in Puerto Rico for not being included in the BA/GTE Merger Order Conditions. The BA/GTE Merger Order was applicable to all GTE ILECS and, therefore, it should have included PRTC, the only ILEC in Puerto Rico. Moreover, because PRTC has been found to have Market Control in local telephone service, access services and intra-island long distance services, this fact should have weighed in favor of including it the FCC Merger Order.

5. WorldNet's Experience with PRTC Confirms the Need to Extend the Applicability of the Conditions Adopted for Verizon in the FCC Merger Order to PRTC and Puerto Rico.

WorldNet was the first reseller of local service in Puerto Rico and is currently the largest, though is quite small by U.S. Mainland standards. WorldNet has been successfully operating in the market since August, 1999, despite the utter lack of regulation and anti-competitive behavior from PRTC in the Puerto Rico market. WorldNet's continued growth, however, is in jeopardy because, while PRTC will tolerate a small reseller, WorldNet believes they have proven unwilling to allow large wholesale competitors. Even to succeed as a small reseller, WorldNet has had to endure extensive anti-competitive practices. Based on WorldNet's experience, PRTC has simply shown no commitment to abide by the 1996 Telecommunications Act and to date has been allowed to operate in complete disregard of all rules.

The Verizon Merger concessions are desperately needed to allow competition in the local market to gain a foothold by providing the necessary guidelines and incentives for PRTC to truly open its network in a fair manner. Some areas that would have great impact based on WorldNet's experience are the following requirements under "Opening Local Markets to Competition."

a. PRTC offers no Standards.

The Carrier –to-Carrier Performance Plan and Uniform and Enhanced OSS will provide much needed help. PRTC has refused to implement any consistent performance criteria either for transferring accounts to resellers, installation of new services, repair or any other OSS function. There was a Reseller manual produced back in 1998 but it was never implemented. Only the procedures PRTC chose to follow were used. None of the performance guidelines for installations and repairs were followed. As early as July, 1999, WorldNet began requesting an updated manual because they were informed much of the current one was outdated and inaccurate. As shown in the meeting agenda for September 9, 1999 between WorldNet and PRTC, WorldNet had been promised the new manual by the end of July, 1999.[39] In this same agenda, WorldNet was also promised they would receive the name of the person appointed to Performance Coordinator, the position detailed in the manual designed to ensure PRTC met the performance commitments and procedures.[40] This Performance Coordinator was the only mechanism provided in the Puerto Rico industry to monitor and correct deviations from standards and update procedures when necessary. As seen in PRTC's response to WorldNet's complaints, these promises were repeatedly broken. PRTC states in their letter of September 9, 1999, "The revised Reseller Manual will be available in a few weeks. We are in the final editing stage." And regarding the Performance Coordinator, "A Performance Coordinator for installation and repair has not yet been appointed."[41]

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[39]See Exhibit 17.

[40]See Exhibit 18.

[41]See Exhibit 19.

After being led to believe both actions were imminent, as of April 22, 2001 PRTC has yet to produce either the Reseller Manual, or Performance Coordinator.

Without any incentive PRTC has consistently delayed and stalled plans to work with the industry to provide updated versions of the manuals. One example of the many unsuccessful requests is seen in WorldNet's minutes sent to PRTC pursuant to a meeting on November 16, 2000.[42] Over one year after the promise was made in the agenda in Exhibit 17, PRTC again states they are working on the manual and admitted that there is now no schedule for completion. Please note it was also agreed during this meeting that the industry as a group would produce the new version. No commitment was given despite the fact that, in the agenda from WorldNet for that same meeting sent to PRTC on November 14[43], WorldNet clearly stated that a date for completion was needed. WorldNet's president even got involved in a letter on May 15, to the Director of PRTC Wholesale complaining in item 6 of the total lack of commitment by PRTC to establish standardized procedures.[44] The industry still has no definitive date for receiving the manual for resale or CLEC procedures and performance. It is clear that without some regulatory requirements these and the many other necessary steps to create procedures for a fair and free market in local service will never occur in Puerto Rico.

By producing no manual, PRTC has reserved the right to unilaterally change any procedure and performance commitment. This absence of any standard has left the door wide open to anti-competitive decisions regarding what level of service PRTC chooses to provide. It is a major

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[42]See Exhibit 20.

[43]See Exhibit 21.

