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April 25, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW -- Room TW-B204
Washington, DC 20554

Re: Worldnet Telecommuniations, Inc. Ex Parte Letter Concerning Bell Atlantic/GTE Merger Conditions
CC Docket No. 98-141/98-184

Dear Ms. Salas:

Enclosed please find the original and seven (7) copies of *Joint Comments of Centennial Puerto Rico License Corp. and Primus Telecommunications, Inc.* relative to the above-reference proceeding.

Please contact the undersigned if you have any questions.

Sincerely,

Karlyn D. Stanley

Enclosures
cc: Janice M. Myles
ITS

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
WorldNet Telecommunications, Inc.'s	)	CC Docket No. 98-141, 98-184
Ex Parte Letter Concerning Bell Atlantic /	)	
GTE Merger Conditions	)	

JOINT COMMENTS OF CENTENNIAL PUERTO RICO LICENSE CORP. AND PRIMUS TELECOMMUNICATIONS, INC.

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Dated: April 25, 2001

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JOINT COMMENTS OF CENTENNIAL PUERTO RICO LICENSE CORP. AND PRIMUS TELECOMMUNICATIONS, INC.

Centennial Puerto Rico License Corp. ("Centennial") and Primus Telecommunications, Inc. (collectively "Joint Commenters"), respectfully submit these comments in support of WorldNet Telecommunications, Inc.'s ("WorldNet") request to the Commission to apply the conditions in the GTE /Bell Atlantic merger to Puerto Rico and Puerto Rico Telephone Company, Inc. ("PRTC").[1]

Centennial is a competitive local exchange carrier ("CLEC") that provides wireline and wireless communications in several states as well as Puerto Rico.[2] Primus Telecommunications Inc. ("Primus") is a provider of interexchange services throughout the United States and in Puerto Rico. Primus is also a certified CLEC in Puerto Rico, where it offers resold local exchange services to commercial customers. Both Centennial and Primus have begun to bring greater choice of telecommunications services to consumers in Puerto Rico, but the telephone

[1] The Joint Commenters submit these comments in response to a March 26, 2001 *Public Notice* in which the Commission requested comments in the above-captioned matter. *See Public Notice DA 01-764, Pleading Cycle Established for Comments on WorldNet Telecommunications, Inc. Ex Parte Letter Concerning Bell Atlantic/GTE Merger Conditions in CC Docket Nos. 98-141, 98-184*, Rel. Mar. 26, 2001.

[2] Centennial Puerto Rico License Corp. is a subsidiary of Centennial Communications Corp.

density on the island remains at a low 33 lines per 100 people, as compared to the national average of 66 lines per 100 people.[3]

I. INTRODUCTION AND SUMMARY.

On June 16, 2000, the Commission authorized Bell Atlantic Corp. ("Bell Atlantic") and GTE Corp. ("GTE") to merge into a new entity called Verizon Communications Corp. ("Verizon"), subject to twenty-six pro-competition conditions ("merger conditions").[4] CLECs in Puerto Rico, such as the Joint Commenters and WorldNet were optimistic that these conditions would improve the development of competition on the island by reining in the anti-competitive practices of the monopolistic incumbent local exchange carrier ("ILEC"), PRTC.

The Joint Commenters and WorldNet assumed that the merger conditions would apply to PRTC since GTE's purchase of a controlling interest in the ILEC was completed before the release of the *Merger Order* and Puerto Rico is considered a State for purposes of regulating the telecommunications industry.[5] Yet, when PRTC was asked when it would begin preparations to comply with the merger conditions, it responded that it was not bound by the conditions imposed on its parent, Verizon, in the *Merger Order*.[6] WorldNet then wrote to the Commission on

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[3] *See Remarks of FCC Commissioner Gloria Tristani before the Caribbean Telecommunications Council, San Juan, Puerto Rico*, Oct. 4, 2000 (discussing 1999 telephone density rates). The telephone density of Puerto Rico is half that of the rest of the United States overall. *See id.*

[4] *See In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, FCC 00-221 (June 16, 2000) (hereinafter "*Merger Order*").

