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July 14, 2006

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WorldNet Telecommunications, Inc.'s Petition to Deny Applications of Verizon Communications, Inc., Transferor, and América Móvil, S.A. De C.V., Transferee, for Consent to the Transfer of Control of Entities Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act; WT Docket No. 06-113, DA 06-1245

Dear Ms. Dortch:

Attached for submission in the above reference docket please find WorldNet Telecommunications, Inc.'s Petition to Deny the above-identified applications and request for declaratory ruling on foreign ownership.

Should the Commission have any questions, it is asked to contact the undersigned directly at (202) 939-7965 or jmoskowitz@fw-law.com.

Respectfully submitted

James N. Moskowitz

188770

BEFORE THE
Federal Communications Commission
Washington, DC

In re Applications of	)	
	)	
VERIZON COMMUNICATIONS INC.,	)	
Transferor,	)	
	)	
and	)	
	)	
AMÉRICA MÓVIL, S.A. DE C.V.,	)	WT Docket No. 06-113
Transferee,	)	DA 06-1245
	)	
for Consent to the Transfer of Control of,	)	
Licenses and Authorizations and	)	
Request for a Declaratory Ruling	)	
On Foreign Ownership	)	

PETITION TO DENY OF WORLDNET TELECOMMUNICATIONS, INC.

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July 14, 2006

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ATTACHMENT 1: Proposed Performance Metrics and Self-Executive Enforcement Mechanisms

BEFORE THE
Federal Communications Commission
Washington, DC

In re Application	)	
	)	
VERIZON COMMUNICATIONS INC.,	)	
Transferor,	)	
	)	
and	)	
	)	
AMÉRICA MÓVIL, S.A. DE C.V.,	)	WT Docket No. 06-113
Transferee,	)	DA 06-1245
	)	
for Consent to the Transfer of Control of,	)	
Licenses and Authorizations and	)	
Request for a Declaratory Ruling	)	
On Foreign Ownership	)	

PETITION TO DENY OF WORLDNET TELECOMMUNICATIONS, INC.

WorldNet Telecommunications, Inc. ("WorldNet"), by its attorneys, hereby files this petition to deny the application of Verizon Communications Inc. ("Verizon") and América Móvil, S.A. de C.V. ("América Móvil") (hereafter referred to as "Applicants") for consent to the transfer of control of licenses and authorizations and request for a declaratory ruling on foreign ownership in the above-referenced proceeding.[1]

I. INTRODUCTION AND SUMMARY

If consummated, the transaction under consideration in this proceeding would cause substantial competitive harm to the telecommunications market in Puerto Rico and therefore should be rejected. Unlike other recent mergers considered by the Commission, here the Commission faces the bleak prospect of a dominant local exchange carrier, Puerto Rico Telephone Company, Inc. ("PRTC"), being ultimately controlled by a dominant foreign carrier,

[1] *See* America Movil, S.A. de C.V., Verizon Communications Inc. and Subsidiaries of Telecommunicaciones de Puerto Rico, Inc. Seek FCC Consent to Transfer Control of Licenses and Authorizations and Request a Declaratory Ruling on Foreign Ownership, Public Notice, DA 06-1245, WT Docket No. 06-113 (June 14, 2006).

namely Telefonos de Mexico, S.A. de C.V. ("Telmex"), with both carriers having long anticompetitive track records.[2] Unrestricted, such a combination would seriously impair competition in what the Commission has acknowledged is a unique and fragile telecommunications market in Puerto Rico.

Over the years PRTC, which has never been subjected to the Section 271 process, has engaged in significant anticompetitive activities with regard to competitive local exchange carrier ("CLEC") deployment, provisioning and operations. The carrier has routinely ignored the Commission's market-opening policies and likewise ignored its obligations under the Communications Act of 1934, as amended. (the "Act" or "1996 Act").[3] Although WorldNet has been particularly affected, PRTC's actions have had the general effect of competitively disadvantaging those few CLECs remaining in Puerto Rico, impairing competition and delaying broadband deployment on the Island. The proposed acquisition will only exacerbate this already bad situation.

Further, the Commission should not grant Applicants' request for a declaratory ruling on foreign ownership. Given Telmex's long anticompetitive track record, particularly with regard to U.S. carriers, the company cannot be expected to comply with procompetitive statutes and Commission rules. Section 310 (b) (4) of the Act requires that this application be rejected.[4]

Accordingly, the public interest requires that the Commission deny the transaction, set it for hearing or adopt conditions and safeguards sufficient to ensure the continued competitive development of the telecommunications market in Puerto Rico. Without such conditions, PRTC

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[2] For example, even though the recent Sprint Nextel merger involved carriers with both wireless and wireline holdings, the key local competition and foreign ownership questions at issue in this proceeding were not considered by the Commission in the context of that merger. *See generally Applications of Nextel Communications, Inc. and Sprint Corporation*, FCC 05-148, Memorandum Opinion and Order (Aug. 8, 2005).
[3] 47 U.S.C. § 151 *et seq.*
[4] *Id.* at § 310(b)(4).

will increase its anticompetitive activities up to, and including, withdrawing those few resources that it still devotes to facilitating its wholesale relationships with CLECs. Specifically, as a condition of any approval Applicants should be required to:

- Resolve ordering and provisioning problems. In particular, PRTC should be required to complete by a date certain an OSS interface with CLECs that allows efficient batch uploading and downloading that provides access to all required information.
- Continue the availability of unbundled network elements ("UNEs") and cap UNE rates, including 2-wire and 4-wire loops.
- Resolve CLEC billing problems and correct persistent billing errors.
- Continue providing interconnection for the exchange of traffic between WorldNet and third-party carriers/providers via PRTC's tandems.
- Cap special access rates.
- Make available to CLECs for 36 months all rates and interconnection terms and conditions that PRTC makes available to its affiliates.
- Provide for the availability of the current resale discount for all telecommunications services at the lowest of either the price within a bundle or stand alone cost for each service for a period of five years.
- Provide for a two-year "fresh look" for all PRTC customer contracts on the Island.
- Offer DSL on a resale basis.
- Require PRTC to establish a compliance process that includes performance standards, reporting and liquidated damages for non-compliance.

II. OVERVIEW OF TRANSACTION AND LEGAL STANDARD

A. The Transaction

The Applicants seek Commission consent to consummate a transaction that would result in the acquisition by Sercotel, S.A. de C.V., a subsidiary of América Móvil, a foreign-owned carrier, of a majority interest in Telecommunicaciones de Puerto Rico, Inc. ("TELPRI"), the parent of PRTC, from GTE Holdings, a subsidiary of Verizon. The Applicants indicate that it is "possible" that TELPRI and PRTC will be 100 percent foreign-owned after the consummation of the transaction.[5] Applicants seek a waiver of foreign-ownership restrictions that would doom the proposed transaction. Although a number of corporate entities appear to be involved in the

[5] *See generally* Applicants' Overview of Transaction/Petition for Declaratory Ruling/Request for Procedural Considerations (filed May 9, 2006).

proposed transaction, in reality there are only four principal parties in the deal: América Móvil; Telmex, the foreign-owned corporation that is under common control with América Móvil; PRTC, the dominant wireline carrier in Puerto Rico; and Verizon, the carrier that controls PRTC.

B. The Parties

If this transaction is approved, the majority of the capital stock of TELPRI, a U.S. carrier, would be owned by foreign corporations and their representatives, and its subsidiary PRTC - - the dominant wireline carrier in Puerto Rico - - would likewise be foreign-controlled. The control of PRTC by a dominant foreign carrier would be both significant and unprecedented. Consequently, the declaratory ruling sought by the Applicants on the foreign ownership question is far from routine.

América Móvil

América Móvil is the largest wireless carrier in Latin America.[6] Telmex is the dominant carrier in Mexico.[7] América Móvil is the wireless corporate "alter ego" of Telmex. Although it was spun off from Telmex, América Móvil is still under common control with the dominant carrier.[8] Further, the operational relationship between the carriers is quite close. According to the América Móvil's SEC filings, América Móvil has "a variety of contractual relationships with Telmex and its subsidiaries."[9] Moreover, Telmex's principal shareholder, Carlos Slim Helu and certain members of his immediate family, acting through various corporations, "have the ability to elect a majority of the members of the company's [América Móvil's] board of directors and to

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[6] Applicants' Public Interest Statement at 2 (filed May 9, 2006).

[7] *The International Bureau Revises and Reissues the Commission's List of Foreign Telecommunications Carriers that Are Presumed to Possess Market Power in Foreign Telecommunications Markets*, FCC Public Notice, DA 04-1584 (May 28, 2004). It is estimated that Telmex has a "95% share of Mexico's domestic fixed-line business." *And the winner is . . .*, FORTUNE (June 30, 2006), http://money.cnn.com/magazines/fortune/fortune_archive/2006/07/10/8380923/index.htm (visited July 7, 2006) ("Fortune").

[8] Applicant's Public Interest Statement at 3.

[9] America Movil SEC Form 20-F for the fiscal year ended December 31, 2005 at 76 (filed June 30, 2005) ("America Movil 2005 Form 20-F").

determine the outcome of other actions requiring a vote of our shareholders, except in very limited cases..."[10] It should be noted that Mr. Slim is América Móvil's Honorary Lifetime Chairman.[11]

Also of note is the fact that this transaction is part of a complex $3 billion transaction which also includes the acquisition of Verizon's Venezuelan and Dominican Republic assets.[12] Telmex is actually a joint venture partner in the acquisition of the Venezuelan assets.[13] Aside from obvious regulatory concerns, it is unclear why Telmex is also not a formal joint venture party in the PRTC deal.

