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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	)	

EX PARTE OR LATE FILED

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

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INTRODUCTION AND SUMMARY

Centennial Puerto Rico License Corp. ("Centennial") and Primus Telecommunications, Inc. ("Primus") (collectively "Joint Reply Commenters"), respectfully submit these reply comments in the above referenced proceeding. On March 26, 2001 the Commission released a public notice requesting comments on the *Ex Parte* letter filed by WorldNet Telecommunications, Inc. ("WorldNet") on February 12, 2001. On April 25, 2001 Verizon and Puerto Rico Telephone Company ("PRTC") filed comments pursuant to the Commission's public notice.

Despite the claims made by Verizon and PRTC, all that is required of the Commission here is the issuance of an Order clarifying the ambiguities of the Commission's Order approving the proposed merger of Bell Atlantic and GTE (the "Merger Order").[1] Specifically, the

[1] *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").

Commission can resolve the ambiguity by issuing an Order clarifying that the conditions adopted in the Merger Order (the "merger conditions")[2] apply to PRTC.

Verizon states in its comments that the Commission may not reopen the proceeding on its own motion because the doctrine of *res judicata* bars "any attempt by the Commission to add new conditions now."[3] Although WorldNet's *Ex Parte* letter requests that the Commission "re-open the docket in order to modify" the Merger Order, in fact, all that is necessary is that the Commission simply issue a *clarifying* Order explaining that PRTC is, like all other similarly situated Verizon entities, subject to the voluntary conditions established under the Merger Order.

As an initial matter, the Joint Reply Commenters believe that there is a reasonable basis to conclude that the merger conditions do, in fact, apply to PRTC. However, if the Commission finds that the express terms of the Merger Order inadvertently failed to include PRTC among the entities covered by the merger conditions, there is currently no reason to affirmatively continue that exclusion of PRTC.

Indeed, there is a compelling reason not to exclude PRTC from the operation of the merger conditions. As explained more thoroughly in the initial comments filed by Centennial and Primus,[4] the same legal and factual rationale for applying these conditions to other Verizon entities, and by extension Verizon states and service areas, also applies to PRTC and its operations in Puerto Rico.

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[2] *See* Appendix, Conditions of Bell Atlantic/GTE Merger Order (hereinafter "merger conditions").
[3] *See Comments of Verizon Communications*, filed pursuant to Public Notice DA 01-764, CC 98-141, 98-184, Apr. 25, 2001, at 5 (hereinafter "Verizon Comments").
[4] *See Joint Comments of Centennial Puerto Rico License Corp. and Primus Telecommunications, Inc.*, filed pursuant to Public Notice DA 01-764, CC 98-141, 98-184, Apr. 25, 2001, (hereinafter "Joint Comments").

I. THE MERGER CONDITIONS SHOULD APPLY TO PRTC.

A. Verizon Comments

Verizon argues, without offering any legal authority or support, that the Merger Conditions do not apply to PRTC. Verizon states that under the terms of the Merger Order PRTC is not subject to the conditions that the Commission adopted in the merger proceeding.[5] Again, it must be noted that Verizon offers no specific authority for this broad assertion. In addition, Verizon suggests that because WorldNet did not participate in the merger proceedings, or seek a reconsideration of the Merger Order, WorldNet is now precluded from requesting that the Commission clarify the application of the Merger Order.

B. PRTC Comments

PRTC argues that the merger conditions were not developed for application to PRTC.[6] Specifically, PRTC states that the Merger Conditions were designed for only the domestic operating entities of Bell Atlantic and GTE,[7] and that it is inappropriate to apply the merger conditions to PRTC given its "cost structure and unique operating environment."[8] Thus, PRTC concludes, the application of the merger conditions would be "unfair and highly prejudicial."[9]

C. Joint Commenters' Reply

Despite the assertions to the contrary made by Verizon and PRTC, the Merger Order does not exclude PRTC from the application of the merger conditions. Neither Verizon nor PRTC provide any direct evidence that the Commission intended to exclude PRTC from the application of the merger conditions. Furthermore, the Merger Order does not separately or independently

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[5] *See* Verizon Comments at 2.
[6] *See Comments of Puerto Rico Telephone Company*, filed pursuant to Public Notice DA 01-764, CC 98-141, 98-184, Apr. 25, 2001, at 16 (hereinafter "PRTC Comments").
[7] *See id.* at 17.
[8] *Id.*
[9] *Id.*

address the question of whether the transfer of the license applicable to the Puerto Rico entity's operations satisfy the public interest standard. Thus, there is no reason to believe that the Commission intended to treat PRTC differently.

