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July 31, 2006

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

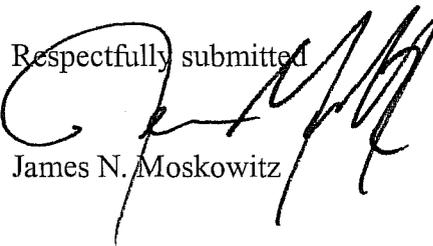
Re: WorldNet Telecommunications, Inc.'s Reply to Oppositions to Petitions to Deny Filed by Verizon Communications, Inc. and América Móvil, S.A. De C.V for Consent to the Transfer of Control of Entities Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications 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 Reply to Oppositions to Petitions to Deny in reference to 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

**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)	

REPLY OF WORLDNET TELECOMMUNICATIONS, INC.

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July 31, 2006

SUMMARY

In this case the Commission is faced with the prospect of the tenth largest incumbent local exchange carrier in the country, the Puerto Rico Telephone Company ("PRTC"), which serves a market with one of the worst track-records in terms of the development of competition in the entire United States, is being acquired by a large foreign-owned carrier, América Móvil. For its part, América Móvil is primarily a wireless carrier with little to no demonstrated commitment to operating under the pro-competitive telecommunications laws present in the United States and that has a demonstrated track-record of abusing its market power in other markets where it operates. As currently devised, this transaction is a recipe for competitive disaster in the wireline market in Puerto Rico.

If approved as proposed, this transaction will result a number of serious public interest harms without any material offsetting posing benefits. Chief among these from WorldNet's perspective is the real possibility that América Móvil will withdraw resources from PRTC's wireline wholesale operations, which PRTC uses to services to competitive carriers. Furthermore, América Móvil's stated public interest benefits are hollow platitudes, devoid of any identifiable substance or meaning. América Móvil's Opposition has added nothing new to its prior empty statements and implicitly accepts that there is little benefit to show from the transaction.

Instead, América Móvil attempts to circumvent this inconvenient fact by arguing that it does not have to demonstrate significant benefits because there are no public interest harms and that, therefore, even the insignificant benefits shown here are sufficient under the FCC's balance of interests. In order to do so, América Móvil's must employ a public interest analysis that is overly narrow and would limit the Commission's inquiry to a cursory review of the antitrust

implications of the transaction. However, the public interest standard under Section 214 of the Act is, by design, both flexible enough and broad enough to address the unique circumstances that the Commission faces when confronted with the situation in the Puerto Rico market.

Accordingly, in order to mitigate the potential harms to competition that will flow from this transaction, WorldNet joins with the Telecommunications Regulatory Board of Puerto Rico ("Board") and with the other parties in this proceeding who have advocated for the creation of federally enforceable service quality standards for application to PRTC's retail and wholesale services. WorldNet believes that its proposal, which focuses on a number of specific operational and provisioning problems, is a good complement to the Board's proposal, which is more general in nature. In an effort to produce a vehicle for reaching a comprehensive service quality proposal, in its Reply WorldNet has revised its service quality standard proposal so that it will fit seamlessly within the proposal advanced by the Board. WorldNet believes that the Commission must adopt these service quality standards in order to ensure that competition in Puerto Rico is not harmed by the proposed acquisition of PRTC by América Móvil.

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**BEFORE THE
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REPLY OF WORLDNET TELECOMMUNICATIONS, INC.

WorldNet Telecommunications, Inc. ("WorldNet"), by its attorneys, hereby files this Reply to América Móvil's and Verizon's Oppositions to Petitions to Deny ("Opposition") filed by Verizon Communications Inc. ("Verizon") and América Móvil, S.A. de C.V. ("América Móvil") (hereafter referred to as "Applicants") in the above-referenced proceeding.

I. INTRODUCTION

The application at issue in this proceeding presents unique issues because the Commission is faced with a stark situation in which the tenth largest incumbent local exchange carrier in the country, the Puerto Rico Telephone Company ("PRTC"), which serves a market with one of the worst track-records in terms of the development of competition in the entire United States and is also one of the most under-developed, is being acquired by a large foreign-owned carrier, América Móvil. América Móvil, in turn, is primarily a wireless rather than wireline carrier and has little demonstrated commitment to operating under the pro-competitive

telecommunications laws present in the United States. To the contrary, América Móvil has a demonstrated track-record of abusing its market power in other markets where it operates.

The transaction in its present form has been opposed by all of the significant wireline competitors in Puerto Rico, by the Telecommunications Regulatory Board of Puerto Rico ("Board"), which is the local regulatory authority with expertise and jurisdiction over the local telecommunications market, and by the President and President Pro Temp of the Puerto Rico Senate who did not oppose but voiced their concerns. In a rare display of consensus, all of these parties independently argue that (a) the competitive market in Puerto Rico lags behind the rest of the country and (b) that this transaction will only make that situation worse. Accordingly, these parties have requested that the Commission either deny the Application or take specific, concrete steps to protect the nascent and fragile competitive market in Puerto Rico from the potential harms posed by this transaction. The Commission now has a chance, by accepting these recommendations, to begin to reverse the years of neglect of the Puerto Rico wireline telecommunications market. The parties opposing the Application have separately identified similar problems relating to the transaction and proposed remedies that are largely consistent with one another and with transactions in other markets in the United States.

América Móvil argues that competition in Puerto Rico is "extensive," intensive, and "large and rapidly growing". Opposition at 10, 12, 14, and 18. This statement is utterly and categorically false. The reality is exactly the opposite -- there is extraordinarily little competition in the wireline market in Puerto Rico, hindering the development of basic and advanced telecommunications penetration on the Islands and completely subverting the goals of the 1996 Act. The facts simply do not bear out América Móvil's claims, as evidenced by the low number of wireline competitors in Puerto Rico, the experiences of WorldNet and others in trying to

obtain wholesale services from PRTC, and the uninterrupted string of decisions by the Board finding that competition in Puerto Rico is not where it should be.

América Móvil also argues that previous Commissions have a long track-record of refusing to intervene in the Puerto Rico Market to address concerns regarding the state of competition and that this Commission should continue in line with that prior precedent.