PRTC

For its part, PRTC is the incumbent local exchange carrier in Puerto Rico. For years, PRTC was a government-owned monopoly provider of local exchange service in Puerto Rico. Today, although the ownership of PRTC has changed, its dominant, entrenched, monopoly position in the local exchange market has not changed. In short, PRTC now serves approximately 1.1 million access lines in Puerto Rico, a number that constitutes nearly 90% of the wireline market. In the words of the federal district court sitting in Puerto Rico from a decision rendered earlier this year, PRTC "is [still] a monopoly provider of local exchange and switched access services in Puerto Rico."[14]

PRTC has maintained its overwhelming market share and monopoly market power despite being subject to the pro-competitive federal regulatory regime over the past ten years that has revolutionized local telephone markets on the United States mainland. According to the

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[10] *Id.* at 10.
[11] *Id.* at 67.
[12] *See* America Movil SEC Form 20-F at 16-17 (filed June 30, 2006).
[13] *See* America Movil SEC Form 6-K (April, 2006).
[14] *See WorldNet Telecommunications, Inc. v. Telecommunications Regulatory Board of Puerto Rico*, Civil No. 04-2051 (JAF), Judgment (D.P.R. Feb. 2, 2006) (adopting in its entirety a Magistrate Judge's Report and Recommendation issued on Oct. 5, 2005).

Telecommunications Regulatory Board of Puerto Rico ("Board"), this has happened not because of a lack of willing competitors, insufficient efforts by competitors, or proper PRTC business efforts. Rather, according to the Board, PRTC maintained its monopoly position so by "fail[ing] to devote the resources or attention necessary to provide even the most basic services and facilities [to competitors] without substantial operational problems."[15] This failure has led the Board to conclude unequivocally that competition in Puerto Rico is "more embryonic than corresponding markets on the mainland" and that "competition in Puerto Rico has been slow to develop, and robust, facilities-based competition has yet to take root."[16] Without protection from continued intransigence by PRTC and potentially by América Móvil and Telmex, the ability of CLECs, such as WorldNet, to compete will be even further impaired and end users will suffer.

WorldNet

Unlike PRTC or American Movil, WorldNet does not have significant market power and is not affiliated with or owned by any other provider of telecommunications services, dominant or otherwise. WorldNet was founded in 1996, the same year that the 1996 Act was passed, and it evolved and has grown its business exactly as Congress contemplated in the Act. WorldNet started as a pure reseller of PRTC telecommunications services. After building a strong customer base through resale, in 2002 WorldNet migrated many of its resale customers to services provided over unbundled network element platform ("UNE-P") circuits leased from PRTC, becoming the first and still only UNE-P provider in Puerto Rico. WorldNet now has deployed its own soft switching and other broadband network equipment and will soon join Centennial to become the second truly facilities-based local service competitor to PRTC. With

[15] *See id.* (citing the Board's opposition to a motion for summary judgment filed by PRTC).
[16] *See In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 & 98-147, Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico for Enterprise Market Switching Impairment in Defined Puerto Rico Markets at 4 (filed Dec. 30, 2003).

this the company is poised to bring advanced broadband service to a desperate Puerto Rican market.

Unfortunately, although WorldNet has followed the road to broadband facilities-based competition set forth by Congress in the 1996 Act, the journey has not been as smooth as Congress envisioned. WorldNet has had to fight, at great expense, for almost everything it has gotten from PRTC -- interconnections and services that the Regional Bell Operating Companies ("RBOCs") such as Verizon routinely provide to CLECs on the mainland. The first PRTC resale manuals and procedures were created by PRTC only after a Board arbitration filed by WorldNet. The same is true of UNE-P terms and conditions, which were then only implemented by PRTC after a second, follow-up enforcement complaint was filed by WorldNet. To date, PRTC's resale and UNE-P invoices continue to include an inordinate numbers of billing errors, and PRTC does not provide electronic access to a number of critical OSS databases, and often refuses or delays contract performance until the weight of Board sanction is either threatened or nearly upon it (such as after a formal complaint has been filed). Indeed, as WorldNet's scheduled switch deployment date has neared, the number of PRTC obstacles has increased. In short, WorldNet's unique measure of success in Puerto Rico has been borne out of its willingness to expend the resources necessary to challenge PRTC and to force PRTC compliance with longstanding legal and contractual obligations.

C. The Legal Standard

Pursuant to Sections 214 and 310 of the Act,[17] the Commission must determine whether the Applicants have demonstrated that the proposed transfer of control will further the public

[17] 47 U.S.C. §§ 214, 310.

interest, convenience and necessity.[18] In order to do so, Applicants bear the burden of proving by a preponderance of the evidence that the transaction is in the public interest taking into consideration the broad aims of the Act, including a preference for preserving and enhancing competition, accelerating private sector deployment of advanced services and ensuring a diversity of license holdings. Moreover, they must affirmatively demonstrate that the merger will enhance competition.[19]

In making its determination, the Commission must assess whether the transaction complies with specific provisions of the Act, other applicable statutes, and the Commission's rules. It must also determine whether the transaction would result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes. Then, the Commission must weigh potential public interest harms of the proposed transaction against the potential public interest benefits.[20] If the Commission is unable to find that the proposed transaction serves the public interest for any reason, or if the record presents any substantial and material questions of fact, section 309(e) of the Act requires that the Commission designate the application for hearing.[21]

In addition, the Commission's public interest analysis is informed by, but not limited to, antitrust principles. Consequently, in addition to considering whether this proposed acquisition will reduce existing competition, the Commission must also consider whether it will accelerate the decline of market power by dominant firms and its effect on future competition, as well as

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[18] *Applications of VoiceStream Wireless Corporation, PowerTel, Inc. and Deutsche Telekom,* AG, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9789 at ¶ 17 ("*VoiceStream*"); *see also Verizon Commc'ns Inc. and MCI, Inc., Applications for Approval of Transfer of Control,* ,Memorandum Opinion and Order, FCC 05-184, 37 CR 416 at ¶2 (2005)("*MCI-Verizon Merger Order*")
[19] *MCI-Verizon Merger Order* at ¶17.
[20] *Id.* at ¶16.
[21] 47 U.S.C. § 309(e).

whether market conditions are such that new competitors will enter the market.[22] Finally, the FCC's public interest authority permits it to impose and enforce narrowly tailored transaction-specific conditions to ensure that the public interest is served by the transaction.

In the instant case, the Commission's analysis of the legal requirements, as well as whether the transaction will enhance competition or harm the public interest, assumes a special significance because of the fact that a majority of the interest in PRTC, a U.S. carrier, would be held both directly and indirectly by dominant foreign carriers: América Móvil and Telmex. Section 310 (b) (4) of the Act states that no license shall be granted to "any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, [or] their representatives . . . or by any corporations organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal . . . of such license."[23] Accordingly, despite the WTO status of the applicant, the Commission may reject an application that poses a very high risk to competition in the U.S. markets and where standard safeguards and additional conditions would be ineffective.[24] Specifically, the Commission has indicated that a denial of an application pursuant to Section 310(b)(4) is appropriate in at least three circumstances - - all of which are present here, namely:

1. Where a dominant international carrier, rejecting rational, profit maximizing behavior, would be able to drive competitors out of the market or keep competitors out and thereby harm end users;[25]
2. Where an applicant possesses the ability to harm competition in the U.S. market in addition to the ability to exercise its foreign market power and the competitive risk it poses cannot be addressed by safeguards or conditions;[26] and
3. Where the past behavior of an applicant may indicate that it would fail to comply with the Commission's competitive safeguards and other rules and whose behavior,

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[22] *MCI-Verizon Merger Order* at ¶¶ 16-17.
[23] 47 U.S.C. § 310(b)(4).
[24] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* 12 FCC Rcd 23891, 23913-14 ¶51-52 (1997) ("*Foreign Participation Order*").
[25] *VoiceStream* at ¶90.
[26] *Foreign Participation Order* at ¶52.

> as a result, could damage competition in the U.S. market and otherwise negatively impact the public interest, including but not limited to adjudicated violations of Commission rules, U.S. antitrust or other competition laws (including presumably WTO decisions).[27]

As demonstrated herein, the Applicants have failed to meet the applicable legal standard here. To the contrary, the proposed transaction will be harmful to the public interest, and the public interest is better served by a refusal thereof, unless the Commission imposes conditions designed to ensure that the telecommunications market in Puerto Rico remains competitive. In the alternative, the Commission should set this application for hearing.

III. PRTC HAS ENGAGED IN SIGNIFICANT ANTICOMPETITIVE ACTIVITIES IN THE AREAS OF DEPLOYMENT, PROVISIONING AND OPERATIONS

A. The Commission Must Closely Scrutinize PRTC's Compliance with the Act and the Commission's Procompetitive Policies.

The Commission must not accept the Applicants' assertions that a fully functioning competitive market exists in Puerto Rico. It does not, particularly on the wireline side. Instead, the Commission should closely examine PRTC's failure to adhere to the Commission's market-opening policies because it has never previously had the opportunity to fully review PRTC's compliance with the goals and obligations of the Communications Act. Further, there are a number of circumstances that are unique to PRTC and the market in Puerto Rico that the Commission must consider in its review of the proposed transaction.

Perhaps the most unique circumstance is the fact that PRTC was granted the ability to provide long distance services way back in 1987[28] and, unlike other carriers in markets of similar size that had been parties to merger and/or transfer of control transactions, was never subject to the market opening requirements of section 271 of the Act - - even though PRTC was bought by

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[27] *Id.* at ¶53.

[28] *Authorization of Common Carrier Facilities to Provide Telecommunications Services Off the Island of Puerto Rico*, CC Doc. No. 86-309, Report and Order, 2 FCC Rcd. 6600 (1987) ("*PRTC Long distance Order*").