[44]See Exhibit 22.

contributor to the crippling of the industry. It is both a barrier to entry and an obstacle for growth. By offering no standard it has made it impossible for competitors to project revenue, to service their customers or to develop systematic internal procedures and OSS functions. Many internal functions must be completed manually because commitments change so often, and are so rarely met, that internal procedures are outdated before they are completed. This has served to keep competition at a small scale. This is why five years into an "Open market", WorldNet, a small privately funded operation is the largest reseller.

b. PRTC's Delays in transferring service to WorldNet.

Moreover, even when standards are set, agreed to and written, as in the old Reseller Manuals, PRTC assumes no responsibility to meet them. One area this lack of commitment is evident is in the widely vacillating time frames and excessive delays WorldNet has been forced to endure for transferring accounts to WorldNet. Performance commitments for transferring accounts were set in the first manual.[45] All transfers were to be effective by the next billing cycle date. For instance, if WorldNet submitted an LOA for an account on billing cycle 16, on the 10th, it would be effective six days later. As clearly illustrated, these guidelines were never met.[46] In response to WorldNet's many complaints, PRTC simply restated their commitments as goals, and then unilaterally changed their guidelines to give themselves longer intervals. This is illustrated in PRTC's e-mail in response to WorldNet's minutes reflecting a meeting held on March 27, 2001. WorldNet lists the verbal commitment made that accounts with 50 lines or less would be transferred within five days. PRTC recants this commitment and restates it as an objective, thereby eliminating any responsibility for

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[45]See Exhibit 23.

[46]See Exhibit 24.

performance. Next, PRTC restates a different commitment tripling the prior time frames for transfers that even exceed the times of two years prior.[47] The time frames for transferring service to WorldNet has been lengthened despite the fact that PRTC has had two years of experience to improve efficiency and the fact that it is installing an entirely new, allegedly state of the art OSS system. They are forcing competition to get less efficient while greatly improving their own efficiency.

c. PRTC's Poor Performance in Repairs and Installations.

Additionally, repair and installation time frames vary so widely and follow no standard that providing even adequate service is impossible. Commitments given for repair or installation are simply ignored. PRTC's original manual contains performance criteria for repair that indicate 90% of repairs are to be completed in 48 hours.[48] PRTC's performance for repairs of WorldNet accounts between the months of October, 2000 and April, 2001 show performance far outside of their own performance guidelines, with only 22% being completed within the 48 hour time frame.[49] Another telling statistic is that not only is PRTC missing their 48 hour commitment with 78% of the repairs, many are extending far beyond, with some taking over 71 days.[50] This data is from a period beginning over a year after PRTC submitted these criteria, and they are still absurdly outside of the standards.

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[47]See Exhibit 24.

[48]See Exhibit 23.

[49]See Exhibit 25.

[50]See Exhibit 26.

PRTC's performance with installations is even worse. PRTC's reseller manual contains performance commitments for installation of POTS lines of 60% in 10 days, and 80% in 20 days.[51] In the sample of 56 requests for POTS lines requested through April, less than 2% were installed within 10 days, and less than 6% were installed within 20 days. Moreover, 50% were still pending in excess of 20 days.[52]

PRTC has performed dismally, entirely missing every time frame for WorldNet's special facilities orders. According to the PRTC manual, 60% of special facilities are to be installed in 30 days, 75% in 45 days and 90% in 60 days.[53] For special facilities ordered by WorldNet between June 8, 2000 and April 20, 2001, WorldNet experienced 0% installed in 30 days, 0% installed in 45 days and 0% installed in 60 days. 13% were finally installed after 60 days, however, 39% are still pending after 60 days.[54]

The Carrier–to-Carrier Performance Plan and Uniform and Enhanced OSS, and various compliance requirements would address these issues by setting guidelines, structure and repercussions if standards are not met. This would effectively bring the necessary organization to the market by setting the proper incentives for PRTC to create an even playing field to compete. This will go a long way in successfully developing an environment for competitors to grow their business and service their customers.

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[51]See Exhibit 23.

[52]See Exhibit 27.

[53]See Exhibit 23.

[54]See Exhibit 28.

d. Lack of Procedural Standards.

Setting procedural standards would also help eliminate much of the discrimination that is occurring. One example of PRTC's discrimination is that they have forced WorldNet to deliver originals of all LOAs before they would transfer an account while allowing another competitor to provide fax copies. This treatment forced WorldNet to encounter delays in submitting orders that the other competitor did not have. WorldNet was required to send originals until they confronted PRTC with this issue. Only now is WorldNet able to send fax copies, but WorldNet has been forced to endure this discrimination for almost a full year. Additionally, if WorldNet had not raised the issue with facts, there is no indication PRTC would have stopped the discriminating policy. If consistent standards had been set and documented, this type of discrimination would not have occurred.

e. PRTC's Discriminating Tactis.

