not conflict with governing federal law. According to PRTC, this means that, if a state commission establishes intercarrier compensation for ISP traffic, then the appropriate paradigm is not to be found in Section 251(b)(5), which governs reciprocal compensation for local traffic. Instead, PRTC claims that if the Board undertakes to devise a payment scheme for ISP traffic then it must do so with the guidance of the Communications Act, specifically Section 201, which applies to interstate traffic.

Third, PRTC argues that Section 201 of the Communications Act requires the Board to adopt a division of revenues method for inter-carrier compensation. PRTC notes in particular that the FCC has concluded that a division of revenues type sharing arrangement applies when an ILEC and CLEC jointly participate to provide interstate access service in a number portability

environment.[24] PRTC also points to equitable division of rates language in Section 400 of the Interstate Commerce Act and decisions relating to the division of charges in the railway industry as support for its proposition that a division of revenues method of intercarrier compensation is the only legal option open to the Board. Finally, PRTC notes that the FCC has placed very significant constraints on carrier cost recovery for this traffic by exempting the traffic from access charges, by requiring billing of ISPs from local tariffs, and by directing carriers not to apply the traffic minutes to the interstate jurisdiction for cost recovery.

In addition to its legal arguments, PRTC argues that sound public policy favors a division of revenues method for intercarrier compensation for ISP-bound traffic. According to PRTC, reciprocal compensation provides a windfall to the terminating carrier because the uni-directional nature of Internet calls coupled with the long holding times of ISP-bound traffic exponentially increases the total reciprocal compensation payment. PRTC also claims that the influx of Internet traffic has required PRTC to invest millions of dollars to accommodate this traffic. PRTC also notes that both parties agree that removal of the data traffic from the voice network is the only long-term solution to these issues.[25] However, according to PRTC, under a reciprocal compensation scheme Sprint will receive a windfall in return for minimal network investment, giving it little incentive to implement network-based solutions for data traffic on the voice network. PRTC also claims that reciprocal compensation would require PRTC to pay far more to Sprint than it can charge its end-user customers.

PRTC also supplied significant testimony in support of its position on intercarrier compensation for ISP-bound traffic. First PRTC addressed the proposition that calls originated on PRTC's network and terminated on Sprint's network would be off-set by calls originated on Sprint's network and terminated on PRTC's network. In his direct testimony, Mr. Blessing testified that, under normal circumstances:

> [T]he amount of traffic delivered by one carrier to the other will essentially be equal to the amount of traffic delivered in return. If true, the value of a specific reciprocal compensation rate becomes irrelevant. Since the carriers would compensate one another for the same level of traffic in

[24] PRTC's Post-hearing Br. at 35.

[25] *See* PRTC's Post-hearing Br. at 41 (citing Direct and Cross-Examination of Reed at 484, 500-02); Deposition Transcript of Correa at 36 ("Again, that is ADSL. This is an ADSL type of solution, that you move the traffic out of that switched network. But, again, if we do that, there is no mutual compensation involved because there is no call sent to a CLEC. Be clear of that. Then there will be no discussion because there are not . . . any Internet calls being sent to the CLEC.")

> a given period, the intercarrier payments would in all likelihood be equal and, thus, would cancel out.[26]

However, according to PRTC, this is not the case with ISP-bound traffic because such traffic is usually unidirectional as ISPs rarely make return calls. Thus, PRTC claims that, under a reciprocal compensation scheme, PRTC would not expect to receive any reciprocal payments from Sprint as long as Sprints ISP customers do not originate calls. Accordingly, PRTC likely would be left with a large increase in reciprocal compensation expense without no corresponding revenues.