Opposition at 22-23. This argument actually works against América Móvil because it highlights the for Commission action here. The result of the Commission's past approach, which relied upon the promises and voluntary actions of PRTC, is that competition in Puerto Rico has failed to develop to anything approaching the degree that exists elsewhere in the United States, where the Commission has historically been more engaged. The facts regarding this competitive malaise, as set forth in WorldNet's Petition to Deny, the Petitions of others in this proceeding, as well as further expanded upon below, illustrate the failure of the approach of relying upon PRTC's unmonitored, voluntary commitments. Further, they present persuasive evidence that, absent affirmative steps by this Commission to protect the competitive market in Puerto Rico, this transaction will damage what little wireline competition exists in Puerto Rico.

II. THE PUBLIC INTEREST STANDARD REQUIRES AN ANALYSIS OF THE STATE OF COMPETITION IN THE MARKET BEYOND AN ANALYSIS OF PURELY ANTI-TRUST PRINCIPLES

When the Commission undertakes its analysis under the public interest standard of Section 214 of the Act, it must weigh potential public interest harms of the proposed transaction against the potential public interest benefits.¹ An important element of the Commission's public interest evaluation includes ensuring that the transaction in question preserves and enhances

¹ *Applications of VoiceStream Wireless Corporation, PowerTel, Inc. and Deutsche Telekom, AG*, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9789 at ¶ 17 (2001); *see also Verizon Commc'ns Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, FCC 05-184, ¶2 (2005) ("MCI-Verizon Merger Order").

competition in relevant markets.² This analysis is informed by, but not limited to the application of narrow antitrust principles.

Under América Móvil's construction of the public interest standard, the Commission would have to begin and end its analysis with a review of whether the transaction increases concentration in the market. However, the Communications Act and Commission's prior precedent make clear that an analysis of market concentration is not the only criteria for the Commission to consider in their merger review.³ Rather, this analysis is only part of the analysis regarding the impact of the transaction on competition.⁴ The Commission also "examines other market factors that pertain to competitive effects, including the incentive and ability of other firms to react and of new firms to enter the market."⁵ Further, the Commission must focus on whether the merger will accelerate the decline of market power by dominant firms in the relevant markets, and the merger's effect on the quality of communications services and future competition.⁶ Finally, the Commission's public interest authority permits it to impose and enforce narrowly tailored transaction-specific conditions to remedy harms that it identifies as arising from the transaction.⁷ In short, the standard is "public interest," properly and broadly defined, and not the artificially constricted notion of "market concentration" conveniently urged by América Móvil.

Taken in its entirety, the public interest standard applied by the Commission under Section 214 of the Act is, by design, both flexible enough and broad enough to address the wide

² *MCI-Verizon Merger Order* at ¶17; *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, 19 FCC Rcd 21522, ¶41 (2004) ("*AT&T-Cingular Order*").

³ *AT&T-Cingular Order* at ¶¶41-42.

⁴ *Id.* at ¶69.

⁵ *Id.*

⁶ *MCI-Verizon Merger Order* at ¶¶17-18; *AT&T-Cingular Order* at ¶¶41-42.

⁷ *MCI-Verizon Merger Order* at ¶19; *AT&T-Cingular Order* at ¶43.

array of unique circumstances that the Commission faces when reviewing transaction.⁸ And the circumstances that the Commission faces in Puerto Rico are indeed unique. PRTC was a government-owned entity and was the sole provider of local telecommunications services until 1998, when it was privatized. The San Juan MSA is the 27th largest in the United States, ranking just after Denver and Newark, which are numbers 25 and 26 respectively, and just ahead of Portland - Vancouver and Kansas City at MSA numbers 28 & 29.⁹ However, despite its size the market has never been subject to the market opening provisions of Section 271 of the Act or any similar merger conditions that applied to PRTC's parent companies, first GTE and then Verizon. Consequently and unsurprisingly, PRTC maintains significant market power in Puerto Rico.¹⁰ Further, the per capita income in Puerto Rico market is among the lowest in the United States, as is the level of wireline penetration, which is approximately 60%, and the level of competition, with two major (2) facilities-based competitive providers. Board Opposition at

⁸ *MCI-Verizon Merger Order* at ¶ 18; *AT&T-Cingular Order* at ¶ 42; *Applications for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee, MB Docket No. 02-70*, Memorandum Opinion and Order, 17 FCC Rcd 23246, ¶28 (2002).

⁹ See List of 100 Largest MSAs, (available at: <http://www.fcc.gov/cgb/NumberPortability/msas.html>) (viewed July 25, 2006) ("*FCC MSA List*").

¹⁰ There is simply no doubt that PRTC is the dominant carrier in Puerto Rico, there is an uninterrupted string of fact-based findings supporting this conclusion. According to the FCC, 80% of zip codes in Puerto Rico have no competitive local exchange carriers. FCC Local Competition Report, Table 16 (rel. July 2005) (data as of December 2004) ("*2004 Local Competition Report*"). PRTC is the provider of local service for over 90% wireline service customers in Puerto Rico. *Id.* at Table 11. PRTC has attempted to reverse findings that it is the dominant carrier in Puerto Rico several times over the years. These efforts have all been uniformly and soundly rejected. They were rejected by the Board in September 2000, and rejected again on reconsideration in December 2000. *Solicitud de Comentarios en Torno a Dominio de Mercado en la Prestacion de Servicios de Telecomunicaciones*, Case No. JRT-2000-CCG-0003, Resolution and Order on Reconsideration, 8 (Dec. 22, 2000); *Solicitud de Comentarios en Torno a Dominio de Mercado en la Prestacion de Servicios de Telecomunicaciones*, Case No. JRT-2000-CCG-0003, Resolution and Order, 9 (Sept. 6, 2000), (collectively "*Market Power Orders*"). In those instances, PRTC's claimed that there was robust competition in Puerto Rico. Then again, in December 2003, the Board expressly ruled that the development of competition in Puerto Rico clearly lagged behind the mainland. *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, pp. 3-5 (filed December 30, 2003) ("*Waiver Petition*"). More recently, in October of 2004, the Board urged the FCC to retain rules predicated on promoting greater competition in the local wireline market in Puerto Rico. *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Local Exchange Carriers*, WC Doc. No. 04-313, CC Doc. No. 01-338, Reply Comments of the Telecommunications Regulatory Board of Puerto Rico, p. 5 (dated October 19, 2004). This fact gives rise to special concerns regarding PRTC's ability to impede competition through impairing competitor access to bottleneck facilities.