Another example of discrimination is that PRTC's service to their large customers such as Banco Popular and Doral Financial, often far exceed what they offer to the wholesale customers. Without standards, it is up to the competitors to investigate and prove that wholesale service is inferior to retail and this is costly and difficult. Only with significant evidence will PRTC offer parity. One illustration of this is WorldNet's discovery that large retail customers had a "VIP Desk" to escalate issues and would receive expedited and special treatment. This was discovered by accident in a meeting with the Director of Wholesale Group, President of WorldNet and the Director of PRTC Marketing. As seen in WorldNet's letter of October 1, 2000 to Mr. Neal, PRTC Director of Wireline Services[55], it was known from experience in the market that PRTC is providing better

[55]See Exhibit 29.

service to large accounts, however, no specifics were uncovered. It was during the meeting that Mr. Neal proudly announced PRTC's "VIP Desk" and described its success in expediting service for large customers.[56] Mr. Juan Velazquez, Director of PRTC's Wholesale Group, admitted at that meeting that the Wholesale Group must provide parity. After waiting a month and hearing no response, WorldNet patiently followed up with Mr. Velazquez on the status.[57] After waiting another week, WorldNet needed to follow up again to finally get a response.[58] Finally, a conference call was arranged in the second week of November and a guarantee was provided by Frank Lucero of Verizon in Dallas, Texas, as shown in WorldNet's minutes following the call.[59] It was not until the beginning of 2001 that PRTC finally created the mere basics of an "Escalation Desk" for Wholesale.[60] As is typical with PRTC, it was never fully implemented and by March 2, 2001, WorldNet had to address with PRTC the complete ineffectiveness of the "Escalation Desk".[61] As a result, WorldNet is still suffering from discrimination in its ability to compete for large customers. PRTC can always offer better service through their "functional" VIP Desk.

A third example is PRTC's denying WorldNet the ability to resell ADSL service. The minutes to a meeting between PRTC and WorldNet on March 2, 2001 clearly shows that Mr. Velazquez, PRTC Director Wholesale Service, accepted responsibility for providing DSL to

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[56]See Exhibit 30.

[57]See Exhibit 31.

[58]See Exhibit 32.

[59]See Exhibit 33.

[60]See Exhibit 34.

[61]See Exhibit 35.

WorldNet for Resale.[62] However, several weeks after this meeting, WorldNet had to again write a letter because PRTC refused to process WorldNet's orders for DSL claiming that WorldNet does not have authorization to resell the product.[63] Our orders were left unprocessed for over three weeks with no notification. In this same letter of April 17, 2001, Gloria Mulett, WorldNet's General Manager, illustrates WorldNet's general frustration when she states:

> "It is very hard to visualize our good faith business relationship, when these situations occur. Mutual time and effort is placed in our meetings, we come to agreements, leave the meetings feeling that we have moved forward, anticipate implementing and following through on these agreements, and later find that these agreements are totally ignored by PRTC."

Yet another example of lack of parity in OSS is lack of access wholesale customers have to PRTC's Network Design Department. Despite requests for proposals and evaluations of potential customers of PRTC's advanced services, WorldNet frequently receives no reply. According to our employee, Francisco Muñiz, who is an ex-PRTC employee in the Network Design Group, retail executives frequently hand delivered requests for evaluations and proposals to this group while they rarely received any follow up from the Wholesale Group. Requests sit in the department untouched.[64] The Wholesale Group has consistently neglected WorldNet's requests for design and pricing of special services. Recognizing this fact, WorldNet requested and was denied the ability to access Network Design Group directly. Once again, despite the energy put into creating parity, the end result is continued discrimination. This was one of the reasons WorldNet was forced to hire Mr. Muñiz from PRTC.

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[62]See Exhibit 35.

[63]See Exhibit 36.

[64]See Exhibit 37.

These examples are only the tip of the iceberg but serve to illustrate the amount of energy that must be put in to fight discrimination and further demonstrate that most attempts, no matter the energy, are unsuccessful. Without standards set through regulation, PRTC is showing that they are not willing to create the level playing field in Puerto Rico that the Federal and Puerto Rico Telecommunications Acts of 1996 envisioned. PRTC has learned there are no repercussions to anti-competitive acts, and delays implementation forever. Therefore, it will continue with these acts until the proper incentives are provided to operate differently. These incentives exist in the Verizon concessions.

f. PRTC's use of its Monopolistic Powers.