Verizon in 2000.[29] The merger conditions that were placed on the merger of Bell Atlantic and GTE, and which created important competitive safeguards in other markets, were not applied in Puerto Rico.[30] Consequently, PRTC has been left with unrestrained access to both the local and long distance markets in Puerto Rico without having to meet the market opening requirements of section 271. As a result, PRTC has never developed any of the detailed service quality standards, performance plans or enhanced OSS options that have opened the way for meaningful facilities-based entry in many other markets of similar size.

In the prior mergers considered by the Commission, the RBOCs had already obtained authorization to provide in-region, interLATA services under section 271 of the Act. In order to obtain such authority the RBOCs had had to show, among other things, that they had fully implemented the competitive checklist set forth in section 271(c)(2)(B) of the Act,[31] and that their entry into the in-region, interLATA market was consistent with the public interest, convenience, and necessity.[32] Moreover, many state regulatory commissions had also conducted their own reviews.

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[29] *See GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 20 CR 989, 16 FCC Rcd 14032 (2000) ("*Bell Atlantic-GTE Merger Order*").

[30] *See generally id.* The failure of the Order to mention PRTC was later interpreted by PRTC as meaning that the Order did not apply to PRTC. *See* Letter from Edwin Quinones, Counsel for WorldNet Telecommunications, Inc., to Michael K. Powell, Chairman of the Federal Communications Commission (February 12, 2001) (available in the record of CC Docket Nos. 98-141, 98-184).

[31] Section 271 conditions authorization to enter the long-distance market on a BOC's compliance with the terms of the competitive checklist, and those terms generally incorporate by reference the core local competition obligations that sections 251 and 252 impose on all incumbent LECs. In demonstrating compliance with each item on the competitive checklist, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist item in quantities that competitors may reasonably demand and at an acceptable level of quality. *See, e.g., Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Telephone Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 21 CR 309, 15 FCC Rcd 18354, ¶¶ 21-22 (2000) ("*SBC Texas 271 Order*").

[32] *SBC Texas 271 Order* at ¶ 9.

For example, in Texas, the Texas Public Utility Commission convened a series of collaborative meetings and workshops, as well as technical conferences, to identify and resolve a number of key issues related to SWBT's compliance with section 271, including the operational readiness of SWBT's operations support systems ("OSS"), and the development and adoption of a performance monitoring and enforcement mechanism.[33] Similarly, in New York, the New York Public Service Commission initiated several proceedings and collaborative sessions to address issues associated with OSS, wholesale performance, unbundling, and other critical issues.[34] As a result of this process, Bell Atlantic (now Verizon) made several commitments, including but not limited to, providing combinations of network elements, engaging a third-party to test its OSS, and establishing a self-effectuating system to prevent backsliding.[35] Such commitments would be welcomed in Puerto Rico.

PRTC however has never been the subject of a state or federal proceeding to determine its compliance with the competitive mandates of the Act. Accordingly, PRTC has been operating virtually free of regulatory oversight, at least with respect to its compliance with the requirements of the 1996 Act. For example, PRTC has never been required to demonstrate that it provides interconnection that is at least equal in quality to that provided by it to itself, and on rates, terms, and conditions that are just, reasonable, and nondiscriminatory as required in section 251(c)(2) of the Communications Act.[36] It does not.

Similarly, PRTC has never been compelled to prove that it provides nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates,

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[33] *SBC Texas 271 Order* at ¶ 13.
[34] *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*, 19 CR 1, 15 FCC Rcd 3953, ¶¶ 21-22 (1999) ("*Bell Atlantic NY 271 Order*").
[35] *Id.* at ¶ 22.
[36] *See* 47 U.S.C. §§ 251(c)(2), 271(c)(2)(B)(i).

terms, and conditions that are just, reasonable, and nondiscriminatory, as required in section 251(c)(3) of the Communications Act.[37] It does not.

Nor has PRTC been required to show that it offers for resale at wholesale rates any telecommunications service that it provides at retail to its subscribers who are not telecommunications carriers, or that it does not prohibit or impose unreasonable or nondiscriminatory conditions or limitations on the resale of telecommunications service as required in section 251(c)(24) of the Communications Act.[38] It does not.

Thus, unlike other section 271-qualified merger participants whose transfer of control applications had previously been granted by the Commission, the present case is unique in that the Commission has never had an occasion to assess PRTC's compliance with the competitive mandates of the Act. In the SBC-AT&T merger proceeding,[39] for example, the acquiring party (SBC) had been through several section 271 proceedings.[40] Similarly, in the MCI-Verizon merger,[41] the acquiring entity (Verizon) had been the subject of numerous section 271 proceedings.[42] In both cases, the Commission had had the occasion to subject the acquiring parties to rigorous reviews. That is clearly not the case here.

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[37] *See* 47 U.S.C. §§ 251(c)(3), 271(c)(2)(B)(ii).
[38] *See id.* at §§ 251(c) (4), 271(c)(2)(B)(xiv).
[39] *See SBC Communications Inc. and AT&T Corp Application for Approval of Transfer of Control*, 37 CR 321 (2005) ("*SBC-AT&T Merger Order*").
[40] *See, e.g., Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, 16 FCC Rcd 20719 (2001); *Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc. for Authorization to Provide In-Region InterLATA Services in California*, WC Docket No. 02-306, Memorandum Opinion and Order (rel. Dec. 19, 2002); *Application by SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Nevada*, WC Docket No. 03-10, Memorandum Opinion and Order (rel. Apr. 14, 2003).
[41] *See MCI-Verizon Merger Order.*
[42] *See, e.g., Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon* Global *Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order (rel. Sept. 19, 2001); *Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc. for Authorization to Provide In-Region,*

B. PRTC Has a Long Record of Being Unwilling and Unable to Provide Competitive Access to its Network as Required by Law.

Although it has been over ten years since the passage of the 1996 Act, PRTC is still in the initial stages of complying with its market-opening requirements. During the years since the 1996 Act's passage PRTC has repeatedly proven itself to be unwilling and unable to provide wholesale services to competitors as required. For example, as far back as 2001 PRTC committed to be "ready, willing, and able" to make UNE-P available in Puerto Rico by October 1, 2002.[43] This was almost a year later than initially required under its then-existing interconnection agreement with WorldNet and over six years after it was first required by federal law to do so. However, on October 1, 2002, PRTC could not and did not provide UNE-P.[44] Although PRTC did accept and process initial UNE-P orders, it did not have the processes or systems in place to provision these services appropriately.[45] Instead, when faced with a complaint filed by WorldNet, PRTC rushed orders through a makeshift, problematic procedure fraught with significant and costly process breakdowns, and widespread and recurring billing errors.[46]

WorldNet was not the only competitor in Puerto Rico to experience these performance problems. The first CLEC to deploy its own local switches in Puerto Rico, Centennial, had to fight with PRTC for over three years in order to obtain the collocation necessary for a UNE-L

InterLATA Services in Virginia, WC Docket No. 02-214, Memorandum Opinion and Order (rel. Oct. 30, 2002); *Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, WC Docket No. 02-384, Memorandum Opinion and Order (rel. Mar. 19, 2003).

[43] *Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico for Enterprise Switching Impairments in Defined Puerto Rico Markets*, CC Doc. Nos. 01-338, 96-98, 98-147, Order and Notice of Proposed Rulemaking, FCC 04-179, p. 22 (filed December 30, 2003) ("*Waiver Petition*").

[44] *Id.*

[45] *Id.*

[46] *Id.*

based service platform and only recently received its first collocation space in 2004.[47] Achieving even this limited milestone required a formal complaint filed with the Board.[48] In the complaint, Centennial reported that PRTC failed to meet a July 2003 interconnection agreement deadline for a number of Centennial collocation orders and that other Centennial collocation orders have been pending with PRTC for over three years.[49] Centennial commented on the record in the Board's Waiver Proceeding that despite the settlement of its complaint against PRTC, the collocation process devised by PRTC was still "highly problematic" and that "many issues remain."[50] WorldNet experienced similar problems in the recent provisioning of its collocation spaces, which took over six (6) months to complete.

With regard to provisioning UNE loops, PRTC did not even begin providing individual unbundled loops until mid-2004. Indeed, after developing a full record on PRTC's ability to provision UNE loops to a competitor's switch, including a full hearing with cross-examination of witnesses, the Board determined that it would be "unrealistic" to expect PRTC to provide the services necessary for a competitor with a switch to access loops without difficulties and delays even under the best of circumstances.[51] Moreover, as the Board pointed out,

> [t]he record reveals beyond this, however, that PRTC's case does not involve the best circumstances. Rather, the record demonstrates a track record of PRTC wholesale service failures (including specific collocation failures) that make PRTC's claims of instant and unprecedented competence even less credible. Indeed, this documented track record includes instances where even after two to four years of experience and opportunity, PRTC has failed to devote the resources or attention necessary to provide even the most basic services and facilities without substantial operational problems.[52]

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[47] *See Centennial Puerto Rico License Corp. v. PRTC*, Request for Emergency Order and Complaint, Case No. JRT-2003-Q-0070 (filed May 13, 2003) ("*Centennial Complaint*").
[48] *Id.*
[49] *See id.*
[50] *Waiver Petition* at 22.
[51] *Id.* at 20.
[52] *Id.* at 21.

The Board concluded that :

> it is difficult to envision any stronger showing of an operational barrier than an ILEC that has absolutely no experience in successfully providing stand alone UNE loops or cross-connects and very limited experience in providing collocation. Indeed, perhaps the only possibility to have a stronger showing is to have a record in which the ILEC not only does not have any successful experience, but actually has negative experiences in providing these services and a consistent track record of being unprepared, uninterested, and incapable of providing wholesale services as and when required or promised. Such is the finding the Board makes regarding the Puerto Rico Markets.[53]

There has been little, if any, improvement in PRTC's performance in complying with the requirements of the Act in Puerto Rico since the Board's conclusions in December of 2003.

C. PRTC's Current Wholesale Provisioning and Operations are not Sufficient to Provide Meaningful Competitive Entry in the Wireline Market in Puerto Rico.