Mr. Blessing testified that PRTC's incremental revenue per call is $0.0275,[27] and its average revenue per call is $0.097.[28] Blessing Hearing EXHIBIT 6 demonstrates that, when reciprocal compensation is paid according to PRTC's proposed rate of $0.016 per minute, PRTC loses money on every call after approximately six minutes on an average revenue basis and after less than two minutes on an incremental basis.[29] Mr. Blessing also testified that, after six minutes measured on an average basis, PRTC operates at a loss, having not even covered all of its variable costs or the fixed or variable costs of its own network.[30]

PRTC also presented evidence that, if reciprocal compensation applies to ISP-bound calls, Sprint could earn a significant windfall from calls originated by PRTC customers to Sprint ISP customers. Using PRTC's proposed transport and termination rate of $0.016 as the reciprocal compensation rate, Mr. Blessing estimated the monthly revenue that Sprint could generate simply by providing a single loop to a single ISP. According to Mr. Blessing, if the loop was in use 10 percent of the time, 50 percent of the time, and 100 percent of the time, Sprint's monthly revenue would be $70.78, $353.93, $707.87, respectively.[31] PRTC's witness Robert Correa testified he has seen some trunks to ISPs above 80 percent occupancy for an entire

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[26] Blessing's Direct Testimony at 63.

[27] *Id.* at 65-66; Direct Examination of Blessing at 181; Blessing Hearing EXHIBIT 5.

[28] Direct Examination of Blessing at 181; Blessing Hearing EXHIBIT 5.

[29] Direct Examination of Blessing at 182-84; Blessing Hearing EXHIBIT 6.

[30] Direct Examination of Blessing at 183-84.

[31] Blessing Hearing EXHIBIT 7.

day.[32] Under Sprint's loop rate proposal, it would pay $6.48 for a loop to an ISP in San Juan, and then collect over $530 per month for that loop from PRTC.[33]

Finally, PRTC presented evidence relating to the network upgrades required to accommodate dial-up ISP traffic. PRTC's witness Mr. Correa testified that extensive network investments have been required to maintain customer service[34] and that PRTC has embarked upon a $16 million project to expand significantly trunk capacity.[35] PRTC's network investments also include projects to "increase link capacity between host switches and remotes, and the switch matrix and the line modules to handle the traffic demand generated by the increase in Internet access.[36] PRTC claims that these network investments are not, as Sprint suggested in the hearing, of PRTC's own or exclusive doing [37] but rather an industry problem caused by the rapid introduction of data traffic onto the voice network.

Decision

As a preliminary matter, I agree with Sprint that the Board has the authority under current law to require intercarrier compensation mechanisms, including reciprocal compensation, for ISP-bound traffic pending the outcome of an FCC proceeding to determine a federally mandated mechanism. However, the Board also has the authority to determine that reciprocal compensation should not apply to ISP-bound traffic or to adopt an alternative mechanism for compensation. In its last word on the issue, in which the FCC found that ISP-bound traffic was largely interstate, the FCC stated:

> *Even where parties to interconnection agreements do not voluntarily agree on an inter-carrier compensation mechanism for ISP-bound traffic, state commissions nonetheless may determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic.* The passage of the 1996 Act raised the novel issue of the applicability of its local competition provisions to the issue of inter-carrier

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[32] Direct Examination of Correa at 131, lines 19-21.

[33] Direct Examination of Blessing at 186-87; Blessing Hearing EXHIBIT 7.

[34] Direct Examination of Correa at 129-30.

[35] Correa's Direct Testimony at 9 ("This upgrade specifically involves the addition of 10,000 trunks to the Caparra tandem, 2,016 trunks to the Bayamon tandem and all central offices in the metropolitan area, and over 2,400 to each eleven DMS switches outside the San Juan metropolitan area.")

[36] *Id*

[37] *See, e.g.*, Direct Examination of Reed at 483. As Mr. Blessing testified, "[f]rom a business perspective, this represents a potentially lucrative strategy. It amounts to an 'arbitrage opportunity' for competitive local exchange carriers, whose entire business plan consists of placing themselves between an ILEC and an ISP." Blessing's Direct Testimony at n.40.

> compensation for ISP-bound traffic. Section 252 imposes upon state commissions the statutory duty to . . . arbitrate interconnection disputes. As we observed in the *Local Competition Order*, state commission authority over interconnection agreements pursuant to section 252 "extends to both interstate and intrastate matters." Thus the mere fact that ISP-bound traffic is largely interstate does not necessarily remove it from the section 251/252 negotiation and arbitration process. . . . While to date the Commission has not adopted a specific rule governing the matter, we note that our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic.[38]

However, the Commission further explained:

