Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	CC Docket No. 01-338
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	CC Docket No. 96-98
Deployment of Wireline Services Offering Advanced Telecommunications Capability	CC Docket No. 98-147

REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC. ("PRT")

José E. Arroyo Dávila
PUERTO RICO TELEPHONE
COMPANY, INC.
1515 Roosevelt Avenue, 12th Floor
Caparra Heights, PR 00921
(787) 793-8441

Gregory J. Vogt
Joshua S. Turner
WILEY REIN & FIELDING LLP
1776 K. St., NW
Washington, DC 20006
(202) 719-7000

Its Attorneys

February 13, 2004

I. Introduction

As PRT showed in its initial comments in this matter,[1] the waiver petition submitted by the Puerto Rico Board is wholly inadequate.[2] The Petition provides no basis for granting a waiver of the Commission's national finding that CLECs are not impaired without unbundled access to enterprise switching. There is no merit to the Board's assertions that the enterprise market in Puerto Rico is different from every other such market in the United States.

The only comments submitted in support of the Petition — by WorldNet, a UNE-P CLEC, and TLD, a reseller — add nothing to the Board's facially insufficient claims.[3] Neither TLD nor WorldNet has any experience providing facilities-based service. WorldNet and TLD incorrectly state the standard the Commission must apply in reviewing the Board's waiver petition and present unsupported assertions that not only are not evidence, but also serve to highlight the speculative nature of the "findings" of the Puerto Rico Board. WorldNet also submits information that the Puerto Rico Board considered during its proceeding, but either chose not to include in its petition or specifically declined to rely on. The Commission should deny the Petition.

II. TLD and WorldNet Misstate the Proper Standard of Review

In an attempt to support the unjustified petition submitted by the Puerto Rico Board, TLD and WorldNet each misinterpret the obligations of both state commissions and the FCC under the

---

[1] Comments of Puerto Rico Telephone Company, Inc., CC Docket No. 01-338 (filed Jan. 30, 2004) ("PRT Comments").

[2] Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico, CC Docket No. 01-338 (filed Dec. 30, 2003) ("Petition").

[3] Comments of WorldNet Telecommunications, Inc., CC Docket No. 01-338 (filed Jan. 30, 2004) ("WorldNet Comments"); Comments of Telefónica Larga Distancia de Puerto Rico, Inc., CC Docket No. 01-338 (filed Jan. 30, 2004) ("TLD Comments").

decision in the *TRO*. The burden imposed on state commissions seeking a waiver of the FCC's findings is much more substantial than either TLD or WorldNet suggest, and grant of any such waiver petition is far from automatic.

TLD incorrectly claims that the FCC "found that an unbundling obligation does not exist [in high capacity switching] absent a state commission finding of impairment," and that "state commissions *were required* to perform a granular market analysis" to determine whether there is impairment.[4] Neither of these characterizations is accurate. First, the Commission made a national finding, based on characteristics of enterprise markets nationwide, that the "denial of access to unbundled switching would not impair a competitor's ability to serve the enterprise markets."[5] The Commission also found that the record contained no evidence of any particular market in which competing carriers would be impaired without access to unbundled switching.[6] This holding was not contingent on whether any particular state subsequently did or did not find impairment. Nor did the FCC imbue state agencies with authority to make a determination of impairment independent from the Commission's determination in the *TRO*. Rather, the Commission concluded that states may alter the Commission's determination of no impairment "only by petitioning this Commission."[7]

Second, the FCC imposed no requirement upon states to conduct an impairment analysis.[8] Whether to conduct such an analysis, and whether to file a waiver petition at the

---

[4] TLD Comments at 2 (emphasis added).

[5] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978, ¶ 453 (2003) (*"TRO"*).

[6] *Id.*, ¶ 455.

[7] *Id.*, ¶ 455, n. 1394.

[8] *TRO*, ¶ 455.

conclusion of their analysis, was entirely left to the discretion of the states.[9] In fact, several state commissions chose not to conduct an impairment proceeding at all, and the Puerto Rico Board appears to be the only such commission that filed a waiver request.

Thus, contrary to the claim put forth by WorldNet, this is not a situation where the Commission stayed its hand, seeking "feedback relating to the deployment of local switching" from state commissions prior to acting.[10] Indeed, any such "feedback" would be wholly unnecessary, given that the Commission received evidence from a range of commenters "relating to the deployment of local switching" as part of the Triennial Review process.[11]

Instead, the Commission has made a categorical, national finding that there is no evidence of impairment with respect to enterprise switching, and found only that states could seek a waiver of this finding if the facts justified such a waiver.[12] As a result, any state seeking a waiver of the Commission's *TRO* finding bears a heavy burden. A waiver petition must rely on types of evidence beyond that available to the Commission in the Triennial Review proceeding, and cannot simply revisit or second-guess the conclusions that the FCC reached after reviewing the same evidentiary record.

Moreover, as even TLD acknowledges, the determination that the state must reach is whether competitors "*are impaired* from entering the Enterprise Market,"[13] not whether competitors *could be* impaired. WorldNet, as well, notes that a states' inquiry must focus on

---

[9] *Id.* ("we *permit* state commissions to rebut the national finding," and states "*wishing* [to seek a waiver] must make an affirmative finding of impairment") (emphasis added).

[10] WorldNet Comments at 2.

[11] As PRT made clear in its opening comments, the evidence before the FCC included data relating specifically to Puerto Rico. PRT Comments at 3, n. 7.

[12] *TRO*, ¶ 455.