Instead, the Commission ruled that "the proposed merger of Bell Atlantic and GTE poses significant potential public interest harms by . . . increasing the incentive and ability of the merged entity to discriminate against rivals."[10] The Commission further concluded that "*absent the [merger] conditions . . . the proposed merger does not serve the public interest, convenience, or necessity because it would inevitably slow progress in opening local telecommunications markets to consumer-benefiting competition*, thereby requiring us to engage in more regulation, which is contrary to Congressional policy."[11]

The same factual scenario that supported the Commission's conclusion to apply the merger conditions as a counter balance to Verizon's market dominance also exist in Puerto Rico. Namely, the need to eliminate the incentives by the incumbent LEC (here PRTC) to slow progress in opening Puerto Rico's local exchange market. Indeed, there is no basis on the record of these proceedings to conclude that the Commission intended to exclude PRTC from the scope of the application of the merger conditions or treat it differently than any other Verizon operating entity.

Moreover, there is considerable evidence to support the conclusion that the Commission's intent was that the conditions would apply to PRTC. First, the Merger Conditions specifically state that the states and service areas that shall be subject to the conditions will specifically include those states "where Bell Atlantic/GTE will have incumbent local telephone operations after the Merger Closing Date and after execution of planned sales of local exchange

[10] *See* Merger Order at ¶ 245.
[11] *See id.* at ¶ 96. (emphasis added).

properties."[12] Clearly, Puerto Rico falls within this definition because Verizon now has *de facto* and *de jure* control over the incumbent local phone operations in Puerto Rico, namely PRTC.

Second, the Merger Order clearly recognizes that at the time of the decision, Verizon (then GTE) had already purchased PRTC.[13] The Commission, responding to concerns raised by a commenting party, stated that the anti-competitive concerns surrounding Puerto Rico's local exchange market would be addressed by the application of the merger conditions. Specifically, the Commission explained that the beneficial applications of the merger conditions imposed on the merger would address "any potential anti-competitive effects of the proposed merger in [Puerto Rico's] domestic local exchange and exchange access markets."[14] Thus, there is clear evidence in the record that the merger conditions were intended to address the detrimental effects of an incumbent LEC's continued monopoly control over Puerto Rico's local exchange markets.

However, if the Commission finds that, despite clear evidence to the contrary, the Merger Order does, in fact, exclude PRTC from the application of the conditions, there is no reasonable basis to continue that exclusion at this time. As explained in more detail in the initial Joint Comments of Centennial and Primus, there is no reason to exempt PRTC from the public interest analysis that the Commission performed in evaluating the proposed merger.[15]

The merger conditions were identified as the critical component of the Commission's decision to approve the merger. Indeed, without the application of the merger conditions the Commission stated that the potential harm to the public interest would far outweigh any asserted benefits of the proposed merger.[16] Furthermore, the Commission clearly indicated that the

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[12] *See* Appendix, Conditions of Bell Atlantic/GTE Merger Order, at n. 4.
[13] *See* Merger Order at ¶ 6.
[14] *Id.* at ¶ 399.
[15] *See* Initial Joint Comments at 4-7.
[16] *See id.* at ¶ 213.

application of the merger conditions to GTE regions was an especially important consideration, given GTE's non-BOC status[17] and the fact that Section 271 does not apply to GTE.

Given these important public interest considerations there is no reasonable basis to exclude PRTC, an entity over which Verizon retains *de jure* and *de facto* control, from the application of the merger conditions. Puerto Rican consumers, who are U.S. citizens and residents of a "State" for purposes of the 1996 Act,[18] deserve all of the protection of the merger conditions now that Verizon controls the incumbent LEC in Puerto Rico. Verizon's control over PRTC is no different from the control it exerts over its other operating subsidiaries that enjoy monopoly control over local exchange markets nationwide because of its status as the incumbent LEC. There is no doubt that the merger conditions apply to Verizon's other operating subsidiaries, except for the limited exception given to GTE's operations in the Commonwealth of the Northern Mariana Islands.[19] Thus, there is strong reason for the Commission to clarify the existing ambiguity in the application of the merger conditions and issue an Order clarifying that the merger conditions do, in fact, apply to PRTC.