The setting of standards, as mentioned above, combined with other of the merger concessions would also greatly help competition by eliminating, or at least reducing, PRTC's use of its monopolistic powers to enforce its will and hurt competition. PRTC has often resorted to these "Bully" tactics when confronted with situations not to its liking. One recent example involved one of WorldNet's customers. In order to collect past due charges WorldNet temporarily disconnected the services of its customer "Municipio de Coamo." This customer called the President's office at PRTC, and within a few hours their services were reconnected and transferred back to PRTC without WorldNet's authorization or knowledge; thus depriving WorldNet of its most powerful tool to collect its money. PRTC then informed WorldNet it was still responsible for the debt in full. When asked what policy PRTC was going to use to reconnect WorldNet's customers without authorization, the reply was that it would be handled on a case by case basis depending on whether PRTC

arbitrarily deemed the situation an "Emergency."[65] WorldNet vehemently protested this misuse of power in a letter but received no response.[66]

Another example of PRT unfairly using its monopolistic powers is evidenced by its opportunistic recent announcement that it would be releasing new CLEC and Reseller manuals that had been unilaterally written by PRTC based on existing Verizon versions. After receiving no response to our complaints that our two year effort through meetings and discussion was being ignored[67], WorldNet included this issue in the same letter of complaint to Ms. Lambert listed above.[68] To date there has been no response that PRTC intends to include the industry in the creation of the new manual. All indications are that PRTC will enforce whatever policies suit its business and the rest of the companies are at their mercy.

A third example is PRTC's marketing group using its other business to deter WorldNet's customers from completing its transfer off PRTC's local service. PRTC's marketing group, including Mr. Neal, Director of Marketing, was involved in a conspiracy to misinform the customer, Doral Financial Corporation, in an attempt to win the account back to PRTC. The customer was told that if they transferred their local lines to WorldNet it would interfere with PRTC's ability to complete Doral Bank's unrelated vital internal data project. This anti-competitive behavior was brought to PRTC's attention in a WorldNet's letter of October 1, 2000 to Mr. Neal, PRTC's Director

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[65]See Exhibit 24.

[66]See Exhibit 38.

[67]See Exhibit 39.

[68]See Exhibitt 38.

of Wireline Services.[69] As a result of Mr. Neal's refusal to stop the actions, the customer returned a large portion of their service back to PRTC for fear of delays or disruptions to this unrelated service. Further damaging WorldNet, is PRTC's arbitrary refusal to transfer another portion of this account that bills $60,000 per month to WorldNet. Despite WorldNet having a legitimate LOA, and continual complaints PRTC has not transferred this account for over 14 months and counting.[70]

g. Other PRTC's Anticompetitive Acts.

The Verizon Merger Concessions would also help reduce PRTC's ability to act in other anti-competitive ways by setting structure in other areas. For example the concession titled "OSS Assistance to Qualifying CLECs " would provide much needed training to the industry on PRTC's systems.

PRTC has refused to offer training to WorldNet for any new products, advanced services or even how to price and manage advanced services. WorldNet has been deprived of this even though such trainings have been requested and promised repeatedly over the last two years. Exhibit 41 shows 6 references to traning requests between April 1999 and February 2001. The lack of parity in this regard was so damaging to WorldNet's ability to service its customers that they it was forced to hire a design engineer from PRTC in order to compete. In March 2001, WorldNet hired Francisco Muñiz from PRTC's Network Design Group.

Another vital provision in the merger concessions is the "Most Favored Nation Clause." Verizon controlled PRTC keeps potential competitors at bay by making the negotiations of new interconnection agreements as lengthy and litigious as possible. Thus, competitors face formidable

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[69]See Exhibit 29.

[70]See Exhibit 40.

barriers to entry in terms of legal cost and time that few Puerto Rican competitors can or will endure. Moreover, PRTC rigidly resists any changes to the company's template interconnect agreement often forcing the CLECs to choose between capitulation or costly and time consuming arbitration on key issues.

WorldNet is facing this now. There is no UNE-P section in any Puerto Rico agreements and in a recent discussion with a member of PRTC's negotiation team WorldNet's president was told that negotiations should proceed quickly, "Unless WorldNet wanted to get fancy like by trying to use a Verizon contract." WorldNet was told that if they did this, negotiations would extend the full legal time of 135 days and would end up in arbitration. That amounts to a threat of delay of up to one year, and based on other companies' experience, over $100,000 just to negotiate a contract that already exists within Verizon in many of the other regions it operates. Moreover, why is the company using Verizon's CLEC and Reseller manual to base the terms of their new manual, but resisting using their contracts? The logical reason is that Verizon can further block competition by making each new product to Puerto Rico a lengthy negotiation.