[5] *See* 47 U.S.C. 153(40) (defining the term "State," for purposes of the Telecommunications Act of 1996, as including the District of Columbia and "the Territories [such as Puerto Rico] and possessions."); 47 U.S.C. 153 (51) (defining the term "United States," as including "the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone.").

[6] *See WorldNet Telecommunications, Inc. Ex Parte Letter Concerning Bell Atlantic/GTE Merger Conditions in CC Docket Nos. 98-141, 98-184*, filed Feb. 13, 2001 at 2 (hereinafter "*WorldNet Letter*").

February 12, 2001, asking the Commission to reopen the above-captioned dockets in order to apply the merger conditions to PRTC.[7] The Commission subsequently initiated these comment proceedings to investigate the matter further. Of course, the Commission has full authority[8] to reopen this docket to address the ambiguity of the *Merger Order* and resolve the question of whether the merger conditions do, in fact, apply to PRTC.

II. THERE IS NO LEGAL BASIS TO EXCLUDE PRTC FROM THE MERGER CONDITIONS.

A. The Merger Conditions Were Devised to Offset Significant Potential Harm to the Public Interest.

When a merger is proposed between two telecommunications companies, such as GTE and Bell Atlantic, the Commission must review the transaction to determine whether control of licenses and lines may be properly transferred to the new merged entity under the standards set forth in Sections 214(a) and 310(d) of the Communications Act.[9] The main purpose of this review is to determine whether the public interest, convenience and necessity will be served by permitting the transfer of licenses and lines.

In the present case, the Commission found that it was essential to impose a host of conditions on the newly-formed company in order to approve the merger. In fact, the Commission clearly stated that without the conditions, it could not approve the merger due to the extraordinary market power of GTE and Bell Atlantic. As Commissioner Tristani pointed out:

> With this merger, two companies – Bell Atlantic/GTE and SBC -- will control a staggering 69 percent of the nation's access lines. Bell Atlantic/GTE alone will control nearly forty percent of those lines, approximately 69 million local exchange access lines. The combined company will have the incentive and, absent conditions, the ability to deny, degrade, or delay competitive LEC access

[7] *See WorldNet Letter* at 16.

[8] The Commission has the authority to reopen a docket pursuant to Sections 1, 4, 201-205, 218, 220 and 403 of the Communications Act of 1934.

[9] 47 U.S.C. §§ 214(a), 303(r), 310(d).

> to a large number of consumers. Moreover, by reducing the number of major ILECs to four, the merger will eliminate an independent source of observation and impair regulators' ability to use comparative practices analyses to facilitate implementation of the Communications Act. The conditions to which GTE and Bell Atlantic have voluntarily agreed should, however, substantially mitigate the potential public interest harms of the proposed merger and result in an overall public benefit.[10]

The Commission found that the conditions were necessary to offset the "significant potential [public] interest harms"[11] of joining two of the largest ILECs in the United States.[12] Without these conditions, it found that permitting GTE and Bell Atlantic to merge would "inevitably slow progress in opening local telecommunications markets to consumer-benefiting competition."[13]

B. The Merger Conditions Should Apply to PRTC.

As a preliminary matter, it is not clear to the Joint Commenters that PRTC is explicitly excluded from the scope of the merger conditions. In fact, a reasonable reading of the *Merger Order* leads to the conclusion that Puerto Rico is included within the scope of the *Merger Order*.