[13] TLD Comments at 2 (emphasis added).

whether "operational and economic barriers *exist* in a market," rather than speculating about whether such barriers may come into being at some future date.[14] In order to justify a waiver petition, states must produce the kind of "specific evidence" of actual, existing impairment that the FCC found lacking,[15] and show that the element in question is "unsuitable" for competitive supply.[16]

Finally, the *TRO* does not "mandate[] a grant of the waiver request," as TLD urges. Nothing in the *TRO* suggests, let alone requires, that the Commission grant any waiver petition a state submits. As with all petitions for waiver, the FCC must weigh the sufficiency of the request, and determine whether it establishes the type of "special circumstances [that] warrant a deviation from the general rule."[17] Where, as here, a waiver request is wholly deficient, and fails to produce the level of specific evidence required to rebut the FCC findings that underpin the general rule, the Commission is obligated to deny the petition.

III. The Assertions of CLECs Are Not Evidence, and Reinforce the Speculative Nature of the Puerto Rico Board's Petition

TLD makes a number of assertions in its reply comments about PRT's alleged performance in permitting resale of its retail services.[18] These allegations are vague and ill-defined, consisting of little more than statements such as "TLD has encountered numerous delays and problems" while negotiating or attempting to enforce interconnection terms.[19] Such broad,

---

[14] WorldNet Comments at 3 (emphasis added).

[15] *TRO*, ¶ 456.

[16] PRT Comments at 6, *quoting USTA v. FCC*, 290 F.3d 415, 427 (D.C. Cir. 2002).

[17] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), *citing WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969).

[18] TLD Comments at 4-5.

[19] *Id.* at 4.

general complaints, without any supporting detail, are not evidence and cannot provide a basis for a state commission's finding of impairment that would justify a waiver of the Commission's national finding of no impairment with respect to enterprise switching.

The comments of both TLD and WorldNet also highlight the speculative nature of the Puerto Rico Board's petition. As noted above, TLD provides service using resale, while WorldNet uses UNE-P and resale. Neither of these carriers use their own facilities to provide local service in Puerto Rico, and neither of these carriers have any experience ordering or using the kinds of facilities (UNE loops, cross-connects, and collocation) that the Commission identified as being relevant to the impairment inquiry with respect to enterprise switching.[20] As a result, neither of these carriers can point to any evidence of actual impairment in enterprise switching in any market in Puerto Rico. All that either of these carriers can offer is more of the same guesswork and speculation about possible future impairment that causes the Puerto Rico Board's petition to be so deeply flawed.

IV. Information Not Submitted by the Board Cannot Be Used to Bolster the Board's Inadequate Waiver Request

WorldNet also seeks to supplement the Board's petition by submitting its filings to the Board.[21] However, the purported facts that WorldNet submits here were presented to the Commission during the Triennial Review proceeding and, therefore were *already* considered and rejected by the Commission when it concluded that the record contained no evidence to support exceptions for particular markets from its *national* finding of no impairment. Therefore, it would

[20] As PRT noted in its initial comments, making collocation part of the impairment inquiry is problematic. PRT Comments at 11, n. 38. Even if difficulties were shown to exist with collocation (which has not occurred here), the impairment process is not the best way to address such difficulties.

[21] *See, e.g.*, WorldNet Comments at 5-6, Exhibit A.

be particularly improper for the Commission to rely upon those comments now, in its consideration of the Rico Board's waiver petition.[22]

The bulk of WorldNet's filing consist of the brief that it filed before the Puerto Rico Board during the Board's enterprise switching impairment inquiry.[23] This brief contains a litany of unproven allegations about PRT's conduct, most of which are wholly outside the bounds of the limited question of whether impairment exists in enterprise switching. Moreover, this brief is merely one of the filings that the Puerto Rico Board received during its proceeding, which also included briefs from PRT and factual submissions from several other telecommunications carriers doing business in Puerto Rico.

In any event, WorldNet's comments are without merit. First, contrary to WorldNet's claims, the fact that the Board has not established "comprehensive performance standards" for PRT's provision of services to CLECs does not create a "significant operational barrier[]" in the enterprise switching market.[24] Indeed, even though such standards are virtually non-existent in areas served by non-RBOCs, such as PRT, the Commission found no impairment throughout the nation, including those jurisdictions without such standards.

Second, WorldNet asserts that there are "economic barriers to switch deployment" in the enterprise markets in Puerto Rico.[25] Not only are WorldNet's filings bereft of any factual support for those claims — there is no attempt to quantify either costs or revenue possibilities — but the Puerto Rico Board rejected WorldNet's claims, finding that "the record evidence [was]

---

[22] *See* PRT Comments at 3.

[23] WorldNet Comments, Exhibit A.

[24] WorldNet Comments at 5.

[25] WorldNet Comments at 5.

incomplete [with respect] to economic barriers."[26] Moreover, WorldNet makes no attempt to explain how there can be "economic barriers to switch deployment" when another carrier has in fact deployed four switches in Puerto Rico which it is using to serve thousands of enterprise customers.[27] Standing alone, the fact that Centennial has deployed these switches and continues to invest in its facilities demonstrates that there is no economic impairment in Puerto Rico.

V. Conclusion

For the foregoing reasons, and those set forth in PRT's comments, the Puerto Rico Board's Petition seeking waiver of the Commission's national finding of no impairment for enterprise switching as applied to Puerto Rico should be denied.

RESPECTFULLY SUBMITTED,

PUERTO RICO TELEPHONE COMPANY, INC.

By: /s/ Gregory J. Vogt

Gregory J. Vogt
Joshua S. Turner
WILEY REIN & FIELDING LLP
1776 K. St., NW
Washington, DC 20006
(202) 719-7000

José E. Arroyo Dávila
PUERTO RICO TELEPHONE COMPANY, INC.
1515 Roosevelt Avenue, 12th Floor
Caparra Heights, PR 00921
(787) 793-8441

Its Attorneys

February 13, 2004

[26] Petition at 26.

[27] PRT Comments at 8.