Attachment A. The public interest standard permits the Commission to address important concerns in unique markets such as Puerto Rico where narrow antitrust issues are not as predominant and other pressing concerns indicate that the transaction will have a serious and lasting negative impact on the affected market.

A. The Applicants Have Not Established any Potential Substantive Benefits from the Proposed Transaction.

In its Application, as well as in its Opposition, América Móvil claims the primary benefits that will flow from the proposed transaction are 1) that América Móvil's has operational experience with low income and rural facilities and products; 2) that Telmex offers economies of scale and scope above that offered by PRTC by itself; and 3) that it will bring certain advanced services to the Puerto Rico market more quickly than if the transaction did not occur.¹¹ América Móvil complains that WorldNet does not acknowledge the importance of these benefits. Opposition at 4. WorldNet cannot agree with América Móvil because the purported benefits that it offers are totally illusory.

Instead, WorldNet's conclusion is supported by the Board, which indicated that in its considered judgment América Móvil's stated public interest benefits are hollow platitudes, devoid of any identifiable substance or meaning. Board Petition at 10. In its Opposition, América Móvil has added nothing to its prior empty statements and implicitly accepts that there is little benefit to show from the transaction. Instead, in a somewhat convoluted argument, América Móvil argues it does not have to demonstrate significant benefits because there are no

¹¹ *In re 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*, Public Interest Statement, (May 9, 2006) (“Application”); *América Móvil’s and Verizon’s Opposition to Petitions to Deny*, 3-4 (July 24, 2006).

public interest harms and that, therefore, even the insignificant benefits shown here are sufficient under the FCC's balance of interests. *See* Opposition at 5-6.

Because of the importance of this transaction to the continued development of competition in Puerto Rico, and the potential damage to competition that will flow from it, the Commission must err on the side of protecting consumers and competition in Puerto Rico and not "engage in experimentation in Puerto Rico" as it has done repeatedly in the past by adopting an approach to the market relying on PRTC's good intentions. *See* Motion to Address Public Interest Concerns of President and President Pro Temp of the Senate at ¶¶8-9, 12. Doing otherwise will, in the best case, ensure that the very slow, sideways-pace of competitive advancement in Puerto Rico will continue, and in the worst case will mark the high-water mark for competition in Puerto Rico, with all else afterward being competitive decline.

There can be little doubt that the abysmal state of wireline telecommunications penetration in Puerto Rico is not helping the slide of the Puerto Rican economy overall, which is the worst condition anywhere in the entire United States. According to an article two months ago in the Economist magazine

Puerto Rico's annual income per person was around \$12,000 in 2004, less than half that of Mississippi, the poorest state. More than 48% of the island's people live below the federally defined poverty line. That poverty rate is nearly four times the national average, and more than twice as high as in poor states such as Kentucky, Louisiana, Mississippi and West Virginia.¹²

The FCC simply cannot continue to bury its head in the sand and ignore these conditions.

¹² *Trouble on Welfare Island; Puerto Rico*, The Economist, May 27, 2006.

B. The Potential Harms from the Proposed Transaction far Outweigh the Potential Benefits.

There are a number of significant harms to competition and the competitive marketplace that will flow from this transaction absent Commission action. First and foremost, there is the real likelihood that América Móvil will withdraw resources from PRTC's wireline wholesale operations which provide services to competitive carriers. According to the July 27 2006 issue of "Caribbean Business," a former senior vice president of PRTC stated, "[t]hese people have no local ties and will have no problem downsizing or centralizing functions outside of Puerto Rico... They'll pay a premium for PRT and they'll do everything in their power and within the law to reduce operating costs and increase revenue...."¹³

Furthermore, América Móvil is predominantly a wireless carrier and has no wireline assets in the United States. As such, it has no operational experience or demonstrated track-record with the market-opening provisions of the Communications Act. A substantial number of its customers are prepaid wireless subscribers and its strategy is to capitalize on its position as a leader in wireless industry in Latin America.¹⁴ Although in its Public Interest Statement and Opposition América Móvil extensively discusses its wireless plans, nowhere does it discuss any plans for PRTC's wireline operations.¹⁵ The FCC must anticipate that América Móvil will be good to its word and focus on its wireless services rather than expend resources on its less-favored wireline plant.

It can be anticipated that América Móvil will have even less incentive in the future to invest in maintaining and improving its wholesale services and operations. Indeed, América

¹³ Francis Ryan and Pedro Javier, *Opposition Won't Derail America Movil's Intentions for P.R.*, Caribbean Business, July 27, 2006, at 17.

¹⁴ America Movil 2005 Form 20-F at 15-16.

¹⁵ See e.g. Application, Public Interest Statement at 3-5.

Móvil has admitted that it faces growing competition which will lead to increased marketing expenses and potentially to reduced revenues and profitability.¹⁶ And this is in the face of declining wireline penetration in Puerto Rico, which stands just above 60 percent as of December 2005, and shrinking capital expenditures for its wireline services.¹⁷ Even investors have taken notice and have expressed concerns that the financial impact of the proposed transaction in Puerto Rico will compel América Móvil to funnel any excess cash out of Puerto Rico rather than reinvesting it there.¹⁸

Finally, América Móvil's reliance on facilities-based competition spurred by unbundling to create an incentive for PRTC to invest is not credible. Opposition at 14. PRTC is not complying with its unbundling obligations now. In fact, PRTC has claimed to WorldNet that it does not presently have the capability to make UNE loops available in a consistent and reliable manner. In other words, PRTC cannot fulfill this obligation that has been in place since 1996. Consequently, the more likely outcome is that an América Móvil-controlled PRTC will slow-roll its already inadequate unbundling efforts to avoid and deter the competitive pressures that would actually spur investment.