Despite continuous efforts by WorldNet to get PRTC to provide even the minimal level of wholesale service required by the Act, PRTC is incapable of providing the level of service required by law and unwilling to invest the time and resources necessary for it to do so. As a consequence, WorldNet continues to experience a number of problems relating to PRTC's provisioning of wholesale services. These problems call into question the company's ability to comply with even the most fundamental market-opening obligations of the Act.

1. OSS Access

For example, despite commitments in its section 251/252 interconnection agreement with WorldNet (the "Interconnection Agreement") to make electronic operations support systems ("OSS") access available to WorldNet by November of 2005, such electronic access is still not

[53] *Id.* at 23.

available in Puerto Rico. As a result, WorldNet must rely upon manual OSS provisioning, which is inherently inferior and causes errors and ordering delays.

Further, the current manual system does not provide OSS information at parity with the information that PRTC uses for its own retail provisioning. Under the manual system, it has taken PRTC over two months to provide loop make-up information, rather than the one-day time-frames required under the Interconnection Agreement. The inability to have immediate access to this information places WorldNet at a significant competitive disadvantage when trying to determine whether a particular customer has loops in place that are capable of supporting broadband services.

Similarly, the OSS access that PRTC provides does not include all of the information in the screens available to PRTC's own retail employees, such as the IDDT and similar screens. This makes it difficult for WorldNet to use the OSS for its own ordering and, instead, leads WorldNet to constantly have to make inquires to PRTC staff to obtain ordering information that it should otherwise be able to access immediately. WorldNet has sought access to "raw" OSS data so that it could build its own database and thereby obtain a virtual OSS platform. However, PRTC has refused to even consider this option. In sum, there is no parity of access to PRTC OSS in Puerto Rico as required under federal law, and this has had the effect of significantly delaying and complicating the wholesale ordering process. This places competitors in Puerto Rico at a significant competitive disadvantage.

2. Order Provisioning

There are also significant problems relating to PRTC's ability to fulfill its wholesale orders. PRTC consistently misses appointments to provision facilities for WorldNet customers without giving the required one (1) day notice. Similarly, PRTC consistently fails to process

WorldNet requests for service suspension and restoration (due to non-payment or other issues) in a timely manner. This is true even where a disconnection occurs due to a PRTC error and the customer is without service. Nor does PRTC give order completion notices to WorldNet or signed customer order acceptances as required under the Interconnection Agreement. Without these notices, it is very difficult for WorldNet to verify that a customer's service has been connected. Nor does PRTC provide WorldNet with notice that one of its customers' service has been disconnected or transferred to another carrier as required under the Interconnection Agreement. The failure to comply with these provisions leads to significant billing problems, including double billing of customers.

Indeed, PRTC's order processing performance is notable for its lack of compliance with the basic notice requirements necessary to allow WorldNet to order and bill for services in a commercially reasonable manner. Many reports required under the Interconnection Agreement are either not sent or are so inaccurate as to render them useless. These reports include the general monthly report, which summarizes the monthly ordering data, due date commitments, which provides dates that facilities are to be delivered, the monthly migration report, maintenance trouble reports, percent repeat reports, outage reports, customer service records, and resale change order reports, just to name a few. Absent these reports, WorldNet is forced to operate without any reliable information regarding the status of its order processing or PRTC's compliance with the provisioning requirements of the Interconnection Agreement.

3. Service Migration Issues

WorldNet also has had significant operational problems with PRTC's service migrations and loop ordering processes. These are the same processes that were addressed and largely resolved in other jurisdictions through the section 271 proceedings. PRTC did not begin

developing a "hot cut" plan until 2005 and the plan that it has created has been the source of significant controversy and is largely a work in progress. PRTC's current hot cut plan is not as comprehensive as those used in most other states and is all but untested in real-world situations. Given PRTC's past track record with implementing other wholesale service processes, it is very likely that competitors such as WorldNet will experience significant problems with the implementation of PRTC's hot cut process in real-world situations, including potentially service-affecting problems.

For example, WorldNet currently experiences delays of over 30 days when migrating government accounts. In some instances, migrating these accounts takes over 100 days. This is in contrast to the five days required under the Interconnection Agreement. Moreover, where a customer has an order for a new service in place at the time of the migration, PRTC does not keep pending orders in their place in the processing queue but places them at the end of the line for service orders, thus further adding to the delays associated with service migrations. This has the result of delaying orders for WorldNet customers whose service is migrated from UNE-P or resale to UNE loops.

4. Billing Problems

PRTC's inability to provide accurate and timely wholesale bills is another area where its wholesale processes are so poor that they reach the level of being anticompetitive. There are over fifty (50) known repeated billing errors that WorldNet must screen for every month and there are often upwards of 5,000 billing errors per billing cycle. WorldNet employs two full time staff to do nothing but review the wholesale bills to correct these errors.

Under the current wholesale billing process, after WorldNet receives a wholesale bill from PRTC it reviews it and creates a summary of all of the billing errors detected. WorldNet

then pays the bill and takes a credit that accounts for the sum of all of the billing errors. PRTC then reviews WorldNet's credits and determines whether it will accept the credits applied by WorldNet. This process is called "account reconciliation."

PRTC completes the account reconciliation process manually and it currently takes at least three months for resold services and five months for wholesale. Under the Interconnection Agreement it is supposed to take one month. What is more, the results of PRTC's account reconciliation are, in turn, often filled with errors, do not reflect the rates terms and conditions set forth in the Interconnection Agreement, or do not include the meaningful explanations required under the Interconnection Agreement to permit a timely and reasoned response by WorldNet.

One of the key problems with PRTC's wholesale billing is that when a billing error that is capable of repetition has been identified, PRTC does not fix its systems to avoid such errors in the future as required under the Interconnection Agreement. Instead, the same error is repeated on a monthly basis even after PRTC has recognized the mistake. The sum result of these billing problems makes it very difficult for WorldNet to render accurate bills to its customers. And, where a PRTC billing error results in a cost that should be passed along to a WorldNet customer, it is often impossible to do so because of the time that has passed between the date the service was rendered and the date that the billing error came to light. All of this is highly prejudicial to WorldNet's competitive position and undermines the competitive conditions in Puerto Rico.

IV. THE ACQUISITION SHOULD BE DENIED UNLESS THE COMMISSION IMPOSES STRICT CONDITIONS AND SAFEGUARDS

A. PRTC's Actions Have Competitively Disadvantaged WorldNet, Impaired Competition in Puerto Rico, and Delayed Broadband Deployment on the Island

The Applicants cannot demonstrate, as they must, that the proposed acquisition will accelerate the private sector deployment of advanced services, enhance competition, accelerate the decline of market power by dominant firms, or encourage entry by new competitors. Although over the past few years competitors all around the country have had to overcome their share of competitive obstacles from incumbent local exchange carriers ("incumbent LECs"), few have had to face the scope or magnitude of obstacles that PRTC has historically created (and still continues to create) for competitors in Puerto Rico. The merger will exacerbate, not resolve, the problem.

By the express findings of the Puerto Rico Board, the competitive barriers erected by PRTC have left the competitive markets in Puerto Rico well behind its counterparts on the United States mainland. These barriers have competitively disadvantaged WorldNet, impaired competition throughout Puerto Rico, and delayed the introduction in Puerto Rico of new and exciting broadband technologies.

As previously noted, WorldNet has had to fight PRTC every step of the way in its transition from resale, to UNE-P, to full facilities-based service. In Puerto Rico, actions to enforce PRTC's legal and contractual obligations have become a cost of doing business. Indeed, in many cases, it is has become a cost of doing business simply to get PRTC to acknowledge that these legal and contractual obligations even exist. The tremendous cost of fighting PRTC's anticompetitive activities has served to both discourage market entry entirely and relegate competitors that do enter the market to a level of service availability and performance that leaves

them at a significant disadvantage to PRTC in the marketplace - - a fact made readily apparent by the inordinately small number, size, and market share of active local service competitors in Puerto Rico.

Despite its success relative to other Puerto Rico competitors, WorldNet has not been immune to this competitive disadvantage. Indeed, as the primary CLEC litigant against PRTC, WorldNet has incurred by far the largest proportion of these unwarranted costs, expending to date literally hundreds of thousands of dollars and thousands of man-hours to force PRTC to provide even the most basic service functions and to meet minimal performance standards. In requiring competitors to incur these costs, PRTC has created and maintained an inherent and unlawful competitive advantage for itself to the detriment of WorldNet, the competitive market in Puerto Rico, and all Puerto Rico consumers.

In addition, PRTC has also competitively disadvantaged WorldNet, and other CLECs, impaired competition in Puerto Rico, and delayed broadband deployment by failing to devote the necessary resources and attention to its wholesale operations—a fact made apparent by the numerous operational and system problems noted above and in the express findings of the local Board. In short, the extraordinary cost to compete in Puerto Rico is not accounted for entirely by anti-competitive PRTC business practices; the cost also includes the price of having to compensate for antiquated PRTC systems and an under-staffed, under-trained PRTC wholesale customer service department.

For example, in WorldNet's last interconnection arbitration with PRTC, PRTC blamed the exorbitant amount of wholesale billing errors on its antiquated, inflexible billing systems. Ironically, PRTC's proposal was not to fix its systems, but to instead continue to have WorldNet incur the cost of reviewing, identifying, and disputing the admittedly erroneous charges. The

Board ultimately ruled against PRTC, but PRTC has still not upgraded its billing systems to improve its billing accuracy in any appreciable manner.