> Although reciprocal compensation is mandated under section 251(b)(5) only for the transport and termination of local traffic, neither the statute nor our rules prohibit a state commission from concluding in an arbitration that reciprocal compensation is appropriate in certain instances not addressed by section 251(b)(5), so long as there is no conflict with governing federal law. A state commission's decision to impose reciprocal compensation obligations in an arbitration proceeding does not conflict with any Commission rule regarding ISP-bound traffic. *By the same token, in the absence of governing federal law, state commissions are also free not to require the payment of reciprocal compensation for this traffic and to adopt another compensation mechanism.*[39]

The FCC's ruling settles the point for the time being. The Board may adopt whatever mechanism it deems appropriate for ISP-bound traffic, including reciprocal compensation, pursuant to the Board's statutory obligation to arbitrate interconnection disputes, provided that the mechanism the Board adopts does not otherwise conflict with an FCC rule or other federal law.

However, the record before me indicates that applying reciprocal compensation here is against the public interest. PRTC has tendered abundant evidence that requiring reciprocal compensation for ISP-bound traffic would provide an inappropriate windfall to the terminating carrier because of the uni-directional nature of Internet calls and the long holding times associated with Internet traffic. PRTC has also presented a compelling case that it might be providing service at a loss under a reciprocal compensation scheme. Finally, I am convinced that

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[38] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling and Notice of Proposed Rulemaking*, 14 FCC Rcd 3689, 3704-05 (1999) ("*ISP Declaratory Ruling*") (emphasis added) (internal citations omitted).

[39] *Id.* at 3706 (emphasis added) (internal citations omitted).

permitting reciprocal compensation would provide a CLEC serving an ISP with an incentive not to develop appropriate network-based capacity solutions for so long as dial-up services are acceptable to consumers.

Sprint has not provided any compelling evidence to counter PRTC's evidence except to observe that some of the expenses PRTC has encountered in upgrading its network to accommodate Internet traffic are of PRTC's own making as PRTC also provides dial-up Internet access via its own ISP. This observation is not sufficient to tip the scale in Sprint's favor.

Consequently, I agree with the Massachusetts Department of Telecommunications and Energy that:

> [t]he unqualified payment of reciprocal compensation for ISP-bound traffic . . . does not promote real competition in telecommunications. Rather, it enriches competitive local exchange carriers, Internet service providers, and Internet users at the expense of telephone customers or shareholders. This is done under the guise of what purports to be competition, but is really just an unintended arbitrage opportunity derived from regulations that were designed to promote real competition. A loophole, in a word.[40]

Accordingly, reciprocal compensation for ISP-bound traffic should not apply in this instant case. The next question is what compensation, if any, should apply.

One option is to apply a modified reciprocal compensation scheme with such compensation capped at the terminating carrier's actual transport and termination costs. Such a scheme would address many of PRTC's public policy concerns, while still providing compensation for such costs. However, when all of a company's expenses are reimbursed, there may be little reason to control costs or develop efficient networks. Moreover, pursuant to Section 252(i) of the Communications Act, the so-called "most favored nation" or "pick and choose" provision, other carriers might be permitted to request reciprocal compensation capped at their, possibly different, actual costs thus creating the possibility of discrimination.

A second option is to apply PRTC's proposed division of revenues scheme. Under this proposal, based on PRTC's average billings for local calls, PRTC and Sprint would share 9.7

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[40] *Complaint of MCI WorldCom, Inc. Against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for Breach of Interconnection Terms Entered into Under Sections 251 and 252 of the Telecommunications Act of 1996*, D.T.E. 97-116-C, Order (Massachusetts DTE May 19, 1999) (http: www.magnet.state.ma.us/dpu/telecom).

cents per call for any call that they collaborate to complete under PRTC's plan, with a credit applied for any amount billed to the ISP by the terminating carrier.[41]

This approach seems more appropriate than capped reciprocal compensation in that it provides economic incentives for the terminating carrier to operate efficiently and avoids the possibility of discrimination with other carriers while at the same time providing a legally sound solution until the FCC adopts rules that provide a specific method of compensation. I note that PRTC is not the only carrier to propose such a mechanism. In fact, the FCC has specifically asked for comment on such a proposal tendered by Ameritech, Inc. in conjunction with the FCC's rulemaking on this issue.[42]

Accordingly, a 50/50 division of revenues mechanism should apply to ISP-bound traffic. Compensation for such traffic should be paid by the carrier whose customer initiates the call in an amount equal to 50% of the total amount billed by the originating carrier for such call. Any amount billed by the terminating carrier to the ISP for delivery of such traffic shall be credited against such payments by the originating carrier and the net amount remaining shall be paid by the originating carrier.