The Commission must also take careful consideration of the fact that PRTC has a long record of failing to comply with the market opening provisions of the 1996 Act. This, coupled with América Móvil's own checkered record with regard to abusing its market power indicates that América Móvil will not take the actions necessary to correct PRTC's non-compliance with the Act. Rather, it is much more likely that it will withdraw resources from PRTC's wholesale

¹⁶ America Movil 2005 Form 20-F at 6.

¹⁷ *In the Matter of Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Doc. No. 96-45, WC Doc. No. 05-337, Comments of Puerto Rico Telephone Company, 27-28 (March 27, 2006).

¹⁸ Nymia C. Almeida, Julia Turner, *Moody's Confirms America Movil's A3 SR, Unsecured Global Currency Rating and Aaa.mx National Scale Rating, Outlook is Stable*, Moody's Investors Service, July 6, 2006 (available at www.moodys.com/cust/research) (visited July 10, 2006).

services departments and look the other way as PRTC continues to avoid its market-opening obligations. *See* Opposition at 18. Even the President and President Pro Temp of the Puerto Rico Senate have said that they are concerned that América Móvil will abuse its market power. *See* Motion to Address Public Interest Concerns of President and President Pro Temp of the Senate at ¶¶8-9, 12.

C. The Proposed Transaction has the Potential to do Irreversible Harm to the Fragile Competition that is Only now Beginning to Take Root in Puerto Rico

Nor can the Commission can "take comfort" in the fact that there is extensive competition in Puerto Rico as América Móvil contends. Opposition at 10. The facts regarding exactly the opposite conclusion are overwhelming and reflect an unacceptably poor state of competition in the Puerto Rico wireline market. Simply put, América Móvil is painting a picture that does not exist in reality. There is no extensive competition in wireline market as PRTC suggests, nor is competition "large and rapidly growing". Opposition at 10, 18. PRTC does not even attempt to address the fact that few companies are even attempting to engage in facilities-based competition in Puerto Rico when ten times as many competitors are present in similarly sized markets in the mainland. As the Commission's own data show, the level of competition in Puerto Rico is far behind the rest of the country. For example, according to the Commission's 2005 Local Competition Report, there are only two competitive carriers that report having access lines in Puerto Rico.¹⁹ Meanwhile, there were 21 reporting competitive carriers in Utah,²⁰ a rural state that has a population size similar to Puerto Rico.²¹ Nebraska, another rural state with a somewhat smaller population than Puerto Rico²² that has no markets in the top 50 MSAs,²³ had

¹⁹ FCC Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of June 30, 2005*, Table 13 (April 2006) ("*2005 Local Competition Report*").

²⁰ *Id.*

²¹ The San Juan area had a total population of 2,450,292 as of April 1, 2000. Census 2000 PHC-T-3. The population of Utah in the year 2000 was 2,233,169. Census 2000 Summary File 1 (SF1), Table 1.

²² The population of Nebraska in the year 2000 was 1,711,263. Census 2000 Summary File 1 (SF1), Table 1.

22 competitive carriers reporting.²⁴ And New Hampshire, which has a population substantially smaller than Puerto Rico and has no markets in the top 100 MSAs,²⁵ had 23 reporting competitive carriers.²⁶

It is bad enough that Puerto Rico currently lags so far behind the rest of the country in terms of competition. Even more troubling, however, is the fact that given the rate of the development of competition in Puerto Rico, it will take decades or longer for the Islands to catch up to the rest of the country under present conditions. A brief comparison of the change in the numbers of reporting competitors in Puerto Rico with those in Utah, Nebraska and New Hampshire illustrates this point. In 1999, Utah had only 2 competitive carriers and Puerto Rico had none.²⁷ Five years later, there were 21 competitive carriers in Utah and two (2) in Puerto Rico.²⁸ The situation is similar in Nebraska where there was one (1) reporting competitor in 1999; and in New Hampshire where there were two (2).²⁹ Five years later, there were 22 competitors in Nebraska and 23 in New Hampshire.³⁰ Even Idaho, which was in the same approximate competitive position as Puerto Rico in 2000 with no competitive carriers,³¹ had eighteen (18) in 2005.³² Puerto Rico had two.

What is more, the competition that does exist in the Puerto Rico wireline market is fragile and subject to reversal if conditions do not improve. Specifically, if competitors cannot get reliable batch hot cuts, loop access, OSS, billing accuracy and the other access and

²³ See *FCC MSA List*, supra n. 9.

²⁴ *2005 Local Competition Report* at Table 13.

²⁵ The population of New Hampshire in the year 2000 was 1,235,786. Census 2000 Summary File 1 (SF1), Table 1.

²⁶ *2005 Local Competition Report*, Table 13.

²⁷ FCC Common Carrier Bureau, Industry Analysis Division, *Local Telephone Competition at the New Millennium*, Table 1, (August 2000) ("*2000 Local Competition Report*").

²⁸ *2005 Local Competition Report* at Table 13.

²⁹ *2000 Local Competition Report* at Table 1.

³⁰ *2005 Local Competition Report* at Table 13.

³¹ *2000 Local Competition Report* at Table 1.

³² *2005 Local Competition Report* at Table 13.

interconnection permitted under Section 251 of the 1996 Act, then competition on the Islands can easily be reversed. This is a critical concern arising out of the present Application given América Móvil's lack of focus on the wireline market in Puerto Rico, its lack of experience in complying with the market opening requirements of the 1996 Act, its prior history of abusing its market power in other countries, as well as from PRTC's past history of failure to implement the requirement of the 1996 Act, and the fact that PRTC is not currently meeting its obligations in these areas.

América Móvil does not attempt to dispute the substance of WorldNet's assertions regarding the persistent operational problems that competitors face in Puerto Rico. Instead, it claims that the fact that WorldNet and Centennial are deploying facilities in the market, despite the operational problems identified, somehow rebuts these claims. Opposition at p. 18. Its argument would seem to be based on the proposition that what doesn't kill you makes you stronger. The fact that WorldNet has overcome many substantial obstacles through expensive and burdensome litigation in order to become viable cannot fairly be interpreted to mean that it is appropriate to leave the obstacles in place -- WorldNet should not have to litigate to obtain what competitors now take for granted in other markets.