Similarly, it was established in the last interconnection arbitration that PRTC had not complied with its obligations to provide WorldNet with nondiscriminatory electronic access to OSS databases, including loop make-up information databases, that would allow WorldNet to market and provide services such as DSL on a level playing field with PRTC. The result was a requirement that electronic access to such databases be established within one (1) year and that, in the interim, such information be provided to WorldNet upon request within one (1) business day. As noted above, to date, PRTC has not provided WorldNet electronic access to loop make-up information and a WorldNet request for manual access to specific loop make-up information has been pending with PRTC for over two (2) months.

Quite simply, through both action and inaction, PRTC has placed WorldNet and other competitors in Puerto Rico at a competitive disadvantage by significantly increasing the cost, resources, and time required to offer service to Puerto Rico consumers. Indeed, as detailed above, WorldNet is now encountering a host of eleventh hour obstacles erected by PRTC as WorldNet approaches the deployment of new switching and broadband network facilities that promise to bring completely new, exciting, and long-overdue technologies and communications capabilities to Puerto Rico consumers. In a very real and direct sense, PRTC is impairing competition and delaying the deployment of broadband technologies to Puerto Rico. In and of itself, such a flagrant disregard for the Act and the Commission's procompetitive policies provides ample justification for the rejection the Applications at issue here.

B. The Proposed Acquisition Will Not Enhance Competition in Puerto Rico

The proposed acquisition involves three parties that have a history of resisting competition and, if permitted, will serve to deter and not enhance competition thereby harming the public interest in contravention of the Act and Commission policy. As previously indicated, PRTC is an entrenched monopoly provider that, according to the findings of local Puerto Rico regulators, has kept the development of local telephone competition well behind other United States jurisdictions due to, among other things, its failure to devote even minimally sufficient resources or attention to its compliance with market-opening legal and contract requirements. For their part, América Móvil and Telmex are foreign-owned entities that have been specifically cited for their overly aggressive, anti-competitive practices in the markets in which they operate. The combination of these entities does not bode well for competition in Puerto Rico. Indeed, it threatens only to move the state of the competitive telecommunications market in Puerto Rico very quickly from bad to worse. Accordingly, the proposed acquisition will not enhance competition in Puerto Rico and should be rejected.

C. Unless the Commission Imposes Conditions and Safeguards Conditions América Móvil/Telmex Will Withdraw Resources from the Wireline Market

Unless prevented by Commission action, América Móvil will likely withdraw resources from PRTC's wireline operations that support CLECs - - an act that will be contrary to the public interest and will harm competitors and end users alike. América Móvil is predominantly a wireless carrier. A substantial number of its customers are prepaid wireless subscribers and its strategy is to capitalize on its position as a leader in wireless.[54] Although in its Public Interest Statement América Móvil extensively discusses its wireless plans, nowhere does it discuss any

[54] America Movil 2005 Form 20-F at 15-16.

plans for PRTC's wireline operations.[55] This is significant because América Móvil has only a minor presence in Puerto Rico's wireless market and presumably the carrier will play to its strengths in wireless as it enters the market.

At the same time, América Móvil has admitted in other forums that it faces growing competition which will lead to increased marketing expenses and potentially to reduced revenues and profitability.[56] To compound the problem, at least from a wireline perspective, the Commonwealth of Puerto Rico faces "unique challenges."[57] Puerto Rico has the ninth highest actual cost per loop, behind only four mainland states.[58] According to PRTC, "[w]ireline penetration rates in Puerto Rico have regressed to approximately 60.9 percent as of December 2005 . . . . From 1996 to 2003 PRT's capital expenditures were reduced from $190 million to less than $70 million . . . [and PRTC's ability to continue] modernizing and upgrading its facilities and extending the reach of its network . . . has been compromised by the elimination of federal support."[59]

Recently, Moody's Investors Service undertook a review of its rating for América Móvil "based on concern with the financial impact of the proposed transactions in Puerto Rico, the Dominican Republic and Venezuela on América Móvil's leverage and overall credit metrics."[60] Although the service confirmed its "stable" rating, it stated:

> The ratings are constrained, however, by the fact that an increasing share of . . . América Móvil's revenues and EBITDA comes from less-stable economies than . . . that of Mexico and that the company will continue to pursue acquisitions in Latin America, which could raise the company's current levels of execution risk. The ratings are also constrained by uncertainties around the

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[55] *See e.g.* Applicants' Public Interest Statement at 3-5.
[56] America Movil 2005 Form 20-F at 6.
[57] *In the Matter of Federal-State joint Board on Universal Service High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, PRTC Comments at 8 (filed March 27, 2006) ("PRTC USF Comments").
[58] *Id.* at 22 n.25.
[59] *Id.* at 27-28
[60] Moody's Investors Service, Global Credit Research Rating Action, 6 JUL 2006.

> company's use of future . . . excess cash. We remain concerned that excess cash could be exclusively. . . funneled to shareholders despite the likelihood that the company's business risk . . . will increase over time.[61]

Additionally, the rating was based on Moody's assumption that América Móvil would post increasing EBITDA margin and free cash flows assisted by "lower levels of capex for network coverage, which is substantially completed and . . . larger economies of scale and cost controls."[62]

The Commission should not ignore the market pressures América Móvil faces, its almost total focus on wireless and the fact that the company clearly has no plans to invest in Puerto Rico's wireline network. Likewise, the Commission should be chastened by PRTC's demonstrated failure to provide sufficient service and performance to CLECs with whom it competes. Given these facts, there is a significant danger that in order to meet market expectations regarding cost-savings and to divert needed resources to either "more important and more profitable" wireless operations or off-shore shareholders, América Móvil will "redirect" PRTC wireline personnel and support currently being devoted to facilitating wholesale relationships with CLECs. It can also be expected that América Móvil will accelerate PRTC's admitted policy of reducing investment in the Island's wireline network. Acting as either a rational or an irrational monopolist, América Móvil has every incentive to engage in such activities in order to limit competitive inroads by wireline CLECs, maximize the company's presence in its preferred wireless market, and funnel excess cash to Telmex. Only adequate Commission safeguards and conditions can prevent this from occurring.

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[61] *Id.*
[62] *Id.*

D. The Commission Must Also Impose Market-Opening Conditions Because PRTC has Acted in a Blatantly Anticompetitive Manner in the Absence of Section 271-Type Oversight.

There are even more imperative reasons that require the Commission to either reject or impose conditions and safeguards on the proposed transaction. In the absence of section 271-type oversight, PRTC has acted in a blatantly anticompetitive manner, calling into question PRTC's compliance with its obligations under the Act. Among other things, PRTC has repeatedly breached its interconnection agreement with WorldNet, leading to significant deployment issues, difficulties with arbitrary pricing, perpetual problems with billing, discriminatory access to OSS, and constant litigation. Similar conduct by other carriers (on a significantly smaller scale) has previously and repeatedly been found to be improper by the Commission and various state commissions. For example, in 2002, the FCC penalized SBC for failing to offer shared transport in the former Ameritech states.[63] The FCC similarly penalized SBC for violating its collocation obligations.[64] State commissions have likewise ruled against the incumbent LECs for breaching their interconnection agreements to disadvantage their competitors.[65]

In order to prevent a worsening of this situation, the Commission must impose market-opening conditions on PRTC. The Commission has not hesitated in the past to impose such market-opening conditions on merging parties. Specifically, in the SBC-Ameritech merger

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[63] *See SBC Communications, Inc. Apparent Liability for Forfeiture*, 17 FCC Rcd 19923 (2002).
[64] *See SBC Communications, Inc. Apparent Liability for Forfeiture*, 17 FCC Rcd 4043 (2002).
[65] *See, e.g., Request Concerning Complaint of AT&T Communications of the Southern States, LLC, Teleport* Communications *Group, Inc., and TCG South Florida for Enforcement of Interconnection Agreements with BellSouth Telecommunications, Inc.*, Docket No. 020919-TP, Order No. PSC-03-1082-FOF-TP, 2003 Fla. PUC LEXIS 619 (Fla.PSC 2003) (breach of interconnection provisions relating to treatment of traffic); *AT&T Communications of California, Inc. and TCG San Francisco v. Verizon California, Inc.*, Decision 04-09-056, Case 04-08-026, 2004 Cal. PUC LEXIS 478 (Cal. PUC 2004) (complaint for discontinuance of local switching and common transport UNEs); *GLOBAL NAPs, Inc. Petition for an Order Directing Verizon-NH to Comply with its Interconnection Agreement Obligation to Pay Reciprocal Compensation* , DT 01-127, Order No. 24,217, 2003 N.H. PUC LEXIS 108 (N. Hampshire PUC 2003) (breach of payment obligations).

proceeding, for example, the Commission found that the asserted benefits of the proposed merger, absent conditions, did not outweigh the significant harms that would result from the proposed merger.[66] Similarly, in the GTE-Bell Atlantic merger proceeding, the FCC approved the proposed merger subject to a panoply of market-opening conditions in order to offset the potentially negative impact of the proposed merger on consumers.[67] More recently, the Commission approved the Verizon-MCI and AT&T-SBC mergers subject to certain conditions and voluntary commitments, including but not limited to, divestitures of certain assets.[68]

V THIS TRANSACTION ALSO RAISES SIGNIFICANT ISSUES UNDER SECTION 310 (b) (4) WHICH MUST BE ADDRESSED

In the *Foreign Participation Order* the Commission indicated that it would either reject or condition an application where, such as here, the past behavior of an applicant indicates that it would fail to comply with the Commission's competitive safeguards and other rules, and whose behavior could damage competition in the U.S. market and otherwise negatively impact the public interest.[69] Given Telmex's long anticompetitive track record, particularly with regard to U.S. carriers, the company cannot be expected to comply with procompetitive statutes and Commission rules. This history compels that the Commission either reject or condition the proposed transaction to ensure that Telmex does not use its position to the detriment of competition in the nascent Puerto Rico telecommunications industry.