These delay tactics are not new to WorldNet, however. The negotiations of WorldNet's resale agreement lasted over two years and the final version was incomplete compared to stateside contracts. WorldNet was pressured in to signing an inferior contract by the need to start business.

In May, 1997, WorldNet began negotiating with PRTC to resell local services.[71] By March 7, 1998, after almost a year of negotiating, WorldNet had almost completed its reseller agreement with PRTC. Just before completion, however, the negotiating contact at PRTC, Mr. Luis Alvarez Suria, was suddenly and suspiciously transferred out of the department and WorldNet had to begin

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[71]See Exhibit 42.

with a new person.[72] WorldNet expressed both the desire and hope that negotiations would begin where they had left off, but WorldNet was forced to start over from the beginning and was forced to endure repeatedly delays and broken commitments. This was expressed in a letter to PRTC's Director of Network Sales and Administration on June 4, 1998 (later renamed the Wholesale Group).[73] Exhibit 45 that illustrates that WorldNet was still working on completing the contract by July 7, 1998. WorldNet's letter of March 10, 1999,[74] mentions that the contract was finally completed in January, 1999 but had still not been signed and returned by PRTC for two months. Moreover, it illustrates that PRTC was not finished with their delay tactics yet. Even after two years of negotiating, PRTC had not developed any internal procedures for wholesale. The entire department was only begun reluctantly at WorldNet's insistence. Letters from PRTC on May 5, 1999 and May 19, 1999 illustrate more delays and broken commitments.[75] Finally, WorldNet's letter of June 16, demonstrates how they were forced to endure yet another delay to begin resale until July 5, 1999.[76] PRTC accepted WorldNet's first LOA at the end of July, 1999. It took nearly two and one half years just to begin resale!

The "Most Favored Nation" clause would greatly deter PRTC's ability to block WorldNet in this way by forcing them to accept the terms and conditions from contracts from Verizon. The purpose of this provision was to spread "Best Practices." This is very badly needed in Puerto Rico.

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[72]See Exhibit 43.

[73]See Exhibit 44.

[74]See Exhibit 46.

[75]See Exhibit 47 and 48.

[76]See Exhibit 49

Without it competitors will be forced to endure these practices with every new product and enhancement. WorldNet's fears how long it will take for it to negotiate and begin selling UNE-P!

Taken together, such policies have completely stymied competition in Puerto Rico. The merger conditions are necessary in Puerto Rico to ensure WorldNet's continued advancement in the market as well as the development and promotion of other resellers and CLECs in Puerto Rico.

6. The Conditions Established by the FCC in the BA/GTE Merger Order will Benefit Puerto Rico and Foster Competition.

a. Reasons for Conditions

In the FCC Merger Order the FCC concluded that "the merger brings few tangible merger-specific public interest benefits to the product markets." [77] The FCC held that:

> "Considered in combination, the Applicants' claimed public interest benefits and efficiencies are insufficient to outweigh the significant public interest harms set forth above. Accordingly, we conclude that, absent the conditions proposed by the Applicants, this merger would cause significant potential interest harms that would not be outweighed by the combined weight of the modest benefits that the transaction may achieve."[78]

> The FCC further concluded that:
> "that the proposed merger of Bell Atlantic and GTE poses significant potential public interest harms by: (a) removing one of the most significant potential participants in local telecommunications mass markets both within and outside of each company's region; (b) eliminating an independent source for effective, minimally-intrusive comparative practices analyses among the few remaining major incumbent LECs as the Commission implements and enforces the 1996 Act's market-opening requirements; and (c) increasing the incentive and ability of the merged entity to discriminate against rivals, particularly with respect to advanced services. We also conclude that these concerns are not mitigated by the proposed transaction's potential public interest benefits. Thus, if our analysis

[77]Id. at ¶ 245.

[78]Id. at ¶ 265.

> ended at this point, we would have to conclude that the Applicants have not demonstrated that the proposed transaction, on balance, will serve the public interest, convenience and necessity."[79]

However, Bell Atlantic and GTE, on January 27, 2000, supplemented their initial Application to the FCC to include a package of voluntary commitments that they submit are likely to augment the benefits of their proposed merger through promoting the widespread deployment of local advanced services, spurring local competition, and helping to ensure that consumers receive high quality and low cost telecommunications services.[80] Later on, Bell Atlantic and GTE modified their commitments on April 14, 2000, and in subsequent filings.[81]

> In the FCC Merger Order the FCC concluded that:
> "the Applicants' package of conditions, with the modifications by this Commission, alters the public interest balance of the proposed merger by mitigating substantially the potential public interest harms while providing additional public interest benefit. Accordingly, with the full panoply of conditions that we adopt in this Order, and assuming the Applicants' ongoing compliance with these conditions, we find that the Applicants have demonstrated that the proposed transfer of licenses and lines from GTE to Bell Atlantic will serve the public interest, convenience and necessity."[82]

Therefore, the FCC authorized the Bell Atlantic/GTE Merger only because the petitioners provided a list of conditions that they would abide by. Otherwise, the FCC would have opposed the merger.