As WorldNet set forth in detail in its Petition to Deny, there can be little debate that competitors face persistent, significant operational impediments when attempting to obtain access to basic interconnection and wholesale services in Puerto Rico. WorldNet Petition to Deny at 14-20. These include problems with UNE ordering and provisioning, service migrations, OSS access, interconnection traffic routing, and wholesale billing, to name but a few. *Id.* In addition to the evidence of these problems included with WorldNet's Petition to Deny,

there is substantial record evidence in other proceedings of these persistent problems.³³ Samples of this record evidence are included as Attachment 2 hereto.

However, it is not just competitors such as WorldNet that raise these concerns. In its Petition to Deny, the *Board* has said that "the Commission cannot find this application to be in the public interest, and cannot grant it. Remediation is required." Board Petition at 12. This is entirely consistent with the Board's prior findings that the telecommunication market in Puerto Rico is "more embryonic than corresponding markets on the mainland"³⁴ and competitors attempting to gain access to the critical incumbent local exchange carrier ("ILEC") facilities necessary for the provision of ubiquitous facilities-based telecommunications services must contend with an incumbent with a "consistent track record of being unprepared, uninterested, and incapable of providing wholesale services as and when required or promised."³⁵ The Commission should give substantial weight and deference to the Board's recommendations in regard to this issue.

D. The FCC Must Reverse its Past Approach to the Puerto Rico Market

PRTC proposes that the Commission should act in accordance with its prior practice of relying on PRTC's voluntary commitments to comply with the law and "make things better" in Puerto Rico, and therefore not address the potential harms to competition posed by this transaction. Opposition at 21, 22.³⁶ The fact that the Commission has declined in the past to

³³ WorldNet Petition at 15-16. *Waiver Petition* at 22.

³⁴ *Waiver Petition* at 5.

³⁵ *Id.* at 23.

³⁶ Board's waiver petition was not denied because the FCC found that there was robust competition in Puerto Rico. *In the Matter of Unbundled Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Doc. No. 04-313; Order on Remand, 20 FCC Rcd 2533, n. 610 (rel. Feb. 4, 2005) ("*Triennial Review Remand Order*") (denying Board's Waiver Petition for failing to consider potential revenues competitors might earn that might counterbalance operational impairments). Indeed, the PRTC has not even attempted to claim that there is a single central office in Puerto Rico where the FCC's current unbundling requirements do not apply due to the presence of competition sufficient to trigger the presumption of "no impairment" under the FCC's rules.

impose conditions similar to those advocated by WorldNet and others does not compel the FCC to blindly adhere to its prior course in this proceeding. *See Motor Vehicle Manufacturers Ass'n v. State Fam Mutual Automobile Ins. Co.* 463 U.S. 29, 42 (1983). Rather, administrative agencies are permitted to adapt their rules and policies to reflect changing circumstances. *Id.*

With regard to requiring market-opening measures in Puerto Rico, WorldNet believes that the previous failure to impose conditions damaged competition in Puerto Rico and should not be repeated. The Commission based its prior decisions on the assumption that no additional protections were necessary to promote competition in Puerto Rico because the rules in place were adequate to ensure that market conditions would improve.³⁷ In the *GTE/PRTC Merger Order* the Commission stated that no commenters had "shown any special risk of harms in the market for local telecommunications services in Puerto Rico"³⁸

However, now there clearly is a special risk of harms from the present transaction. The passage of time has shown that the Puerto Rico market is increasingly falling behind the mainland.³⁹ Indeed, the record evidence in this case demonstrates that the development of competition in Puerto Rico, as measured by the number of competitors found in markets of similar size, is less than one tenth what it should be.⁴⁰ The record also demonstrates that the Commission can not rely on América Móvil's protestations that specific market protections are (and have been) unnecessary to promote the growth of competition in Puerto Rico. Instead, the

³⁷ *Application of Puerto Rico Telephone Authority, Transferor, and GTE Holdings (Puerto Rico) LLC, Transferor, for Consent to Transfer Control of Licenses and Authorizations Held by Puerto Rico Telephone Company and Celulares Telefoinica, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 3122, ¶¶ 28, 30 (1999) ("*GTE/PRTC Merger Order*"); *see Application of GTE Corp. and Bell Atlantic Corp. for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and for a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 14032, Appendix D (2000) ("*Bell Atlantic/GTE Merger Order*") (omitting PRTC from list of GTE subsidiaries to which conditions applied).

³⁸ *GTE/PRTC Merger Order* at ¶30.

³⁹ *See* Discussion *supra* pp. 10-11.

⁴⁰ Indeed, it is interesting to note that only one (1) of the commenters cited as raising concerns about PRTC's network interconnection, TLD, is still in the market. *See GTE/PRTC Merger Order* at n. 66. All of the others, APCT, KMC, and MCI-WorldCom are now absent from the wireline market in Puerto Rico and TLD is still not a facilities based local carrier.

Commission should recognize that previous "unconditioned" transactions have led to an incumbent provider that has become all but immune from federal regulatory oversight over its compliance with the market-opening provisions of the 1996 Act.

The Commission's prior hands-off policies have now been demonstrably shown to be inadequate to protect competition in Puerto Rico. Continuing the prior approach, given the added weight of evidence that has accumulated over time, would result in the competitive market in Puerto Rico falling even further behind. Accordingly, based upon this accumulation of facts, the Commission must now act to reverse this trend and impose meaningful market protections in Puerto Rico.

IV. THE COMMISSION MUST APPLY CONDITIONS TO THE TRANSACTION TO MITIGATE THE POTENTIAL HARMS TO COMPETITION

The usually fractious competitive community in Puerto Rico, as well as the Board, which is the expert agency with the best direct knowledge of the competitive circumstances in Puerto Rico, have all concluded that this transaction places the nascent competition that exists in Puerto Rico at risk. Even the President and President Pro Temp of the Puerto Rico Senate stated in a filing that they have "no confidence in América Móvil's promises" and urged that the Commission not "engage in experimentation in Puerto Rico" and instead take concrete steps to ensure that América Móvil improves its infrastructure and services. *See* Motion to Address Public Interest Concerns of President and President Pro Temp of the Senate at ¶¶8-9, 12.