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[66] *See Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of* Corporations *Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Communications Act*, 18 CR 1, 14 FCC Rcd 14712 (1999).
[67] *See GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 20 CR 989, 16 FCC Rcd 14032 (2000).
[68] *See SBC-AT&T Merger Order* at ¶ 3 (conditioning approval on divestitures and certain voluntary commitments); *Verizon-MCI Merger Order* at ¶ 3 (conditioning approval on certain voluntary commitments).
[69] *Foreign Participation Order* at ¶52- 53..

Telmex's anticompetitive practices are well-documented. For example, Telmex's anticompetitive practices were the subject of a complaint lodged by the United States against Mexico before the World Trade Organization ("WTO") on August 17, 2000. In that complaint, the United States asserted that the government of Mexico failed to discipline Telmex from using its dominant position in the market to thwart competition. The United States further claimed that Telmex was charging exorbitant interconnection rates to U.S. operators to complete calls into Mexico. A panel established by the WTO to address the United States' claims ultimately sided with the United States, concluding, among other things, that the Mexican government failed to prevent Telmex from engaging in anticompetitive practices.[70] In the WTO's own words, "Mexico has failed . . . to maintain 'appropriate measures' to prevent [TelMex's] anti-competitive practices . . . ."[71] A report published by the United States Trade Representative ("USTR") in 2005 further confirmed that Telmex provided inferior and discriminatory service to its competitors and found such practices "particularly troubling."[72]

Moreover, Telmex has been known to block enforcement of marketing-opening initiatives in Mexico. For example, in a recent U.S. government report, the USTR noted that Telmex continues to dominate the Mexican telecommunications market and retain influence over the Secretariat of Communications and Transport and the Federal Communications Committee ("COFETEL"). Both agencies, according to the USTR, have failed to adequately resolve disputes upon competitors' claims of market discrimination. The report further observed that in the few instances where the government has attempted to take action to improve

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[70] *See, e.g.,* "U.S. Wins Telecommunications Case Against Mexico in WTO," Press Release, United States Trade *Representative* (rel. Mar. 3, 2004).
[71] World Trade Organization, WT/DS204/R, Mexico – Measures Affecting Telecommunications Services, Report of *the* Panel (Apr. 2, 2004), http://docsonline.wto.org/GEN_highLightBottom.asp?qu=WT%2FDS204%2FR&doc=D%3 (visited July 7, 2006).
[72] 2005 National Trade Estimate Report on Foreign Trade Barriers, at 421 (2005).

competitiveness, Telmex has successfully blocked enforcement by using court-ordered injunctions and other legal maneuvers.[73] The report continued:

> This behavior is exemplified by the current debate over so-called Triple-Play services (voice, data, and video). Previously, Cable TV operators were given the legal capacity to offer telephony services through their networks only if they partnered with a licensed telecom carrier. This requirement limited the spread of VoIP services by restricting Cable TV operators. Due to the intervention of the Federal Competition Commission (COFECO), however, the ruling was recently over-turned and the partnering requirement abolished, enabling Cable TV operators to offer triple-play services. The ability of cable companies to provide triple-play services is expected to trigger regional consolidation among the approximately 200 cable companies as they attempt to successfully compete with Telmex. Industry sources suggest that COFETEL is considering granting Telmex the immediate ability to provide video or broadcasting services to placate Telmex for the perceived loss of market share. COFECO, among other agencies, has suggested that Telmex not be given the ability to provide the services for at least two years. *However, Telmex has insisted that it will release video phone services in the near future and is prepared to legally fight such a ruling.*[74]

More recently, it has been reported that several VoIP providers, including Vonage and Skype, are having problems with Telmex. These reports suggest that VoIP services are being blocked by Telmex in its service territory in order to protect its stranglehold over long distance services in Mexico. The USTR is reportedly concerned about these allegations and is currently in the "information-gathering stage" to address the issues raised by Vonage.[75]

Telmex also has strongly opposed legislative initiatives designed to open the Mexican telecommunications market. Just this year, Telmex's principal shareholder lobbied hard against

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[73] 2006 National Trade Estimate Report on Foreign Trade Barriers, at 451 (2006) ("*NTE Report*").
[74] *Id* (emphasis added).
[75] *See Is Telmex Blocking VoIP Calls in Mexico,* Miami Herald (May 8, 2005), http://www.geocities.com/jonclark500/stories/telmex-voip.html (visited July 7, 2006); *Mexico Telephone Operator Under VoIP Fire,* CNET News.com (Apr. 25, 2005), http://news.com.com/Mexico+telephone+operator+under+VoIP+fire/2100-7352_3-5681542.html (visited July 7, 2006).

a measure that would curtail the activities of giant companies that control the Mexican economy, including Telmex. Fortuitously, however, the measure passed over the objections of Telmex.[76]

During the same time period, Mr. Slim proposed a national reform package which "was notable for the absence of the word 'competition.'"[77] Fortune Magazine has described the Mexican telecommunications situation as follows:

> they often charge higher prices - - it costs about three times as much to call the U.S. from Mexico City as the other way around - - and not to introduce more competition is to doom the country to further stagnation.[78]

It is thus clear that Telmex has not hesitated to use its power and status in the past to competitively disadvantage other carriers. These actions are contrary to both the letter and the spirit of the Commission's procompetitive policies. Under such circumstances, the Commission should rule pursuant to section 310(b)(4) of the Act that "the public interest will be served by the refusal" of a license to Telmex's affiliate América Móvil.[79] In the alternative, the Commission should set the Application for Hearing or condition the proposed transaction in order to ensure that Telmex's acquisition of PRTC does not create additional anticompetitive opportunities for Telmex.

VII. THE COMMISSION SHOULD NOT APPROVE THE TRANSACTION UNLESS IT ADOPTS THE FOLLOWING CONDITIONS AND SAFEGUARDS

A. The Commission should Compel PRTC to Resolve Ordering and Provisioning Problems.

PRTC's persistent and systemic inability to provide the basic wholesale ordering and provisioning services necessary for competitive access to its network as required under the Act

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[76] *See Mexican Congress Approves Overhaul of Antitrust Laws*, The New York Times (Apr. 28, 2006); *Mexican Congress Approves Overhaul of Antitrust Law*, LatinAmerican Post (2006), www.latinamericanpost.com/index.php?mod-seccion&secc=2&conn=4108 (visited July 3, 2006).
[77] Fortune at 3.
[78] *Id.* at 4.
[79] 47 U.S.C. 310(b)(4).

warrants corrective action by the Commission. Specifically, the Commission must require that PRTC adhere to specific and strict performance benchmarks for OSS access, order processing and provisioning. It is imperative that these benchmarks be self-enforcing to avoid having PRTC continue its past practice of forcing competitors to litigate every issue rather than voluntarily complying with the mandates of the law. To this end, WorldNet recommends that the Commission require PRTC to comply with the performance matrix and liquidated damages terms developed in the most recent interconnection arbitration between WorldNet and PRTC in Puerto Rico. These terms were developed specifically for application to PRTC and were approved by the administrative law judge in the arbitration proceeding. A copy of this matrix and the associated liquidated damages terms is attached to this petition as *Attachment 1*.

B. PRTC Should be Required to Continue the Availability of UNEs and Cap UNE Rates.

To ensure that PRTC's competitors are able to compete against PRTC, as well as to guarantee PRTC's compliance with its unbundling obligations under the Act, the Commission should require PRTC to (a) continue to make UNEs available in Puerto Rico, including but not limited to, two-wire and four-wire loops and transport, and (b) for a period of at least thirty-six (36) months, beginning on the merger closing date, not seek any increase in state-approved rates for UNEs that are currently in effect. These conditions would give competitors a level of certainty and allow them to plan ahead. The FCC had previously imposed substantially similar conditions on other carriers seeking merger approvals.[80]

[80] *See, e.g., Verizon-MCI Merger Order* (App. G) (setting forth conditions relating to UNE availability and *UNE* rates); *SBC-AT&T Merger Order* (App. F) (imposing UNE rate restrictions).

C. The Commission Should Require PRTC to Resolve Billing Problems with WorldNet.

WorldNet's extensive billing problems with PRTC are a matter of public record. As noted previously, PRTC continues to erroneously charge WorldNet for services and facilities. These billing issues have persisted despite WorldNet's attempts to resolve them, and are now negatively affecting WorldNet's operations. Because billing problems such as these have a prejudicial impact on a CLEC's ability to compete, the Commission should require PRTC to engage in good faith efforts to resolve its billing issues with WorldNet. In particular, the Commission should impose a strict timetable within which PRTC must initiate and complete negotiations with WorldNet with a view towards resolving their existing billing disputes.

D. PRTC should be Required to Continue Providing Interconnection for the Exchange of Traffic Between WorldNet and Third-Party Carriers/Providers via PRTC's Tandems.

Although PRTC's interconnection obligations under the Act are clear, it has become apparent that PRTC interprets its interconnection obligations differently and in ways that are inconsistent with the language of the Act and implementing FCC regulations. For example, PRTC had previously insisted that WorldNet would have to have direct trunking arrangements with interexchange carriers for the purpose of exchanging long distance traffic, thus potentially increasing WorldNet's interconnection costs many times over. In order to ensure that PRTC abides by its interconnection obligations, as well as to avoid resource-intensive litigation to enforce PRTC's interconnection obligations, the Commission should require PRTC to allow WorldNet and other CLECs to interconnect at PRTC's tandem(s) for the purpose of exchanging traffic (long distance, local, enhanced) with third-party carriers/providers, regardless of the

volume of traffic exchanged. The FCC had, in other merger proceedings, imposed interconnection-related conditions on merger participants.[81]

E. PRTC's Special Access Rates should be Capped.

To ensure the availability of special access service at reasonable rates, the Commission should require PRTC not to increase the rates in its interstate tariffs, including contract tariffs, for DS1, DS3, and OCn special access services that PRTC provides in its local service area, as set forth in PRTC's tariff on file with the Commission on the merger closing date, for a period of at least thirty-six (36) months from the merger closing date. Likewise, the Commission should require PRTC not to provide special access offerings to their affiliates that are not available to other similarly situated special access customers on the same terms and conditions, for a period of at least thirty-six (36) months from the merger closing date. Finally, the Commission should require PRTC to provide to the Commission performance measurements related to special access service, similar to those adopted by the Commission in the *Verizon-MCI Merger Order* and the *SBC-AT&T Merger Order*.[82]

F. The Commission Should Require that All Rates and Interconnection Terms and Conditions that PRTC Makes Available to its Affiliates Should also be Available to WorldNet and Other Competitors for 36 Months.