II. THE COMMISSION HAS CLEAR AUTHORITY TO RESPOND TO WORLDNET'S REQUEST.

A. Verizon Comments

Verizon suggests that because there was no petition for reconsideration filed in respect to the Commission's Merger Order there can be no further clarification from the Commission on the precise application of the merger conditions.[20] In addition, Verizon attempts to mischaracterize the nature of WorldNet's request to suggest that any clarifying Order from the

[17] *See id.* at ¶ 259.
[18] *See* 47 U.S.C. 153(40).
[19] *See* Appendix, Conditions of Bell Atlantic/GTE Merger Order, at n. 3.
[20] *See* Verizon Comments at 3-4.

Commission would add new conditions to Verizon.[21] Finally, Verizon suggests that any clarification from the Condition would be an *ultra vires* act by the Commission that exceeds its authority.[22]

B. Joint Commenters' Reply

Verizon has mischaracterized the nature of WorldNet's request. Because of the existing ambiguities concerning the application of the merger conditions, WorldNet, and the other commenting parties who have filed comments on its behalf, seeks only a simple clarifying Order from the Commission concerning the application of the merger conditions. There is no need for the Commission to impose new conditions, or expand the existing conditions in any way. Indeed, despite Verizon and PRTC's assertions to the contrary, no party has asked that the Commission expand the list of conditions or impose new conditions on Verizon. All that is required from the Commission to address the problem here is a simple Order clarifying that PRTC is subject to the merger conditions.

There is no doubt that the Commission has broad authority to re-open dockets to correct ambiguities or oversights made during the decision making process.[23] Moreover, the Commission has specifically reopened other dockets when the need for clarification was compelling. For instance, at the request of a number of parties affected by the Commission's

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[21] *See id.* at 5.

[22] *See id.* at 5-6.

[23] *See, e.g. Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, Report & Order, 11 FCC Rcd 21581, FCC 96-425, IB Docket No. 95-117, (rel. Dec. 16, 1996) (noting that there may be circumstances where it may serve the public interest to re-open a rule, and reserving the right to do so in certain cases); *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, NPRM, 11 FCC Rcd 1, FCC 95-229, IB Docket No. 95-91 (rel. June 15, 1995) (discussing the option of re-opening a license processing window and the need for the Commission to reassess situation in light of new applications); Beach Broadcasting Limited Partnership; Manuel Lima; For Construction Permit for New FM Station, Channel 233A, Long Beach, Mississippi, Decision, 6 FCC Rcd 885, MM Docket No. 89-66 (rel. Feb. 12, 1991) (re-opening record in broadcast license assignment decision)).

newly-issued rules on Customer Proprietary Network Information (CPNI), the Common Carrier Bureau issued an order "clarifying" an earlier Commission Report and Order.[24] As explained in that Order, the need for clarification was necessary in order "to minimize any potential confusion regarding" the application of the rules.[25] Thus, it is clear that where necessary the Commission has the authority, and the obligation, to correct ambiguities and inconsistencies through the issuance of clarifying orders.

Again, WorldNet has not asked the Commission to expand the merger conditions, or to add new conditions to Verizon. The only act required of the Commission is a simple Order clarifying the *applicability* of the merger conditions to PRTC. For these reasons, Verizon's claims that additional action by the Commission violates the doctrine of res judicata is unfounded. A clarification order would not require further deliberation concerning the public interest considerations raised in the underlying Merger Order. Nor would there be a need to review and reassess the merger conditions themselves. No legal or factual issue would be relitigated. For these reasons, Verizon's "reliance" and *res judicata* arguments can be disregarded as irrelevant to the question of whether the Commission may clarify existing ambiguities.