In its filing the Board submitted a Proposed Regulations for Quality of Service Measurement and Reporting ("Board Performance Standard Proposal") (Board Petition at Attachment B) that sets for in detail service quality measures, penalties, and reporting requirements that the Board believed where necessary to adequately protect the Puerto Rico

market. WorldNet also submitted a performance measure proposal that was similar in its aims to that proposed by the Board.

WorldNet commends the Board for taking this meaningful first step towards the creation of meaningful, self-executing performance standards for application in Puerto Rico. WorldNet believes that the Board's proposal is a good step toward the development of a meaningful performance measure regime and accordingly conditionally embraces it, subject to revisions designed to specifically address wholesale service ordering and billing process problems that WorldNet has encountered in its dealings with PRTC. WorldNet believes that protections to harmonize and supplement those proposed by the Board are necessary to fully address the specific circumstances as they exist on the ground in Puerto Rico.

Accordingly, in Attachment A attached hereto, WorldNet proposes a number of revisions to the Board's proposal. These proposals are based upon the performance standards that WorldNet presented in its Petition to Deny. WorldNet's proposals have been reformatted to fit seamlessly into the Board's proposal -- which is a standardized list of ILEC performance metrics. Although relevant and valuable, the Board Standards are not tailored to PRTC, which by most measures is not a standard ILEC. To this end, WorldNet believes that it is both necessary and appropriate to supplement the Board Standards by adding performance metrics that are tailored specifically to PRTC.

In Schedule 2 to Appendix A, WorldNet has identified additional performance standards that it believes should be adopted along with the Board Standards ("Supplemental Standards"). Each of the Supplemental Standards is specifically tailored to PRTC. Indeed, almost all of the Supplemental Standards are standards that the Board has already found, in the context of interconnection arbitration proceedings, are necessary market-opening metrics that should be

applied specifically to PRTC. The only exceptions are the last five of the Supplemental Standards (i.e., WL-66 to WL-70), all of which establish metrics for PRTC provision of hot cuts. The demand for hot cuts is a very recent development in Puerto Rico, and the processes and procedures for this activity have not yet come before the Board. Nevertheless, as the Commission is aware, hot cuts are a critical gateway service to opening local markets to facilities-based competition. WorldNet, therefore, has added to the list of already-approved Board standards proposed metrics for this one critical service that are fair, reasonable, and imminently attainable by PRTC.⁴¹

The addition of the Supplemental Standards is important and necessary for several reasons. Although PRTC is already bound by contract to follow most of the Supplemental Standards, they should nevertheless be added to the Board Standards so that they are generally applicable and their benefit available to all Puerto Rico competitors without undue complication, baggage, or constraint. In addition, even with many of the Supplemental Standards included in existing contracts, these standards have, as a practical matter, been all but unenforceable against PRTC. In particular, PRTC has locked the primary enforcement remedy included in those contracts (i.e., liquidated damages) in litigation for almost two years. And, to the extent that actual damages can be measured effectively, competitors like WorldNet are left to the uncertain jurisdiction of the Board to award such damages or the often cost- and time-prohibitive jurisdiction of the courts. Against this backdrop, it is no wonder that PRTC has flaunted and ignored many of these standards as now imposed solely as contract obligations.

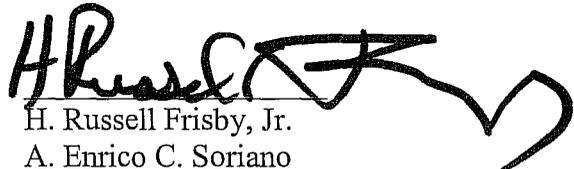
⁴¹ A fuller explanation of WorldNet's proposed revisions to the Board's Board Performance Standard Proposal is set forth in Attachment 1 of this Reply.

In sum, in the event that the proposed acquisition of PRTC is not denied, the FCC should combine and adopt the Board Standards (as clarified) and the Supplemental Standards to ensure that competition will not be impeded.

VI. CONCLUSION

For the reasons stated herein, the Commission must now put an end to a decade of neglect of the Puerto Rico market and act to avert the potentially significant and lasting damage to competition that otherwise will likely flow from this transaction. WorldNet urges the Commission to deny the present Application. In the alternative, the public interest requires that the Commission adopt the conditions and safeguards requested by WorldNet. The Commission must seize this opportunity to head off further damage to the competitive climate in Puerto Rico.

Respectfully submitted,



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Dated: July 31, 2006
189085.1

ATTACHMENT 1

PROPOSED PERFORMANCE METRICS AND SELF-EXECUTING ENFORCEMENT MECHANISMS

APPENDIX A

PERFORMANCE STANDARDS

In its petition to deny the acquisition at issue in this proceeding, the Telecommunications Regulatory Board of Puerto Rico (“Board”) proposed a series of performance standards to be applied to PRTC (“Board Standards”) in the event the acquisition is not denied. WorldNet supports the Board Standards, subject to a few proposed clarifications. These proposed clarifications are identified in Schedule 1 to this Appendix A.

In addition, WorldNet proposes that the Board Standards should be supplemented with a number of additional wholesale service standards. The Board Standards are a standardized list of ILEC performance metrics. Although relevant and valuable, the Board Standards are not tailored to PRTC – by most measures a non-standard ILEC. To this end, WorldNet believes that it is both necessary and appropriate to supplement the Board Standards by adding performance metrics that are tailored specifically to PRTC.

In Schedule 2 to this Appendix A, WorldNet has identified additional performance standards that should be adopted along with the Board Standards (“Supplemental Standards”). Each of the Supplemental Standards is specifically tailored to PRTC. Indeed, almost all of the Supplemental Standards, are standards that the Board has already found, in the context of interconnection arbitration proceedings, are necessary market-opening metrics that should be applied specifically to PRTC. The only exceptions are the last five of the Supplemental Standards (i.e., WL-66 to WL-70), all of which establish metrics for PRTC provision of hot cuts. The demand for hot cuts is a very recent development in Puerto Rico, and the processes and procedures for this activity have not yet come before the Board. Nevertheless, as the FCC knows, hot cuts are a critical gateway service to opening local markets to facilities-based

competition. WorldNet, therefore, has added to the list of already-approved Board standards proposed metrics for this one critical service that are fair, reasonable, and imminently attainable by PRTC.