In the *Merger Order*, the Commission discussed concerns about Verizon's control over U.S. bottleneck facilities used in provisioning international service raised by TRICOM USA Inc. ("TRICOM"). In this regard, the Commission specifically noted TRICOM's concern that GTE was bidding for a controlling stake in PRTC at the time it submitted its comments.[14] The Commission also noted that subsequent to TRICOM filing its comments, GTE did in fact purchase an interest in PRTC.[15] The Commission's response to TRICOM's concerns over

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[10] *See Merger Order*, Separate Statement of Commissioner Gloria Tristani.
[11] *Id.*, *Merger Order* at ¶ 245.
[12] The Commission outlined the five primary goals of the conditions: "(a) promoting equitable and efficient advanced services deployment; (b) ensuring open local markets; (c) fostering out-of-territory competition; (d) improving residential phone service; (e) ensuring compliance with and enforcement of the conditions." *Id.* at ¶ 251.
[13] *See id.*, at ¶ 96.
[14] *See id.*, at ¶ 399, n. 893.
[15] *See id.*

GTE's control over U.S. bottleneck facilities, and the pending PRTC purchase, was that such concerns were adequately addressed in the merger conditions.[16] Thus, a reasonable reading of the language of the *Merger Order* would include Puerto Rico within the scope of the conditions just like any other U.S. service territory of GTE. Such a reading of the *Merger Order* fits squarely with the treatment of Puerto Rico as a State and its inclusion in the definition of "United States" under the Telecommunications Act of 1996 ("1996 Act").[17]

Even if the Joint Commenters' interpretation of the *Merger Order* is not what was originally intended by the Commission, there is no legal reason to exclude Puerto Rico from the Commission's conditions. The safeguards adopted in the *Merger Order* were created in order to protect U.S. consumers from the potentially anti-competitive effects of the GTE-Bell Atlantic merger. Puerto Rican consumers are U.S. citizens, residents of a "State" for purposes of the 1996 Act[18] and they need the protection of the merger conditions now that GTE controls the dominant Puerto Rico LEC. Verizon acquired *de jure*[19] and *de facto*[20] control over PRTC during

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[16] *See id.*, at ¶ 399 (stating that "any potential anti-competitive effects of the proposed merger in the domestic local exchange and exchange access markets would be outweighed by the accompanying benefits of the conditions we impose on the merger.").

[17] *See supra* note 6. In contrast, the Commission omitted Puerto Rico from its discussion regarding control of bottleneck facilities on the *foreign ends* of international routes, reinforcing the Joint Commenters' reading of the *Merger Order* as including Puerto Rico in the U.S. territories covered by the conditions. *See Merger Order* at ¶ 398. In the same vein, the Joint Commenters also note that the Commission did not list the pending PRTC purchase as a potential foreign carrier affiliation, even though it was aware of the transaction. *See Merger Order* paras. 401-422.

[18] *See* 47 U.S.C. 153(40).

[19] GTE Holdings (Puerto Rico) LLC purchased 40% of the stock of PRTC's parent company, Telecomunicaciones de Puerto Rico, Inc. ("TELPRI") in 1999, after successfully bidding on the right to purchase the stock in 1997. *See WorldNet Letter* at 2-3.

[20] GTE Holdings acquired control over TELPRI and its affiliates in several ways, such as the power to elect a majority of TELPRI directors, as well as a shareholder agreement and management agreement that effectively gave GTE *de facto* control over PRTC.

the Commission's merger review process.[21] Verizon has acknowledged that it now controls PRTC, as was recognized by the Commission in its Order approving the transfer of control, licenses and certification to GTE Holdings.[22]

Verizon has just as much control over PRTC as it does its other ILEC subsidiaries, such as GTE Hawaiian Telephone Company Inc., GTE Florida Inc. or GTE California Inc.,[23] and there is no legal reason to treat the citizens of Puerto Rico less favorably than those who live in Hawaii, Florida or California in the development of telecommunications competition. Verizon's operations in Puerto Rico should be subject to the same reporting and operating controls as in its other U.S. service territories because there is no legal difference, for purposes of applying the merger conditions, between Puerto Rico and any State.

C. It Is Sound Public Policy To Include PRTC In The Merger Conditions.

The Commission found that these conditions, and Verizon's ongoing compliance with them, were crucial to its approval of the proposed merger, which it expressly stated it would not approve but for the conditions.[24] From a policy standpoint, it does not make sense to say that the imposition of the conditions is important in all GTE service territories *except* Puerto Rico. In terms of the need to foster competitive alternatives, Puerto Rico should be no different than any

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[21] *See generally, WorldNet Letter* at 2-6.