To ensure competitive parity, the Commission should require PRTC to make available to any requesting telecommunications carrier in its service territory any interconnection arrangement or UNE that PRTC has made available to another carrier pursuant to section 252(a)(1) of the Communications Act. PRTC should make available to any requesting telecommunications carrier in its service territory any interconnection arrangement or UNE that

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[81] *See, e.g., Application of NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer* Control *of NYNEX Corporation and its subsidiaries*, 12 FCC Rcd 199985, App. C (1997).

[82] *See Verizon-MCI Merger Order* (App. G, Att. A, Service Quality Measurement Plan for Interstate Special *Access*); *SBC-AT&T Merger Order* (App. F, Att. A, Service Quality Measurement Plan for Interstate Special Access).

PRTC has made available to an affiliate, including those negotiated outside the section 252(a)(1) process. The Commission had imposed similar conditions on other merger participants in the past.[83]

G. The Commission Should Impose a Two-Year "Fresh Look" for CSAs.

The FCC previously has determined that customer service agreements ("CSAs")[84] are subject to the resale requirements of section 251(c)(4) of the Communications Act.[85] Although incumbent LECs have begrudgingly followed the Commission's mandate regarding resale of CSAs, many incumbent LECs, including PRTC, invariably impose excessive termination charges when a customer terminates its CSA to migrate to a CLEC CSA. This practice is anticompetitive because it discourages ILEC-to-CLEC migration of customers under CSA contracts, as well as renders the resale requirements of section 251(c)(4) effectively meaningless. Accordingly, the Commission should require that, for a period of twenty-four (24) months following the merger closing date, PRTC must make available its CSAs for resale *without* any termination charges. Thus, PRTC customer will be able to terminate their CSAs and migrate to a CLEC without penalties or other financial disincentives.

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[83] *See SBC-Ameritech Merger Order*, App. C (setting forth conditions relating to out-of-region and in-region *arrangements*).

[84] CSAs are contracts between an incumbent LEC and a specific customer that are formulated to meet the special needs of that customer. *See AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc.*, 12 CR 521 (U.S.D.C. North Carolina 1998) (defining CSAs and holding that section 251(c)(4) mandates resale of CSAs).

[85] *In the Matter of the Local Competition Provisions in t he Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, ¶ 948 (1996) (stating that contract and other customer-specific offerings are subject to section 251(c)(4).

H. Telecommunications Services must be Offered for Resale at the Lower of the Standalone Rate or the Component Price within a Bundle.

Section 251(c)(4) of the Communications Act requires incumbent LECs to offer to resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.[86] Although the language of the statute is clear on its face, it has become apparent to WorldNet that PRTC appears to interpret section 251(c)(4) in ways that are inconsistent with the language and spirit of the statute. More specifically, based on prior dealings between WorldNet and PRTC, it would appear that with respect to telecommunications services that PRTC offers as part of a bundled service, PRTC will make those telecommunications services available for resale at the standalone rate, not at the component rate within the bundle. This practice is both inconsistent with the clear mandates of the Act and fundamentally anticompetitive. Accordingly, the Commission should require that, for a period of at least five (5) years, all telecommunications services provided by PRTC must be offered to CLECs for resale at the lower of the standalone rate or the component price within a bundle.

I. PRTC Must Continue to Make DSL Available for Resale

In order to ensure that Puerto Rican consumers benefit fully from the availability of broadband services, the Commission should require PRTC to continue to make DSL service available to CLECs on a resale basis. Moreover, PRTC should be required to offer stand-alone DSL within its local service area within twelve (12) months of the merger closing date. Stand-alone DSL means DSL service on DSL-equipped lines without requiring customers to also purchase circuit-switched voice grade telephone service. This service must be available both for existing PRTC voice and DSL customers who wish to port their voice service to a VoIP provider

[86] 47 U.S.C. § 251(c)(4).

or to another facilities-based provider, and for new customers who wish to subscribe only to PRTC's DSL and not its voice service. This service should remain available in Puerto Rico for at least thirty-six (36) months after the "implementation date." For purposes of this condition, the "implementation date" will be the date that PRTC can offer this service on 80% of PRTC's DSL-equipped lines in PRTC's local service area.

J. The Commission Should Adopt a Compliance Process.

In the *SBC-Ameritech Order*, the Commission adopted a compliance process to ensure that the merged entities complied with the merger conditions. WorldNet believes that a similar compliance mechanism should be adopted in this proceeding. Specifically, the Commission should require Telmex/PRTC to establish a compliance program as follows:

a. PRTC shall appoint a senior corporate officer to oversee PRTC's implementation of, and compliance with, the merger conditions; to monitor PRTC's compliance program; to provide periodic reports regarding PRTC's compliance; and to consult with the appropriate individuals at the FCC on an ongoing basis regarding PRTC's compliance with the merger conditions.

b. Not later than sixty (60) days after the merger closing date, PRTC shall submit to the FCC for review and comment a plan for compliance with the merger conditions.

c. Following the merger closing date, PRTC shall submit to the Commission and file for the public record an annual compliance report detailing PRTC's compliance with the merger conditions during the preceding calendar year. A report shall be filed for each calendar year in which PRTC is subject to the merger conditions.

To further ensure that PRTC adheres to the proposed compliance program, WorldNet believes that liquidated damages should apply in the event of noncompliance. WorldNet understands that the Commission is fully authorized to impose penalties or forfeitures for violations of Commission orders. However, forfeiture proceedings are time-consuming and resource-intensive. Accordingly, WorldNet believes that enforcement of the merger conditions

through liquidated damages or similar self-executing enforcement mechanisms would be more appropriate and eminently more effective.

VI. CONCLUSION

For the reasons stated herein, WorldNet urges the Commission to deny Applicants Application for Consent to the Transfer of Control of Licenses and Authorizations and Request for a Declaratory Ruling On Foreign Ownership. In the alternative, the public interest requires that the Commission adopt the conditions and safeguards requested by WorldNet.

Respectfully submitted,

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Dated: July 14, 2006

ATTACHMENT 1

PROPOSED PERFORMANCE METRICS AND SELF-EXECUTING ENFORCEMENT MECHANISMS

PERFORMANCE STANDARDS

1.0 Unless otherwise required by applicable law or individual contracts to satisfy more stringent performance standards, PRTC shall provide the following wholesale services in the intervals provided in the following chart. In the event that PRTC fails to satisfy the intervals provided, it shall be liable to the affected competitive provider for the corresponding liquidated damage amounts.

	Service	Interval	Breach Unit	A	B
1	Billing Detail	n/a	Each non-compliant charge	5	5
2	SLC Charge Service Identification	n/a	Each non-compliant charge	5	5
3	Universal Service Charge Detail	n/a	Each non-compliant charge	5	5
4	Usage Billing	n/a	Each non-compliant charge	5	5
5	Detailed Usage Billing	n/a	Each non-compliant charge	5	5
6	Bill Format Change Notice	90 Calendar Days	Each material change	4	1
7	Bill Format Change Data	45 Calendar Days	Each material change	3	1
8	Disputed Amount Response	30 Calendar Days	Liquidated damage determined as provided in Section 9.3	n/a	n/a
9	Billing Credits	30 Calendar Days	Each charge subject to credit	4	1
10	Billing Errors	30 Calendar Days	Liquidated damage determined as provided in Section 9.9	n/a	n/a
11	Billing Inquiries	10/20 Business Days (as applicable)	Each request	1	1
12	Access to Electronic OSS Information	Within one (1) year after the Effective Date	Each PRTC system	1	1
13	Alternative Access to Electronic OSS Information	1 Business Day	Each request	3	1
14	TBS Access	Once every two weeks	Each breach	3	n/a
15	Preorder System Access	1 Business Day	Each customer	4	1
16	Order System Access	1 Business Day	Each order	4	1
17	Maintenance & Repair System Access	1 Business Day	Each trouble report	4	1
18	CARE System Access	1 Business Day	Each order	4	1
19	Order Acknowledgement	When order(s) received	Each order	5	5
20	Order Confirmation	2 Business Days	Each order	4	1
21	Order Rejections	1 Business Day	Each order	5	5
22	Order Changes	1 Business Day	Each order	5	5
23	Order Completion Notice	1 Business Day	Each order	4	1
24	Order Acceptance Sheet	1 Business Day	Each order	4	1
25	Disconnection Notice	2 Business Days	Each customer	1	1
26	Account Reconciliation Notice	3 Business Days	Each order	3	5
27	Facilities Unavailable Notice	3 Business Days	Each order	3	1