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[79]Id. at ¶ 246.

[80]Bell Atlantic/GTE Jan. 27, 2000 Supplemental Filing at 2. *See also* Jan. 31, 2000 Public Notice.

[81] Id. at ¶ 247.

[82]Id. at ¶ 247

The package of conditions that BA/GTE presented to bolster the benefits of their proposed merger was patterned closely after the set of conditions that the FCC adopted less than two years ago in the *SBC/Ameritech Order*.[83] Of the 30 separate sections of the *SBC/Ameritech Conditions*, Bell Atlantic and GTE proposed to retain 26.[84]

The FCC concluded in the Merger Order that:

> "We adopt, with some modification, the proffered commitments of Bell Atlantic and GTE as express conditions of our approval of the transfer of licenses and lines from GTE to Bell Atlantic. For the reasons set forth below, we conclude that, assuming the Applicants' ongoing compliance with these conditions, Bell Atlantic and GTE have demonstrated that their proposed transaction, on balance, will serve the public interest, convenience and necessity."[85]

The FCC further explained that:

> "As indicated below, these conditions are designed to accomplish five primary public interest goals: (a) promoting equitable and efficient advanced services deployment; (b) ensuring open local markets; (c) fostering out-of-territory competition; (d) improving residential phone service; and (e) ensuring compliance with and enforcement of the conditions. These goals flow from our statutory objectives to open all telecommunications markets to competition, to promote rapid deployment of advanced services, and to ensure that the public has access to efficient, high-quality telecommunications services. Achieving these goals will also serve to ameliorate the potential public interest harms of the transaction described above."[86]

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[83]See *SBC/Ameritech Order*, 14 FCC Rcd at 14854-925, paras. 348-518 (section of the order discussing the conditions); App. C, Conditions, *Id.* at 14964-15172 (*SBC/Ameritech Conditions*).

[84]Id. at ¶ 248.

[85]Id. at ¶ 250.

[86] Id. at ¶ 251.

b. Benefits from Conditions

Below please find a description of some of the benefits that some of the conditions adopted in the FCC Merger Order could provide to the Puerto Rico market place.[87]

Condition No. 5 - Carrier-to-Carrier Performance Plan.

As a means of ensuring that Bell Atlantic/GTE's service to telecommunications carriers will not deteriorate as a result of the merger and the larger firm's increased incentive and ability to discriminate, and to stimulate the merged entity to adopt "best practices" that clearly favor public rather than private interests, pursuant to this condition, Bell Atlantic/GTE have to file publicly performance measurement data for each of its in-region states with the FCC, and make such data available over the Internet, on a monthly basis.[88] The data will reflect Bell Atlantic/GTE incumbent LECs' performance of their obligations toward telecommunications carriers in 18 different measurement categories.[89] These categories cover key aspects of pre-ordering, ordering, provisioning, maintenance and repair, and billing associated with UNEs, interconnection, and resold

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[87]As a matter of fact, it seems that PRTC has already agreed one of the conditions. In a newspaper article, in El Nuevo Dia, of October 1, 2000, Engineer Eduardo Diaz, Manager of Advanced Networks Group of PRTC stated that:

> "When PRTC offers DSL services in Puerto Rico it will have the company Genuity as the new provider of access to the Internet. Genuity is a division of GTE that used be known as GTE Internet. . . . Along with Genuity we will have a SuperPoP (super point of presence), which will permit a super direct connection to the Internet and will extend to the island [Puerto Rico] the Genuity Internet Network." [Translation ours]. See Exhibit No. 17, at 15.

[88]Id. at 279.

[89]This includes the line sharing provisioning performance measurement (or sub-measurement) that Bell Atlantic/GTE is required to propose and implement after the merger closing date. *See* Conditions at para. 9.

services.[90] Many of the 18 measurement categories are divided into numerous disaggregated sub-measurements, thereby tracking Bell Atlantic/GTE's performance for different functions and different types of service.[91] Furthermore, the list of measurements reported by Bell Atlantic/GTE under this condition is not static.[92] This list is subject to addition or deletion, and the measurements themselves are subject to modification, by the FCC, through a joint semi-annual review with Bell Atlantic/GTE.[93]

PRTC has absolutely no operational performance standards for CLEC and resellers in Puerto Rico. It is like if the Verizon affiliate, PRTC, is operating in a banana republic instead of operating in the Commonwealth of Puerto Rico, which is part of the United States and falls under the complete jurisdiction of the FCC.