[22] *See Memorandum Opinion and Order, In re Applications of Puerto Rico Telephone Authority and GTE Holdings for Consent to Transfer Licenses and Authorization Held by Puerto Rico Telephone Company and Celulares Telefonica, Inc.*, FCC 99-22 at ¶ 66 (Feb. 12, 1999) (where the Commission noted that GTE Holdings will continue to exercise control over PRTC after GTE's merger with Bell Atlantic); *see also WorldNet Letter* 2-6.

[23] GTE Hawaiian Telephone Company Inc., GTE Florida Inc. or GTE California Inc. are all wholly owned subsidiaries of GTE Corp. GTE International Telecommunications Inc. is a wholly owned subsidiary of GTE Corp. and the parent of GTE Holdings. GTE exercises the same amount of control over PRTC, through the shareholder and management agreements discussed *supra* at n. 16.

[24] *See Merger Order* at ¶ 246.

other service territory in which Verizon controls the ILEC, such as GTE's ILEC arm in Hawaii. Therefore, the Joint Commenters urge the Commission to affirm or extend the application of the conditions to PRTC to ensure that all of the competitive benefits of the *Merger Order* are provided to Puerto Rico's telecommunications consumers.

III. COMPETITION IN PUERTO RICO WOULD BENEFIT FROM THE MERGER CONDITIONS.

A. PRTC Dominates the Local Exchange Market in Puerto Rico.

Currently, PRTC is the incumbent provider in Puerto Rico and, accordingly, controls the overwhelming share of the local exchange market. As the WorldNet Ex Parte letter clearly demonstrates, PRTC continues to dominate the local exchange market. To that end, WorldNet provided significant evidence to the Commission of PRTC's position as the ILEC holding a dominant share of the market.[25] The experiences of the Joint Commenters support the evidence presented by WorldNet in the Ex Parte letter. The Joint Commenters endorse WorldNet's conclusions regarding the state of competition in Puerto Rico's local exchange market.[26] Indeed, as explained above, the telephone density on the island remains at a low 33 lines per 100 people, due in large part to PRTC's anti-competitive practices.[27]

B. The Application of the Merger Conditions Would Enhance Competition in Puerto Rico.

PRTC's anti-competitive practices are the principle reason why competition has stagnated in Puerto Rico. If the merger conditions had been applied to PRTC, competition in

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[25] *See WorldNet Letter* at 7-15.

[26] Indeed, the *WorldNet Letter* cited, in part, comments of both Centennial and Primus made before the Puerto Rico Telecommunications Board in its proceeding on the PRTC's market dominance. *See In re Request for Comments on Market Dominance by PRTC*, Docket No. JRT-2000-CCG-0003, Puerto Rico Telecommunications Board.

[27] *See Remarks of FCC Commissioner Gloria Tristani before the Caribbean Telecommunications Council, San Juan, Puerto Rico*, Oct. 4, 2000 (discussing 1999 telephone

Puerto Rico would have been aided in several ways. The imposition of several specific merger conditions on PRTC is particularly important for competitive resellers in Puerto Rico. In particular, the merger conditions related to the resale discount, access to Operations Support Systems ("OSS"), and the Carrier-to-Carrier Performance Plan, could provide significant competitive benefits to providers of competitive resold services in Puerto Rico. In addition, the imposition of merger conditions concerning UNE and collocation provisioning is extremely important for providers of competitive facilities-based services in Puerto Rico.

1. *The Resale Discount*

Under the *Merger Order* conditions Verizon is required to offer resale discounts designed to encourage rapid development of local competition in residential and less dense areas.[28] Specifically, Verizon must offer to competitors a residential resale discount of 32%.[29] Currently, PRTC offers Primus a paltry residential services resale discount rate of 14%. Given the costs of offering competitive telecommunications services in Puerto Rico, it is economically infeasible for Primus to offer residential resold services based on a 14% discount rate. However, under the 32% discount rate for resold services, Primus would be able to offer competitive resold residential services.