D. ARBITRATION ISSUE NO. 10: Branding and unbranding of operator services and directory assistance (Sections 5.7, 5.8.2 and 8.5.2.2)

Statement of the Issue. The parties disagree as to whether PRTC should, upon the reasonable request of Sprint, be required to remove its brand from its operator services and directory assistance.

Sprint's Position. Sprint argues that the FCC rules and an FCC order support its position that incumbent LECs are required to provide such services on an unbranded basis when requested by CLECs. Sprint also maintains that refusal to unbrand operator services and directory assistance upon Sprint's reasonable request raises a presumption that PRTC is unlawfully restricting access to its operator services and directory assistance.[43]

Sprint attempts to show that Section 51.217 of the FCC's rules governs the provision of operator services and directory assistance to interconnecting carriers. Subsection (d) of that rule

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[41] The theory behind the credit, of course, is to avoid compensating Sprint twice for the costs of terminating the call. The record does not appear to contain evidence of what amount is typically billed to the ISP by the terminating carrier on a per call basis.

[42] *ISP Declaratory Ruling*, 14 FCC Rcd at 3709.

[43] Sprint's Post-hearing Br. at 24-25.

establishes that the refusal of a local exchange carrier to comply with a competing carrier's reasonable request to rebrand operator and directory assistance services or provide such services on an unbranded basis creates the rebuttable presumption that the LEC is unlawfully restricting access to its services. The providing LEC may rebut this presumption by demonstrating that it lacks the capability to comply with the competing provider's request. However, Sprint notes that PRTC did not offer any evidence on this issue and has failed to demonstrate that it lacks the capability to unbrand.[44]

Additionally Sprint makes the argument that the statutory provision relied upon by PRTC to "trump" Section 51.217 of the FCC rules does no such thing. Rather, argues Sprint, Section 226 of the Communications Act applies only to interstate traffic initiated from an aggregator.[45] According to Sprint, Section 226 does not apply here.

PRTC's Position. PRTC claims that any contractual provision obligating a carrier to offer operator services on an unbranded basis would be illegal under the Communications Act and FCC rules. According to PRTC, under Section 226 of the Communications Act, a provider of operator services is required to "identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call." Accordingly, PRTC urges the Board not to require PRTC to provide unbranded operator services upon request.

PRTC also claims that the same issues arise with respect to directory assistance service. According to PRTC, Section 226 was enacted in order to protect consumers who make interstate operator services calls against unreasonably high rates and anti-competitive practices by operator service providers. In the context of directory assistance, PRTC argues that consumers are subjected to a potential risk of unreasonably high prices and anti-competitive conduct by the providers of that service. Chapter II, Section 7(f) of the Puerto Rico Act states: "All the actions, regulations and determinations of the Board shall be governed by the Federal Communications Act, the public interest, and especially by the protection of the consumers' rights."

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[44] *Id.* at 28.

[45] *Id.*

Decision

As a preliminary matter, I note that, on September 15, 1999, the FCC adopted new rules concerning the unbundled network elements that incumbent local exchange carriers are required to make available to competitors. According to the FCC Press Release, the FCC will no longer require ILECs to provide CLECs with access to their operator and directory assistance service. Consequently it is possible that Arbitration Issue No 10 may eventually be mooted.

However, the new rules are not yet in effect. Further, I have not received notice from the parties as to the disposition of this issue. Consequently, I will proceed to make the following decision:

I find that PRTC has the burden of demonstrating that it lacks the capability to comply with Sprint's request that PRTC provide rebranded operator and directory assistance services to Sprint, or, in the alternative, provide those services unbranded. Although PRTC has made unsubstantiated claims that it is not capable of rebranding, it did not present any evidence that it lacks the capability to do so. Moreover, PRTC did not present any evidence that it was not capable of providing unbranded operator or directory assistance services.