The addition of the Supplemental Standards is important and necessary for several reasons. Although PRTC is already bound by contract to follow most of the Supplemental Standards, they should nevertheless be added to the Board Standards so that they are generally applicable and their benefit available to all Puerto Rico competitors without undue complication, baggage, or constraint. In addition, even with many of the Supplemental Standards included in existing contracts, these standards have, as a practical matter, been all but unenforceable against PRTC. In particular, PRTC has locked the primary enforcement remedy included in those contracts (i.e., liquidated damages) in litigation for almost two years. And, to the extent that actual damages can be measured effectively, competitors like WorldNet are left to the uncertain jurisdiction of the Board to award such damages or the often cost- and time-prohibitive jurisdiction of the courts. Against this backdrop, it is no wonder that PRTC has flaunted and ignored many of these standards as now imposed solely as contract obligations.

In sum, in the event that the proposed acquisition of PRTC is not denied, the FCC should combine and adopt the Board Standards (as clarified) and the Supplemental Standards to ensure that competition will not be impeded.

Schedule 1

Proposed Clarifications to the Board Standards

1. Definition of Wholesale Telecommunications Service. Unless specifically stated otherwise, all Wholesale Telecommunications Service Standards of Service should, at a minimum, apply to all wholesale services made available in accordance with Section 251(c) of the federal Telecommunications Act of 1996. Although the Board Standards broadly define “Wholesale Telecommunications Service” (see Section 4.3), the definition is a bit confusing¹ and does not offer the certainty or clarity that a simple reference to Section 251(c) offers.
2. Applicability of Penalties. All Wholesale Telecommunications Service Standards of Service should have a penalty attached for non-compliance. As proposed, the Board Standards inexplicably do not attach any penalty for non-compliance to 11 of the 24 standards.² Because the Board Standards, by their own terms, do not create any civil liability, the absence of any penalty for a standard effectively leaves the standard unenforceable – a condition that has historically resulted in PRTC non-compliance.
3. Assessment of Penalties. Penalties should be assessed for each failure of PRTC to comply with the associated standard as approved by the Board with regard to the Supplemental Standards, not once per PRTC “reporting unit” as now proposed in the Board Standards. As currently proposed, the monthly price tag for PRTC to completely ignore any given Board Standard could be as little \$500 – a relatively insignificant price for PRTC to pay in exchange for avoiding compliance. The role of penalties is to provide compliance incentive, and assessment of the proposed penalty by “reporting unit” will in many cases fall short of this goal.
4. Penalty Phase-In. 100% penalties should apply as and when the associated Wholesale Telecommunications Service Standards of Service first become effective and there should be no phase-in of the Supplemental Standards. As currently proposed, the Board Standards defer applicability of Wholesale Telecommunications Service Standards of Service for a year and further phase-in the applicability of penalties, with no penalties in the first year, 50% penalties in the second year, and full penalties in the third year. If Wholesale Telecommunications Service Standards of Service are deferred for a year, PRTC will have ample time and opportunity to prepare itself for compliance with those standards, and no phase-in of penalties is reasonably warranted. Similarly, no deferral or phase-in is warranted for the Supplemental Standards because they are standards that PRTC has been obligated to comply with for almost two years already.

¹ For example, the Board Standards include resold services, UNE services, and collocation services in the definition of Wholesale Telecommunications Services, but later in the same paragraph state that “[n]o UNE service . . . Resold service or Collocation service vertical services and no information service or contract services are included in quality of service performance measurement.” See, Board Standards, Section 4.3.

² The Board Standards do not propose any penalty for breach of the following standards: WL-01 to WL-05, WL-08, WL-11, WL-12, WL-19, WL-20, and WL-24.

5. Existing and Future Contract Standards. The Board Standards should be clarified to state that the Board Standards do not supersede existing contract terms imposing performance standards and/or liquidated damages nor the right of carriers to obtain better and/or different performance standards and liquidated damages in future contracts.³
6. Exclusion of DSL. Digital Subscriber Line (“DSL”) service should not be excluded from the applicability of the Board Standards. Section 3.2 excludes DSL from the reach of the Board Standards without any explanation. In approving the standards now reflected in the Supplemental Standards, the Board made no exclusion of DSL, and there is no identifiable justification why this service should be singled out and left without any metric to ensure prompt and fair PRTC provisioning performance.

³ In submitting the Supplemental Standards, WorldNet is not representing that such standards will always be appropriate or reasonable under the circumstances, and to that end, WorldNet expressly reserves the right to seek different and/or better standards and remedies in future proceedings before the Board or otherwise to reflect the particular circumstances, issues, and PRTC capabilities that exist at such time.

Schedule 2

Introduction

As explained above, WorldNet proposes to add the following list of Supplemental Standards to the Board Standards. The Supplemental Standards are not changes to the Board Standards. Rather, they are additional Board-approved metrics that WorldNet is proposing to add to the list of Board Standards.

In sum, the Supplemental Standards address PRTC-specific operational issues and problems not otherwise covered by the generic Telcordia-crafted standards proposed by the Board (e.g., dispute resolution, collocation, hot cuts, etc.). For clarity and convenience, WorldNet has formatted the Supplemental Standards to match the format of the Board Standards. WorldNet has also used the same numbering convention. To that end, the Supplemental Standards begin with standard number WL-25 (i.e., picking up where the numbering of the Board Standards leave off – WL-24).

Proposed Supplemental Standards Wholesale-Local Measurement Standards and Business Rules

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WL-25 Wholesale Performance Measures

Metric number

Name:

WL-25

Wholesale-Local Billing Dispute Response

Definition:

Response to a notice of disputed charges that includes substantive documentation supporting or rejecting the disputing party's claim (including detailed documentation explaining the investigation (in electronic format, if available), an itemized detail of the results for each claim, a description of formulas, methodology and source of data used in those calculations, and an explanation of how such formulas, methodology, or source data resulted in the conclusion reached.

Exclusions:

None.

Business Rules:

Performance measure timeframe runs upon LEC receipt from disputing party of reasonable documentation and detail of the basis for the dispute ("Dispute Documentation").