	Service	Interval	Breach Unit	A	B
28	Facilities Unavailable Order Status Notice	5 Business Days	Each order	3	n/a
29	Facilities Unavailable Jeopardy Notice	One week	Each order	3	1
30	Service Suspend, Cancel, or Block	1 Business Day	Each order	1	1
31	Emergency Service Suspend, Cancel, or Block	2 Business Hours	Each order	1	1
32	Service Restoration	10 minutes	Each order	3	1
33	Service Change Notice	Concurrent with notice to public	Each change	4	5
34	Intentionally left blank				
35	Order Migration	n/a	Each occurrence	1	5
36	Pending Order Notice (Migration)	Effective date of migration	n/a	3	1
37	Intentionally left blank				
38	End User Invoices (Migration)	n/a	Each occurrence	1	5
39	Special Services Repair Escalation	As provided in Section 7.2.3.13	Each trouble report	1	5
40	OSS Systems List	On the Effective Date	n/a	1	1
41	Process Flow Chart	On or before Effective Date	n/a	1	1
42	Process Flow Chart Changes	30 Calendar Days before change	Each change	1	1
43	Director Certification	Three months after the Effective Date	n/a	1	1
44	OSS Information Correction	2 Business Days	Each uncorrected error	5	5
45	Trouble Reports Cleared (POTS)	2 Business Days	Each trouble report	2	1
46	Trouble Reports Cleared (Special Services)	1 Business Day	Each trouble report	2	1
47	Activate POI	Negotiated	Each POI	1	1
48	Establish Initial Trunk Groups	Negotiated	Each order	1	1
49	Changes to Trunk Groups	Negotiated	Each order	1	1
50	Activate Mid-Point Meets	Negotiated	Each mid-point meet	1	1
51	Transfers of Resale to UNE and UNE to Resale	2 Business Days (95% of the time)	Each line	1	1
52	Transfers of Customers to Resale	5 Business Days	Each line	1	1
53	Loops (1 to 10 lines)	10 Business Days	Each loop	1	1
54	Loops (11 or more lines)	15 Business Days	Each loop	1	1
55	DSL Loop (w/o conditioning)	5 Business Days	Each loop	3	1
56	DSL Loop (w/ conditioning)	15 Business Days	Each loop	3	1
57	Line Sharing (w/o conditioning)	10 Business Days	Each line	5	5
58	Line Sharing (w/ conditioning)	15 Business Days	Each line	5	5
59	Dark Fiber Loop (terminated)	10 Business Days	Each loop	5	5
60	Dark Fiber Loop (not terminated)	10 Business Days	Each loop	5	5
61	NID	10 Business Days	Each NID	3	5

	Service	Interval	Breach Unit	A	B
62	Local Switching	10 Business Days	Each port	3	5
63	Shared Transport	10 Business Days	Each transport facility	3	5
64	Dedicated Transport	10 Business Days	Each transport facility	3	5
65	Dark Fiber Transport (terminated)	10 Business Days	Each transport facility	1	1
66	Dark Fiber Transport (not terminated)	15 Business Days	Each transport facility	1	1
67	Number Portability	Within 1 hour of facility transfer	Each number	3	5
68	SS7 Links	20 Business Days	Each order	5	5
69	Transfer of Customer to UNE	5 Business Days	Each line	1	5
70	Conversion Service Quality (e.g., disconnections)	n/a	Each affected line	1	5
71	Application Response	10 Calendar Days	Each application	2	5
72	Change Application Response	10 Calendar Days	Each application	2	5
73	Premises Tour	10 Calendar Days	Each request	2	5
74	Collocation Space Report	10 Calendar Days	Each request	2	5
75	Caged & Cageless Collocation	90 Calendar Days	Each collocation	2	5
76	Virtual Collocation (space & power available)	60 Calendar Days	Each collocation	2	5
77	Virtual Collocation (space & power not available)	110 Calendar Days	Each collocation	2	5
78	Cabling Modifications	30 Calendar Days	Each application	3	5
79	Construction Corrections	10 Business Days	Each collocation	5	5
80	Telephone Equipment Drawings	20 Business Days	Each request	3	5
81	Outside Plant Fiber Drawings	20 Business Days	Each request	3	5
82	Power Cabling Information	20 Business Days	Each request	3	5
83	Guidelines & Processes	10 Business Days	Each request	2	3
84	Performance Reporting	Daily and/or the 15th Calendar Day of each month	Each report	4	1
85	Performance Breach Letter	2 Business Days	Each request	3	1

A = Liquidated damage amount for initial breach.
B = Liquidated damage amount added to initial amount for each Calendar Day breach continues beyond the applicable interval.*

* For Service Restoration, "B" shall be the liquidated damage amount added to the initial amount for each additional 10 minutes that breach continues beyond the initial interval. Similarly, for Special Services Repair Escalation and Number Portability, "B" shall be the liquidated damage amount added to the initial amount for each additional Business Hour that breach continues beyond the initial interval.

A	
1	$500
2	$375
3	$250
4	$50
5	$10

B	
1	10% x A
5	A

1.1 Liquidated damages amounts shall be invoiced by the competitive provider to PRTC within ninety (90) days of events from which the invoiced liquidated damages amounts arose (or from the date such events reasonably became known to the competitive provider). The competitive provider invoices shall include a detailed explanation of the data andcalculations used by the competitive provider to determine the invoiced amounts.

2.0 Within thirty (30) days of receiving a competitive provider invoice for liquidated damages, PRTC shall pay to the competitive provider such invoiced amounts by electronic funds transfer, company check, or other mutually acceptable means (including set-off) or dispute any such amounts.

3.0 The liquidated damages set forth in this Performance Standards Attachment are an exclusive remedy for failure to meet the intervals and/or obligations identified in Section 1.0 above.

5.0 For the Resale and UNE intervals provided above, PRTC shall be deemed to have completed the relevant task listed upon the date that PRTC assigns status 15R or its equivalent to the underlying order.

6.0 Performance Reporting

6.1 PRTC shall provide the competitive provider with daily and monthly reports in an editable electronic format containing the information categories described below for UNEs and Resale. For each information category, PRTC will report the performance for all CLEC customers and PRTC. Each report will be sent in electronic form, using a consistent and uniform format. Each monthly report shall be delivered by the 15th calendar day of the succeeding month, reflecting results from the prior calendar month. Each report will include an explanation of where the data originated and a clear definition of what each number represents.

6.2 Resale Pre-Ordering/Ordering/Provisioning

6.2.1 Transmission of Customer Service Record ("CSR") information. PRTC shall report the percent of CSRs sent to the requesting party within one (1) business day following PRTC's receipt of a valid LOA. The report will also include the average time for completion.

6.2.2 Transmission of Order Confirmation ("OC"). An OC is to confirm every order for service received by PRTC from a competitive provider. PRTC shall report the total number of all orders received, including, but not limited to, Special Services, in the prior month for each of the four sections (i.e., Repair, Additions, Service Cancellations, and Moves and Changes). PRTC will also include the percent of OCs sent to the requesting party within two (2) business days following PRTC's receipt of an OC request. The report will also include the average time for completion.

6.2.3 Due date commitments. PRTC shall report the list of orders for new service completed, including, but not limited to, Special Services and orders for PIC and LPIC change, for the month prior. The report shall include the date ordered, the PON, the due date, the location, date completed and number days past due date.

6.3 Maintenance/Repair

6.3.1 Trouble reports. PRTC monthly trouble reports shall include:

- Complete and separate list of trouble reports for Special Services for the prior month by trouble ticket number
- Complete list of trouble reports for POTS for the prior month by trouble ticket number
- Date ticket opened
- Date ticket closed
- Number of business days to complete
- For POTS, percentage of repairs completed in 1,2 3,4,5+ days
- For Special Services percentage of repairs completed in 2,4,6,8, 9+ hours
- Percent of customers making trouble reports (total number of customer trouble reports per reporting category divided by the total access lines and multiplied by 100).

6.3.2 Percent repeat reports. PRTC shall report the monthly percent of customers making repeat trouble reports (total number of customer trouble reports per reporting category submitted within thirty (30) days of a prior trouble report divided by the total number of customer trouble reports and multiplied by 100).

6.4 Migration UNE-C/Resale

6.4.1 PRTC Monthly Migration report shall contain a separate section for UNE-C and Resale and include the following:

- Complete list of all pending orders
- PON for each order
- Status of each order
- List of all ANI's associated with PON
- Receipt date
- Dates of all orders completed in the prior month. Completed equals status of 15R or equivalent
- Number of days to complete transfer
- Number of days pending for all uncompleted orders.

6.5 Outages Report

6.5.1 By 8:00 each business morning except Sunday PRTC will send to the competitive provider t by e-mail a report titled "Outages Report" of any outages throughout the Island effecting more than 100 lines. The report will include to the best of PRTC's knowledge

- Date, hour, and minute of the report
- The time of the outage
- The cause of the outage
- The NXX's effected
- The expected repair time to the hour
- All reasons jeopardizing repair time

For mornings that an outage is reported, or if an outage occurs during the day after 8:00 am, PRTC will send an update to the competitive provider to the same address each hour detailing any new information in the above categories.

6.6 Resale Change Order Report

By 8:00 A.M. each Business Day, PRTC shall provide to each competitive provider (via email) a report detailing all resale change orders entered into OSADIA or any other system which PRTC may enter competitive provider orders. PRTC shall provide the report in the format and with all information historically provided to competitive providers in such reports before the effective date of these performance standards (e.g., information under the following headings: BTN, CLASS, ORD. NO., Take DT, PR-DATE, HR MAC, TN, RES-OLD, RES-NEW, NAME, PON, and TELBILNO). The report will also provide a status update on all competitive provider orders for Services, as well as a complete and updated legend for all column headings and acronyms.

7.0 If PRTC fails to provide a Service in accordance with the performance standards provided in this Agreement, PRTC will, within two (2) Business Days of a competitive provider request, provide to the competitive provider (via email titled "Performance Letter") identifying the Service by order number, acknowledge the breach in performance, and include a brief description of the Service, date requested, reason for delay, and anticipated date of performance.

188750.1

Certificate of Service

I do hereby certify that I have this 14th day of July 2006 served the following with a copy of the foregoing **PETITION TO DENY OF WORLDNET TELECOMMUNICATIONS, INC.** via electronic filing, electronic mail and/or by placing a true and correct copy of the same in overnight mail, addressed to the parties listed below

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