

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Clarification, or in the Alternative, Waiver of Section 54.311(b)	)	CC Docket No. 96-45
	)	
Federal-State Joint Board on Universal Service	)	
_____	)	

**PETITION FOR CLARIFICATION, OR IN THE ALTERNATIVE,  
WAIVER OF SECTION 54.311(b)**

The Telecommunications Regulatory Board of Puerto Rico (“TRB” or “Board”), by its attorneys, requests that the Federal Communications Commission (“FCC” or “Commission”) clarify that Section 54.311(b) of the FCC rules, the cascading or targeting rule, does not apply to the Long-Term Support (“LTS”) portion of interim hold-harmless support funds received by Puerto Rico Telephone Company, Inc. (“PRT”). If the Commission does not agree that this clarification is correct, the Board respectfully requests a waiver pursuant to Section 54.311(c), that the full amount of interim hold-harmless LTS for PRT be provided to the company without application of Section 54.311(b). The Board seeks clarification of Section 54.311(b) to ensure that PRT is provided hold-harmless universal service funding in accord with FCC policies.<sup>1</sup>

LTS was formerly part of the FCC’s access charge system facilitating interstate interexchange service in high-cost areas. After the 1996 Act, the Commission removed

---

<sup>1</sup> Simultaneously with the filing of this waiver, the Board is submitting its certification that PRT is using universal service funds to provide services supported by universal service. Said certification is conditional on the clarification of FCC policy or waiver sought in this petition.

LTS from the access charge system and folded it into the universal service program. At that time, the Commission originally anticipated “that LTS for non-rural carriers would be subsumed in the new, forward-looking support mechanism in the near future.” *Federal-State Joint Board on Universal Service*, Thirteenth Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 24422, ¶ 6 (2000) (“*Thirteenth Order*”). Based upon that finding, the Commission included LTS in interim hold-harmless support. *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, ¶ 78 (1999) (“*Ninth Order*”).<sup>2</sup>

In the *Ninth Order*, the Commission established a targeting mechanism for interim hold-harmless support, 47 C.F.R. § 54.311(b), finding that such “support must be targeted for competitive purposes to the high-cost wire centers served a non-rural carrier.” *Ninth Order*, ¶ 82. The FCC targeted the support pursuant to a cascading approach under which “a carrier’s highest-cost wire centers receive support before its lower-cost wire centers received support.” *Id.*, ¶ 83.

However, in 2000, the Commission, in adopting recommendations of the Joint Board, acknowledged that: “The forward-looking mechanism adopted in the Ninth Report and Order does not replace LTS for non-rural carriers, contrary to the Commission’s originally anticipated outcome.” *Thirteenth Order*, ¶ 9. As a result, the Commission recognized that “LTS for non-rural carriers should be preserved until we have considered further reform of the LTS program.” *Id.* To that end, the FCC explicitly exempted LTS from its phase-down rules, holding that “interim hold-harmless support,

---

<sup>2</sup> In an open proceeding, the Commission is currently considering merging LTS with Interstate Common Line Support. See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent LEC and IXCs*, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, ¶¶ 272-276 (2001) (*MAG Order and MAG Further Notice*).

*excluding LTS*, be phased down beginning January 1, 2001, through annual \$1.00 reductions.” *Id.*, ¶ 12 (emphasis added).

In the text of that same Order, the FCC also appeared to modify its targeting provisions with the adoption of phase-down support when it emphasized that only phase-down hold harmless support would be subject to the cascading rule. *Id.*, ¶ 16. However, the FCC did not change the text of the cascading rule itself, 47 C.F.R. § 54.311(b). As written, the text of the rule could be read to require cascading to apply to LTS as well as the phase-down portion of interim hold harmless support.

The Board seeks clarification of this rule. It appears that the cascading rule may not be appropriate in the case of PRTC. The FCC’s cascading rule seeks to ensure that the highest-cost wire centers within a state or territory receive proxy-model support or interim hold-harmless support first. LTS, conceptually and operationally, is different. LTS “supports interstate access rates,” *Thirteenth Order*, ¶ 6, and for PRT, access charges do not vary from wire center to wire center. Thus, there is no logical basis to target LTS to a particular wire center based on proxy model cost calculations. Under this framework, it appears that Commission policy would be best advanced if PRT were to be eligible for LTS payments without imposing the cascading requirement.

In the alternative, if the Commission disagrees with this interpretation of its intended policy, the Board requests a waiver of Section 54.311(b) to allow hold-harmless LTS to be distributed without the cascading mechanism set out in Section 54.311(b), pursuant to Section 54.311(c). A waiver is in the public interest for the reasons set out above. In particular, the waiver would more appropriately maintain the reasonableness of interstate access charges as was intended by the LTS mechanism. Because LTS is a

separate support mechanism, distinct from “high-cost” support or “high-cost model” support, and due to the interstate nature of LTS, a more general allocation of those funds is warranted. The requested treatment is thus consistent with the intent of LTS.

For the foregoing reasons, the FCC should clarify that PRT is eligible to receive LTS funds on a company-wide basis, without any obligation to target those funds to any particular wire center. Alternatively, the Board requests a waiver of the cascading rule as described above.

Respectfully submitted,

Telecommunications Regulatory  
Board of Puerto Rico



By Veronica M. Ahern  
Nixon Peabody LLP  
401 9<sup>th</sup> Street, N.W.  
Suite 900  
Washington, DC 20004  
(202) 585-8000

Its Attorneys

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **Petition for Clarification, or in the Alternative, Waiver of Section 54.311(b)** was served via First Class Mail, postage prepaid, on this 8<sup>th</sup> day of December, 2003 upon:

Phoebe Forsythe Isales, Chair  
Telecommunications Regulatory Board of Puerto Rico  
Ave. Arterial Hostos #235  
Capital Center, Torre Notre  
Suite 1001  
San Juan, Puerto Rico 00918-1453

Mr. Douglas Meredith  
John Staurulakis Incorporated  
547 South Oakview Lane  
Bountiful, UT 84010

Gregory J. Vogt  
Wiley, Rein & Fielding LLP  
1776 K Street, N.W.  
Washington, DC 20006

  
\_\_\_\_\_  
Maria Sklar