The specific performance measures that Bell Atlantic/GTE will implement in the Bell Atlantic legacy service areas are based upon performance measures developed in a New York collaborative process involving Bell Atlantic's application for in-region, interLATA relief.[94] The performance measures that Bell Atlantic/GTE will implement in the GTE legacy service areas are based primarily upon performance measures applicable to GTE that were developed in a

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[90] Id

[91] Id

[92] Id

[93] *See, e.g.*, Conditions Attach. A, Carrier-to-Carrier Performance Assurance Plan at para. 4 (Performance Plan). Indeed, the scope of this semi-annual review is broad, and it encompasses the business rules associated with such measurements.

[94] Id. at ¶ 281.

collaborative process in California.[95] For Puerto Rico, the FCC should impose the GTE performance measures. Rather than develop a new set of measures, the FCC found that relying upon these performance measures and corresponding business rules, which may be modified over time, will achieve the goals of the Performance Plan and conserve time and resources.[96] The FCC emphasized that "use of such measures in the merger review proceeding was not meant to affect, supplant, or supersede <u>any existing or future state performance plan</u>." [97] [Emphasis ours].

These limited performance measures adopted by the FCC are intended to offset or prevent some of the merger's potential harmful effects; they are not designed or intended as anti-backsliding measures for purposes of section 271.[98] Indeed, to the extent that GTE and PRTC legacy service areas are not subject to the market opening requirements of section 271 in order for GTE and PRTC to provide in-region, interLATA services originating from those areas, these performance measures constitute a significant benefit of these conditions where states have not implemented performance plans with respect to GTE and PRTC.[99]

<u>Condition No. 6 - Uniform Enhanced OSS (Including Advanced Services OSS).</u>

The FCC stated in its Merger Order that effective, nondiscriminatory access to OSS is critical for achieving the 1996 Act's local competition objectives.[100] The FCC also stated that the

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[95] *See* Bell Atlantic/GTE Jan. 27, 2000 Supplemental Filing at 24; Id.

[96] *See SBC/Ameritech Order*, 14 FCC Rcd at 14868, para. 379; Id.

[97] Id.

[98] Id. at ¶ 282.

[99] Id

[100] Id. at ¶ 285.

commitments in this condition are intended to facilitate local services competition (including advanced services competition) in the merged entity's combined service area by providing entrants additional and more economical options for accessing the merged entity's OSS on a non-discriminatory basis as compared to its retail operations, and by encouraging constructive participation by local entrants in the development of the merged entity's systems used by those local entrants.[101] This condition will thus guard against discriminatory treatment by the merged entity to its rivals, as well as reduce the costs and uncertainty of providing competing services.[102]

Specifically, pursuant to this condition, Bell Atlantic/GTE commits to establish uniform OSS interfaces and business rules within the former Bell Atlantic service areas and separately within the former GTE service areas.[103] In addition, the merged entity will implement uniform transport and security protocols, uniform OSS functions and product ordering capabilities[104], and a uniform change management process across its combined service area.[105]

The FCC found that Bell Atlantic/GTE's commitment to achieve uniform interface and business rules within Bell Atlantic's service areas and separately within GTE service areas furthers the 1996 Act's local competition objectives by providing competitors with "one-stop shopping"

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[101]*SBC/Ameritech Conditions*, 14 FCC Rcd at 15001, para. 25.; Id.

[102]Id.

[103]Id. at ¶ 286.

[104]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).

[105]Id.

within large areas of the BA/GTE's region.[106] WorldNet requests that PRTC should use the same uniform interface and business rules as the ones use in the GTE's service areas.

Pursuant to this condition, for example, prior to implementing its OSS commitments, the merged firm first will prepare a plan of record ("Plan") outlining the steps it proposes to take in unifying its OSS in the separate Bell Atlantic and GTE legacy service areas, as applicable. [107] Competitors shall have the opportunity to comment on the Plan and its scope, including the procedures for a collaborative process.[108] Following submission of the Plan, the merged firm will collaborate with participating competitive LECs to reach agreement on the interfaces, enhancements, business rules, data format specifications, transport and security protocols, and OSS functions and product ordering capabilities to be implemented.[109] The merged entity must ensure that it makes available to competing carriers all information necessary for them to fully evaluate the Plan (including, but not limited to, information about its back-end systems, OSS interfaces, business rules, data specifications, and hardware capabilities) and to participate productively in collaborative sessions.[110]

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[106]Id. at ¶ 287.