I agree with Sprint that Section 51.217 of the Commission's rules governs the provision of rebranded or unbranded operator and directory assistance services and that the rule requires PRTC to provide or demonstrate that it is not capable of providing such services. PRTC's reliance on Section 226 of the Communications Act and the rules promulgated thereunder is misplaced.

Section 226 of the Communications Act was enacted by Congress in 1990 as the Telephone Operator Consumer Services Improvement Act ("TOCSIA") to protect consumers of operator services making interstate calls from telephones provided by call aggregators. The FCC has made it clear that the limited branding requirements imposed by Section 226 of the Communications Act do not relate to the provision of operator or directory assistance services provided by a LEC to a competing provider:

> In using the term "branding requirement" in this [the provision of operator and directory assistance services by a LEC to a competing provider] context, we do not refer to the section 226 requirements obligating OSPs [Operator Service Providers] to identify, [sic] themselves to consumers; rather, we refer to the obligations beyond section 226, if any, of a LEC to a competing provider that is using the LEC's facilities to provide its own operator services.

or is reselling the operator services of the LEC. In these situations, the issue is whose brand should be used.[46]

The Commission did however note that "[a]ny inter-carrier branding arrangements under which an interstate operator services call made from an aggregator location would not be branded would violate Section 226 of the Act and Part 64 of our rules. We therefore caution interconnecting carriers that, in negotiating branding arrangements for operator services, they must insure that such arrangements are consistent with Federal laws and regulations requiring interstate OSPs to identify themselves."[47]

The crucial distinction drawn by the Commission is that Section 226 of the Communications Act applies only to OSPs providing services to aggregator locations. Moreover, for purposes of Section 226, one becomes an OSP only if one is providing "operator services," which is defined in Section 226 an "interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion or both of an interstate telephone call." An "aggregator" is defined as a "person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services" – in other words, a provider of pay telephones. This type of activity is separate and distinct from providing operator services to a competing provider of local exchange service. I find as a matter of law that the FCC has declared that requiring an ILEC to rebrand or unbrand its operator and directory assistance services provided to an interconnecting competitive provider does not violate Section 226 of the Communications Act. Accordingly, PRTC should be required to rebrand or unbrand its operator and directory assistance services.

I am also not persuaded by PRTC's public interest claims that rebranding or unbranding could lead to the misleading or abuse of consumers. With pay phones, a consumer has no way of knowing the presubscribed provider of operator services prior to placing a collect or other interstate call that would require operator assistance. Accordingly, should the consumer

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[46] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan For Dallas and Houston, Ordered by the Public Utility Commission of Texas, Administration of the North American Numbering Plan, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, Second Report and Order*, 11 FCC Rcd 19392, 19454 (1996).

[47] *Id.* at 19455.

suddenly find that the call was outrageously priced, the consumer has no way of knowing who to pursue for complaint unless the OSP has identified itself.

The same concerns do not exist in the provision of competitive local exchange services. Assuming that a Sprint local customer had a complaint relating to operator services provided on an unbranded basis by PRTC, it should not be too difficult to determine where the problem lies. The concerns related to transient users of unknown payphones simply do not exist in the competitive local exchange marketplace.

Section 226 of the Communications Act and the rules promulgated thereunder have no application to the issue in this proceeding. Rather, these requirements relate only to interstate traffic initiated from a call aggregator's location. PRTC has failed to demonstrate that it cannot provide rebranded or unbranded operator and directory assistance services. Accordingly, PRTC is required to rebrand or unbrand such services at such time as Sprint elects to purchase such services from PRTC.

E. ARBITRATION ISSUE NO. 18: Service quality standards and processes (Article 9 and Section 2.8.1

Statement of the Issue. The parties disagree as to whether PRTC should be subjected to performance standards applying to its provision and performance of services, systems, processes and related activity under the agreement.

Sprint's Position. Sprint maintains that PRTC should be subjected to such performance standards, arguing that such standards are essential to ensure that an ILEC's obligations under an interconnection agreement are met and that PRTC is providing service on a nondiscriminatory basis. Sprint also argues that the proposed performance standards are part of Sprint's standard interconnection agreement and have been included in its previous interconnection agreements.