As the Commission recognized in the *Merger Order*, meaningful resale discounts can help promote residential competition in lower population density areas.[30] At this time, Primus offers services to business customers across the island, including in the cities of Añasco, Mayaguez, Humacao, Ponce and Caguas. If the merger condition resale discount rate of 32%

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density rates). The telephone density of Puerto Rico is half that of the rest of the United States overall. *See id.*

[28] *See Merger Order* at ¶ 307.

[29] *See id.* at ¶ 310.

[30] *See id.*, at ¶ 310.

applied to PRTC, Primus would also be able to offer services to residential customers across the island. Thus, the application of the resale discount established in the merger conditions will allow Primus to expand its service offerings to all of the citizens of Puerto Rico, thereby increasing competitive choices for the residents of the island.

2. *Access to OSS*

Under the merger conditions Verizon is required to: establish uniform OSS interfaces and business rules; implement uniform transport and security protocols; and implement uniform OSS functions and product ordering capabilities.[31] As the Commission has explained, implementation of these conditions is important because "[e]ffective nondiscriminatory access to OSS is critical for achieving the 1996 Act's local competition objectives."[32]

Primus has experienced significant problems related to access to PRTC's OSS databases. PRTC continues to deny Primus fully automated access to order processing systems. Instead, for a number of transactions related to the databases, PRTC requires that Primus *fax* order requests, status changes, and letters of agency ("LoAs"), in addition to entering information from these forms into the database, an unnecessarily redundant process.

It is inappropriate for PRTC to require that LoAs be provided at all. While the standard industry practice, and the Commission's rules,[33] require only that the requesting carrier have a copy of the LoAs on file, PRTC requires that the carrier actually provide a hard copy of the LoA

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[31] *See id.*, at ¶ 286; *see also* Conditions, Attach. B-1 (specifying electronic OSS interface functions to be made uniform across the combined Bell Atlantic/GTE region); Conditions, Attach B-2 (specifying a region-wide, uniform products set which will be available through Bell Atlantic/GTE's application-to-application ordering capability). *See also* CoreComm Mar. 1, 2000 Comments at 35 (requesting like functionality throughout Applicants' combined service area).

[32] *See id.*, at ¶ 285.

[33] *See e.g.*, 47 C.F.R. §§ 64.1100 to 64.1180.

in conjunction with the change order. Clearly, such a practice is burdensome, expensive, and an obstacle to efficiency. Furthermore, while it is possible for Primus to view pending orders on the PRTC's system, Primus is unable to make any changes or corrections to those orders.

Despite standard industry practice, PRTC requires Primus to employ costly, time-consuming manual procedures to access its databases.[34] PRTC's effective denial of access to its OSS databases hinders Primus' ability to offer lower cost, competitive telecommunications services to the residents of Puerto Rico. Thus, application of the OSS-related merger conditions to PRTC will address and hopefully deter such anti-competitive practices.

3. *Order Provisioning Delays*

The merger conditions require Verizon to report data concerning the performance of its obligations toward telecommunications carriers in 18 different measurement categories, including key aspects of pre-ordering, ordering, provisioning, maintenance and repair, and billing associated with . . . resold services.[35] In adopting these conditions, the Commission determined that the Performance Plan reporting offered a means of ensuring that Verizon's service to telecommunications carriers does not deteriorate as a result of the merger and the larger firm's increased incentive and ability to discriminate.[36]

Closely related to the OSS access issues described above are the order provisioning delays that Primus has experienced. In this regard, Primus believes that the application of the Carrier-to-Carrier Performance Plans merger condition would increase PRTC's incentives to improve its current wholesale carrier service record.

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[34] The standard industry practice is for carriers to exchange billing tapes with this type of information.
[35] *See Merger Order* at ¶ 279.
[36] *See id.*

Primus continues to face significant delays in provisioning new customers that request resold services from Primus and leave PRTC's service. For example, PRTC will not confirm receipt of the order from Primus, nor will PRTC provide an expected time frame for the customer's conversion. Moreover, PRTC refuses to convert any customer that has a pending work order with PRTC. Of course, the pending work orders are PRTC's responsibility to complete. PRTC, therefore, has every incentive *not* to complete the work order so that the customer conversion does not take place.