[107]Id. at ¶ 288.

[108]Id.

[109]If the Plan of Record does not specify a collaborative process competitive LECs may, nonetheless, request that any issues they raise in their written comments to the Plan be addressed in a collaborative process. Id.

[110]Id.

Failure to provide a sufficient Plan will be considered a violation of these commitments and the FCC Merger Order, and may subject the merged entity to penalties, fines, or forfeitures pursuant to general Commission authority.[111]

Bell Atlantic/GTE and the participating competing carriers shall seek to reach a written agreement resolving any issues raised by the Plan and the competing carriers' comments to the Plan.[112] To the extent that Bell Atlantic/GTE and the competitors cannot reach agreement, or have disputes about the scope of the Plan, including the procedures governing the collaborative process, they may request resolution of such disputes by binding arbitration conducted by an independent third-party.[113] The FCC expects that the collaborative and arbitration processes will generally function in the same way as the processes specified in the conditions attached in the *SBC/Ameritech Order*.[114] After completion of the collaboratives and any necessary arbitrations, Bell Atlantic/GTE will develop and deploy the agreed-upon or arbitrated OSS requirements, such as, but not limited to, interfaces, enhancements, and business rules, within specified periods of time.[115] Once deployed, Bell Atlantic/GTE will maintain these OSS requirements for not less than 36 months.[116]

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[111]Id.

[112]Id. at ¶ 289.

[113]Conditions at paras. 19(b), 21; *see also SBC /Ameritech Order*, 14 FCC Rcd at 15002-04, para. 28; Id. at 14870, para. 383; Id.

[114]Id. at ¶ 289.

[115]*E.g.*, Conditions at para. 19(e); Id.

[116]*See* Conditions at para. 64 (each condition is designed to yield at least 36 months of benefit).

This condition will counterbalance other difficulties that competing carriers encounter interfacing with Bell Atlantic/GTE's OSS.[117] For example, Bell Atlantic/GTE will adopt, subject to state approval where necessary, throughout its region the current Bell Atlantic change management process originally developed through collaboratives with competitive LECs as part of the section 271 proceeding before the New York Public Service Commission.[118] Bell Atlantic/GTE will also offer -- for a period of 30 months from the Merger Closing Date -- to develop and deploy an electronic bonding interface (EBI) throughout its combined in-region service areas for maintenance and repair of resold local services and UNEs, including all enhancements that comport with industry standards.[119] Specifically, the requesting carrier and Bell Atlantic/GTE must enter into a written contract wherein they agree to the nature of the EBI implementation and the requesting carrier agrees to pay Bell Atlantic/GTE for the costs of development of any enhancements *in advance of* industry standards.[120]

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[117]Id at ¶ 291.

[118]Conditions at para. 20; *See Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. Dec. 22, 1999) at para. 104; Id.

[119]Id.

[120]Requesting carriers will not have to pay for the costs of the development and deployment of EBI compliant with, but not exceeding, industry standards. For example, a requesting carrier will not have to pay for the development and deployment of an industry compliant EBI in a service area previously lacking an EBI at al.; Id.

Condition No. 7 - Training in the Use of OSS for Qualifying Carriers.

This condition provides that, as a means of reducing the barriers to new entry in its combined region, Bell Atlantic/GTE will provide special OSS assistance to any "qualifying" competitive LEC.[121]

As for the nature of this OSS assistance, Verizon will designate and make available for a minimum of 36 months at no additional cost one or more team(s) of OSS experts to assist these qualifying carriers with OSS issues.[122] The condition also obligates Bell Atlantic/GTE to identify and develop training and procedures beneficial to such qualifying carriers.[123] Disputes regarding whether a carrier qualifies under this condition will be resolved by the appropriate state commission.[124]

Condition No. 8 - Collocation, Unbundled Network Elements, and Line Sharing Compliance.

Pursuant to this condition an independent auditor should conduct a review and determine whether each company is offering collocation terms and conditions, and has in place methods and procedures, that comply with the FCC's rules.[125] Moreover, an independent auditor will develop and implement a comprehensive audit of PRTC's compliance with the FCC's collocation

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[121]Id. at ¶ 294.

[122]Id. at ¶ 295.

[123]Id.

[124]Id.

[125]Id. at ¶ 296.