Sprint's witness Paul D. Reed provided testimony as to why these standards and measurements are important for local exchange service in Puerto Rico.[48] According to Mr. Reed, performance standards and measurement reporting constitutes the cornerstone in ensuring parity and nondiscrimination. Without measurement and reporting, there is simply no comparative data to determine whether PRTC is allowing nondiscriminatory access to its network. According to Mr. Reed, measurement standards should be based upon actual PRTC

[48] Reed's Direct Testimony at 20, lines 18-30, and at 21-28; Direct Examination of Reed at 489-92.

support provided to its retail operations. In the absence of directly comparative PRTC results, standard levels of performance should be established based upon performance studies.[49]

Sprint also claims PRTC has substantial experience in the provisioning of retail local exchange service in Puerto Rico. Nevertheless, Sprint recognizes that PRTC has limited experience in a competitive environment. Mr. Reed noted that PRTC had little experience with competition, CLECs or resellers. Mr. Reed also claimed, however, that most of the measurements suggested by Sprint are tools that telecommunications companies use to manage their business. Therefore, while PRTC may have limited experience in a competitive environment, Sprint claims PRTC should have the experience and capacity to provide the requested reports and be subject to performance standards based on PRTC's experience in the telecommunications industry and use of management tools.

Mr. Reed also testified that Sprint's main concern in seeking performance standards was to ensure parity.[50] According to Sprint, while PRTC offered to provide reports in three or four different areas in the most recent negotiations, there was no indication that PRTC would provide the reports in a proper format such that a comparison could be made between their retail operations, the current retail interval, the CLEC industry as a whole and Sprint's specific intervals. Thus, according to Sprint, the reports that PRTC is willing to provide would not show whether parity was being achieved. Mr. Reed explained that parity is nothing more or less than PRTC providing service to Sprint at the same quality and level that it provides to PRTC's retail customers.[51]

At the hearing, Sprint appeared to modify its position. According to Mr. Reed:

> Sprint realizes PRTC's lack of experience with performance standards and competition. Sprint suggests that the Board order PRTC to provide to Sprint the Category I Direct Measures of Quality (DMOQ) within ninety days of Sprint's entry into the local market in Puerto Rico. In addition the Board should order PRTC to implement the Gap Closure plans and remedies within nine months of Sprint's market entry, Sprint recommends the Board order a

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[49] Reed's Direct Testimony at 22.

[50] Direct Examination of Reed at 489.

[51] *Id.* at 490.

> collaborative workshop with Subject Matter Experts (SME) from PRTC and any CLECs willing to participate.[52]

Further, Sprint's counsel stated at the hearing that, "what Sprint believes should happen is that a procedural workshop should be held and maybe . . . what could be done is include language in the agreement to the effect that PRTC agrees to that proceeding and then the Board in the future could have that proceeding . . . ."[53]

PRTC's Position. PRTC supports the proposition that the Board should organize and oversee a proceeding in which performance standards may be developed for Puerto Rico. However, PRTC argues against the imposition of Sprint's proposed performance standards beginning on a fixed date after Sprint's entry into the Puerto Rico local exchange market.

PRTC objects to incorporating specified performance standards into its interconnection agreements, principally because it believes performance standards are not reasonable for a carrier that has no actual experience in providing the interconnection services that Sprint is requesting. Although PRTC has agreed to provide such services on a nondiscriminatory basis, it claims that it should not be required to adhere to performance requirements intended to apply to Regional Bell Operating Companies having extensive experience in the provisioning of unbundled network elements.

In his direct testimony, PRTC's witness Paul R. Zielinski addressed PRTC's lack of experience with meaningful local exchange competition and competitive service provisioning:

> [T]hough PRTC has entered interconnection agreements with a number of parties, no party has ever purchased an unbundled element from PRTC. The very first party began reselling PRTC telecommunications services in July, 1999, and that party has placed only a handful of orders with PRTC. Finally, PRTC has provided interconnection only to two to three parties and, even in those cases, only on a sporadic basis. As a result of the limited competitive entry to date, PRTC personnel have no experience with unbundled element orders or repair and maintenance requests from a new entrant, and PRTC personnel have little useful experience with resale or interconnection provisioning. More importantly, PRTC personnel have utterly no experience with simultaneous unbundled element, resale, and interconnection orders from multiple new entrants.

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[52] *See generally* Agreement at Article 9.

[53] Sprint's Opening Statement at 38, lines 17-23.