III. THE PUERTO RICO BOARD HAS DETERMINED THAT PRTC RETAINS DOMINANCE OVER PUERTO RICO'S LOCAL EXCHANGE MARKET.

A. PRTC Comments

In support of its contention that the merger conditions should not apply to it, PRTC argues that Puerto Rico's telecommunications market is competitive. PRTC points to the entry

[24] *See Implementation of the Telecommunications Act of 1996: Telecommunications' Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Order, 13 FCC Rcd 12390, CC Docket. No. 96-115 (rel. May 21, 1998).
[25] *See id.* at ¶ 4.

of competitors in the long distance and wireless markets as evidence of this competition.[26] PRTC also attempts to argue that the local exchange market is competitive. In this regard, PRTC points to the fact that it has entered in to a number of interconnection negotiations with other carriers and also points to the presence of Centennial as evidence of the competitive market.[27]

B. Joint Commenters' Reply

Despite PRTC's attempts to assert otherwise, there is uncontroverted evidence that PRTC retains monopoly control over Puerto Rico's local exchange market. Specifically, after conducting an extensive inquiry into the state of competition on the island, the Puerto Rico Telecommunication Regulatory Board determined that PRTC retained dominant control of the intra-island long distance, local exchange and exchange access markets.[28]

While Centennial's operations on the island do represent an important first step to the realization of real competitive choices for the Puerto Rico's residents, there can be no doubt that PRTC continues to assert monopoly control over Puerto Rico's local exchange market.

Indeed, further evidence of PRTC's actions as an incumbent LEC are illustrated by the negotiations that have occurred between PRTC and Centennial over the question of collocation. PRTC's discussion of its unreasonable delays in offering Centennial's Puerto Rico landline CLEC subsidiary access to PRTC's Unbundled Network Elements ("UNEs")[29] highlights why PRTC needs additional constraints in its dealings with competitors.

As noted in the Joint Commenters' initial comments, Centennial offers wireless services in the mainland United States, and wireline, wireless Internet and interstate access services in Puerto Rico. Since the passage of the Act more than five years ago, Centennial has gone through

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[26] *See* PRTC Comments at 9.
[27] *See id.* at 10.
[28] *See In re: Request for Comments on Market Dominance by PRTC*, Docket No. JRT-2000-CCG-0003.
[29] *See* PRTC Comments at 14.

a number of corporate restructurings and refinancings attendant upon, *e.g.,* being spun off from a former corporate owner and the sale of various domestic cellular properties. These restructurings and refinancings resulted in a number of essentially *pro forma* changes in the corporate structure within which the Puerto Rico landline CLEC subsidiary (formerly known as Lambda) is embedded. But the landline Puerto Rico operation has been a continuous business with a continuous market presence (and, putting aside changes in the normal course of business, many of the same key personnel) since early 1997 when the parties first executed an interconnection agreement. The changes in corporate name and structure, in short, have had no direct impact on the day-to-day business operations of the landline CLEC subsidiary — which is, in fact, PRTC's ***only*** source of landline competition.[30]

Given PRTC's position as the monopoly ILEC in Puerto Rico, neither its ability nor its incentive to impose anticompetitive obstacles in the path of its competitors can reasonably be questioned. What is noteworthy is PRTC's willingness here to crow over its ability to foreclose its main competitor's access to UNEs on the basis of formalistic trifles. At no point in the process did PRTC have any basis to question whether Centennial's Puerto Rico landline subsidiary was a "real" entity or that its operations were in any way questionable. To the contrary, PRTC knew then, and knows now, that Centennial is PRTC's main (in fact, we believe, its ***only***) real source of facilities-based competition. So there was no possible legitimate, non-monopolistic reason for PRTC to delay the availability of UNEs while the contracts were formally revised to reflect Centennial's changed corporate structure. All this incident shows is

[30] In addition to serving business and some residence customers by means of its fiber-based landline network, Centennial also offers basic telephone service using fixed wireless technology to more than 20,000 Puerto Rico resident customers. Centennial's wireless subsidiary in Puerto Rico is certified as an "eligible telecommunications carrier" by the Puerto Rico regulatory authorities, and, indeed, many if not most of its fixed wireless customers obtained their service from Centennial because PRTC has been unable or unwilling to actually deploy the basic loop facilities needed to reach their homes.

PRTC's ability to forestall competition, at its option, on the basis of its legalistic whims. In fact, the example highlights the problems new competitors face with PRTC.

IV. CONCLUSION

For the foregoing reasons, it is clear that Verizon's continued dominance over Puerto Rico's local exchange market, through its control of PRTC, demonstrates the need for the Commission to clarify that the merger conditions apply to PRTC.

Respectfully submitted,

By: _____

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May 10, 2001

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CERTIFICATE OF SERVICE

I, Debra Sloan, hereby certify that on this 10th day of May, 2001, I caused a copy of the foregoing *Reply Comments of Centennial Puerto Rico License Corp. and Primus Telecommunications, Inc.* to be hand-delivered to the following:

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