The cumulative effect of these actions is that Primus is forced to wait, on average, one month for PRTC to a switch customer's a line from PRTC to Primus. In fact, in some cases the process takes much longer. For that reason, Primus now has hundreds of orders pending with PRTC.

Because PRTC faces no penalties for these shortfalls it has no incentive to improve this dismal record. PRTC's current practices fall far below the acceptable level of provisioning time intervals established in the merger conditions. For this reason, the Joint Commenters believe that the application of the Carrier-to-Carrier Performance Plans merger condition will increase PRTC's incentives to eliminate provisioning delays and impose a system of accountability on PRTC.

4. *UNE and Collocation Rules Compliance*

Under the merger conditions Verizon will undergo an independent audit of the merged company's compliance with the Commission's collocation[37] and UNE and line sharing rules.[38] The Commission explained that "this condition will make it quicker and easier for the

[37] *See Merger Order* at ¶ 297.
[38] *See id.* at ¶ 298.

Commission and others to detect non-compliance with our collocation, UNE, and line sharing rules both prior to and following the merger."[39]

As a facilities-based competitive carrier, Centennial has faced several provisioning delays in relation to PRTC's delivery of collocation arrangements and UNEs. For instance, PRTC has continued to fail to deliver specific unbundled network element facilities that Centennial has requested.

Specifically, in October of 1999, Centennial requested local loop facilities to serve new Centennial customers. After PRTC failed to provide the requested facilities, Centennial, some five months later, on February 18, 2000, was required by PRTC to make a second request for these facilities because PRTC arbitrarily changed its procedures. On March 14, 2000 a copy of this revised request was personally handed to PRTC's President, Mr. John Slater, by Centennial's President, Ms. Kari Jordan, who met to discuss this and other matters. Several additional requests for facilities were made over the course of the next several months. PRTC did not deliver the requested facilities until the end of 2000, many months after the initial requests were made.

The application of the merger conditions related to UNE compliance would directly impact PRTC's failure to comply with the Commission's rules. Under the merger conditions PRTC's provisioning practices would be subject to an independent audit to determine whether those practices satisfied the current federal legal requirements. Undoubtedly, PRTC's current practices fall far below Commission requirements. For that reason, the competitive environment would benefit from the imposition of this merger condition on PRTC.

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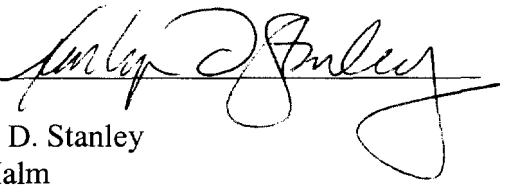
[39] *See id.* at ¶ 299.

IV. RECOMMENDATION AND CONCLUSION.

For the foregoing reasons, the Joint Commenters urge the Commission to apply the conditions in the *Merger Order* to PRTC.

The Joint Commenters believe that there is good reason to conclude that the merger conditions adopted in the Order do, in fact, apply to Puerto Rico and PRTC's operations. However, even assuming those conditions do not currently apply, there is an excellent basis on which to include Puerto Rico and PRTC's operations within the scope of the *Merger Order*. As demonstrated above, PRTC remains the virtual monopoly provider of local exchange services in Puerto Rico and uses its position as the incumbent to slow access to the market by competitors. Application of the merger conditions would directly address this problem and bring the residents of Puerto Rico a major step closer to enjoying the benefits of a competitive local exchange market.

Respectfully submitted,

By: 

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Dated: April 25, 2001

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CERTIFICATE OF SERVICE

I, Debra Sloan, hereby certify that on this 25th day of April, 2001, I caused a copy of the foregoing *Joint Comments of Centennial Puerto Rico License Corp. and Primus Telecommunications, Inc.* to be hand-delivered to the following:

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