According to Mr. Zielinski, PRTC "really has no experience whatsoever in providing wholesale services of the type that this contract is discussing and it needs to get some history to even form a base line as to where the gap closure plan should start . . . ."[54]

Pending the establishment of a Board supervised rulemaking to develop appropriate performance standards for Puerto Rico, PRTC urges the adoption of its proposal. PRTC has agreed to provide specific reports measuring how well it is performing with regard to the activities most important to competitors. The reports will address the percentage of customer service records delivered within two business days of the receipt of the valid letter of agency, the percentage of order confirmations delivered within two business days of the receipt of the service order, the percentage of basic service orders completed within ten business days of the service order, the monthly percentage of Sprint customers making trouble reports, and the monthly percentage of Sprint customers making repeat trouble reports. These reports are among those included in Sprint's proposed reporting obligations. PRTC is capable of generating these reports relatively quickly because they feature data that PRTC already captures or may capture with limited changes to its existing systems.

In addition, PRTC has proposed the following language for inclusion in the PRTC-Sprint interconnection agreement:

> The Parties recognize that many of the services, elements and features addressed by this agreement require the development and refinement of methods, procedures and arrangements by PRTC including, but not limited to methods, procedures and arrangements for ordering, preordering, maintenance, provisioning and carrier billing. These new methods, procedures and arrangements are set forth in a Carrier Manual developed cooperatively by PRTC and the affected carriers in Puerto Rico. PRTC submitted the Manual to the Board for review on September 3, 1997. Any dispute regarding the terms of the manual shall be resolved by the Board. The Parties agree that any challenge by PRTC or Sprint to any Board action with respect to the manual shall be in accordance with Section 252(e)(6) of the Act. Neither Party shall be precluded by the terms hereof from making any proposal or argument to the Board regarding the inclusion in the manual or the exclusion from the manual, of any terms relating to performance standards or remedies.

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[54] Cross-Examination of Zielinski at 95-96. *See also* Deposition Transcript of Zielinski at 58 ("[N]othing material or practical that would be helpful is really going to happen until orders are issued, until problems start to be encountered and getting resolved. At that starting point . . . we are going to have good data that you can start to look at and say, you know, here's where we should be, here's the kind of standard we should be setting").

The Board has previously approved such language. PRTC would like previously developed CLEC and Resale Manuals to govern its interim responsibilities.

Attached to Mr. Zielinski's prefiled testimony were two manuals marked as Exhibits PRZ-1 and PRZ-2. PRZ-1 was identified as "CLEC Manual" and PRZ-2 was identified as "RESALE Manual." According to Mr. Zielinski, these manuals are intended to inform new entrants as to procedures, performance measures, interfacing with PRTC and additional information regarding services offered by PRTC.[55]

Decision

The record establishes that PRTC and Sprint are in accord that meaningful performance standards should be developed in a Board-sponsored proceeding. PRTC has agreed to provide specific reports measuring how well it is performing with regard to the activities most important to competitors; to participate in a Board-supervised Puerto Rico-specific performance standards workshop; and to memorialize the determinations of the PRTC-Sprint Implementation Team in the existing PRTC CLEC and resale carrier manuals. As Mr. Zielinski explained in his direct testimony, "Through specific and identifiable reporting obligations and the collaborative process of developing and refining PRTC's CLEC and resale carrier manuals, Sprint will be permitted to verify that it is provided with efficient, nondiscriminatory access to the systems, functions, and elements necessary for the provision of local telephone service."

I agree with the parties that the Board should initiate a rulemaking or workshop in which industry-wide performance standards, reporting requirements, and penalties and incentives will be established, and the Board has independently confirmed its intention to initiate such a proceeding. Accordingly, the only issue remaining is whether Sprint's proposed Category 1 Direct Measures of Quality (DMOQs), or whether PRTC's proposals should apply in the interim. The record shows that PRTC's proposal, with some modifications, is most appropriate.

Generic performance standards are not appropriate given PRTC's lack of experience and the characteristics of the Puerto Rico market. Sprint's Category 1 DMOQ's are just such standards. The record shows that these standards have simply been copied from other Sprint interconnection agreements. Accordingly, it does not make sense to adopt these standards in the

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[55] Zielinski's Direct Testimony at 8.