

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

In re:

Telefónica Larga Distancia de Puerto Rico, Inc.

WC Docket No. 06-01

Petition for Expedited Declaratory Ruling
Regarding Section 253 of the Communications
Act of 1934, as amended

REPLY OF PUERTO RICO TELEPHONE COMPANY, INC.

The Puerto Rico Telephone Company, Inc. (“PRT”) hereby submits its Reply to Telefónica Larga Distancia, Inc.’s (“TLD”) Petition for Expedited Declaratory Ruling (“Petition”). On February 3, 2006, the Puerto Rico Telephone Company, Inc. (“PRT”) withdrew its Single-Zone tariff filed at the Telecommunications Regulatory Board of Puerto Rico (“TRB”) and has no present intention of re-filing this offering. Therefore, PRT hereby requests that the Federal Communications Commission dismiss Telefónica Larga Distancia, Inc.’s (“TLD”) Petition for Expedited Declaratory Ruling on the grounds that it is moot.

Nonetheless, because the TRB has not yet dismissed the complaints pending before it, PRT replies to the arguments made by Sprint Nextel (“Sprint”)¹ and San Juan Cable.² Sprint’s

¹ Comments of Sprint Nextel Corporation, WC Dkt. No. 06-01 (filed Jan. 26, 2006) (“Sprint Comments”).

and San Juan Cable's comments reiterate the arguments previously made by TLD, to which PRT has already fully responded in its own Comments.³ However, these competitors' attempt to have the Commission use its Section 253 authority to give them an unfair competitive advantage in the market underscores that, if the FCC does not dismiss the Petition as moot, the agency should promptly deny the Petition on the merits.

Both Sprint and San Juan Cable conveniently avoid the fact that other carriers in the Puerto Rico market (including Sprint now and San Juan Cable likely in the future) are providing service in which customers pay local rates for island-wide calling. As PRT explained in its comments, the two largest competitive local exchange carriers ("CLECs"), Centennial and WorldNet, already treat all of Puerto Rico as one local calling zone, as do all six wireless carriers. In fact, Centennial has been using one calling zone for more than one year. *All of Sprint's wireless plans in Puerto Rico treat the entire United States, not just the island of Puerto Rico, as one calling zone.*⁴ Similarly, San Juan Cable, although stating that it is "evaluating the opportunities [for providing voice communications services],"⁵ fails to note that most cable companies are providing voice services using Voice-over-Internet-Protocol ("VoIP") technology with no toll charges for intrastate or interstate calling. San Juan Cable is suspiciously silent

² Comments of San Juan Cable, LLC, WC Dkt. No. 06-01 (filed Jan. 26, 2006) ("San Juan Cable Comments").

³ Comments of Puerto Rico Telephone Company, Inc., WC Dkt. No. 06-01 (filed Jan. 26, 2006).

⁴ See Sprint, "Calling Plans," <http://www.sprint.com/business/products/categories/callingPlans.jsp> (last visited Feb. 3, 2006); Sprint, "Coverage Information," http://www1.sprintpcs.com/explore/servicePlansOptionsV2/FreeClearFairFlexiblePlans.jsp?FOLDER%3C%3Efolder_id=1436723&CURRENT_USER%3C%3EATR_SCID=ECOMM&CURRENT_USER%3C%3EATR_PCode=None&CURRENT_USER%3C%3EATR_cartState=group&bmUID=1138735409461 (last visited Feb. 3, 2006).

⁵ San Juan Cable Comments at 2.

regarding whether it would use one calling zone in Puerto Rico. The Commission should not be swayed by these calls for Section 253 preemption to help Sprint and San Juan Cable protect themselves from competition.

Sprint and San Juan Cable also ignore the Section 253(b) safe harbor that allows a “[s]tate to impose, on a competitively neutral basis and consistent with section 254 of this title, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.”⁶ Neither commenter cites any precedent allowing the Commission to short circuit a state proceeding and eliminate a state’s rights under Section 253(b). The TRB should be allowed an opportunity to complete the record and make its own determinations.

Finally, like TLD, neither Sprint nor San Juan Cable is able to identify any “legal requirement” that the Commission should preempt under Section 253(a). San Juan Cable admits that PRT’s tariff could go into effect “without any further action by a government agency.”⁷ Although Sprint asserts that the TRB may “sanction[]”⁸ or “approve”⁹ PRT’s tariff, Sprint provides no basis for this claim. As PRT has explained, the TRB has yet to take *any* action that could be characterized as a legal requirement under Section 253, making FCC involvement premature. Moreover, there is no requirement in Puerto Rico law that the TRB “approve” a tariff, and all tariffs filed with the TRB take effect by operation of their terms. The TRB is considering discrete complaints filed regarding the tariff, which has been withdrawn. If the TRB denies these complaints, PRT’s tariff would have taken effect without any further action. Thus,

⁶ 47 U.S.C. § 253(b).

⁷ San Juan Cable Comments at 13-14.

⁸ Sprint Comments at 3.

⁹ *Id.* at 3-4 n.2.