Levels of Disaggregation:

N/A

Calculation:

Report Structure/Geography Area:

Dispute response provided beyond measurement standard interval

By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of responses provided within thirty (30) calendar days of receiving notice of dispute.

Objective Measurement Level:

100% of responses provided within thirty (30) calendar days of receiving notice of dispute.

Penalty:

Penalty shall be a credit of the disputed amount for each individual failure within the subject month to meet the measurement standard interval.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-26 Wholesale Performance Measures

Metric number Name:

WL-26 Wholesale-Local Billing Inquiry Response

Definition:

Response to a written billing inquiry providing in writing all clarifications, explanations, and supporting data reasonably required to respond to the billing inquiry.

Exclusions:

Excludes all weekends and holidays.

Business Rules:

None.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of inquiry responses provided beyond the measurement standard interval * 100 / number of inquiries responses due - By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

10 days per inquiry relating to resale local usage and/or USOC meanings
20 days per any other inquiry

Objective Measurement Level:

95% within the applicable measurement standard interval

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval(s). The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-27 Wholesale Performance Measures

Metric number Name:

WL-27 Wholesale-Local Electronic OSS Access

Definition:

Provision of nondiscriminatory, real-time, fully functional, downloadable and uploadable electronic access to OSS information, including, without limitation, loop make-up information, CNAM, LIDB, and the TBS database.

Exclusions:

None.

Business Rules:

Measurement standard interval includes all necessary usage and/or access training.

Levels of Disaggregation:

N/A

Calculation:

Report Structure/Geography Area:

N/A

By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% access within six (6) months of the effective date of FCC acquisition approval.

Objective Measurement Level:

100% access within six (6) months of the effective date of FCC acquisition approval.

Penalty:

Upon the expiration of the six (6) month measurement standard, penalty shall be \$500.00 per day until 100% access is provided.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-28 Wholesale Performance Measures

Metric number Name:

WL-28 Wholesale-Local Alternate Access to Electronic OSS

Definition:

Until nondiscriminatory, real-time electronic access to OSS information is provided, the provision of such information by email.

Exclusions:

None.

Business Rules:

Requests for OSS information shall be submitted by email to an email address designated by the telecommunication service provider.

The telecommunications service provider must transmit the requested OSS information by return email.

The clock starts on the Request Date, which is the day the telecommunications service provider receives the request for OSS information. For orders received after 3:00 PM, the Request Date is the next business day.

The clock stops on the Completion Date which is the day that the telecommunications service provider personnel provide the requested OSS information.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of inquiry responses provided beyond the measurement standard interval * 100 / number of inquiries responses due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of requests complied with within one (1) business day of receiving request.

Objective Measurement Level:

95% of requests complied with within one (1) business day of receiving request.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-29 Wholesale Performance Measures

Metric number Name:

WL-29 Wholesale-Local Order System Access

Definition:

Provision of nondiscriminatory, real-time electronic access to order status information.

Exclusions:

None.

Business Rules:

None.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times access provided beyond the measurement standard interval * 100 / number of times access due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of access to order status information made available within one (1) business day of transmittal of order confirmation.

Objective Measurement Level:

95% of access to order status information made available within one (1) business day of transmittal of order confirmation.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-30 Wholesale Performance Measures

Metric number Name:

WL-30 Wholesale-Local Maintenance & Repair System Access

Definition:

Provision of nondiscriminatory, real-time electronic access to trouble report entry, maintenance, and repair information.

Exclusions:

None.

Business Rules:

For trouble reports received after 3:00 PM, the receipt date is the next business day.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times access provided beyond the measurement standard interval * 100 / number of times access due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of access to order status information made available within one (1) business day of receipt of trouble report.

Objective Measurement Level:

95% of access to maintenance and repair information made available within one (1) business day of receipt of trouble report.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-31 Wholesale Performance Measures

Metric number Name:

WL-31 Wholesale-Local Order Acknowledgement

Definition:

Acknowledgement by email of receiving wholesale service orders.

Exclusions:

None.

Business Rules:

The clock starts on the Request Date, which is the day the telecommunications service provider receives the subject order(s). For orders received after 3:00 PM, the Request Date is the next business day.

The clock stops on the Completion Date which is the day that the telecommunications service provider personnel provide the acknowledgement.

Email acknowledgements will be titled "Order Acknowledgement" and provided by email in a consistent and uniform format sent to an email address designated by the party submitting the order(s). Such email will provide the following information for each order: PON number and customer name. PRTC is required to provide electronic confirmation of all orders.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of order acknowledgements provided beyond the measurement standard interval * 100 / number of order acknowledgements due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of acknowledgements provided with within one (1) business day of receiving the subject order(s).

Objective Measurement Level:

95% of acknowledgements provided with within one (1) business day of receiving the subject order(s).

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-32 Wholesale Performance Measures

Metric number Name:

WL-32 Wholesale-Local Order Acceptance Sheet

Definition:

Facsimile transmittal of order acceptance sheets signed by end user customers.

Exclusions:

None.

Business Rules:

Signed order acceptance sheets must be sent to the facsimile number designated by the ordering party.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of order acceptance sheets provided beyond the measurement standard interval * 100 / number of order acceptance sheets due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of order acceptance sheets provided with within three (3) business days of completing the subject order(s).

Objective Measurement Level:

95% of order acceptance sheets provided with within three (3) business days of completing the subject order(s).

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-34 Wholesale Performance Measures

Metric number Name:

WL-34 Wholesale-Local Account Reconciliation Notice

Definition:

Email notification of need for account reconciliation before order provisioning.

Exclusions:

None.

Business Rules:

The clock starts on the Request Date, which is the day the telecommunications service provider receives the subject wholesale service order(s). For orders received after 3:00 PM, the Request Date is the next business day. The clock stops on the Completion Date which is the day that the telecommunications service provider personnel provide the account reconciliation notice.

Notices of account reconciliation will be provided by email to an email address designated by the receiving party. Notices of account reconciliation will (at a minimum) provide the following information for each order: PON number, customer name, order date, a preliminary reason for reconciliation, estimated completion date, assigned telecommunications service provider coordinator, and a description of any and all modifications made by the telecommunications service provider to complete the account reconciliation.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of account reconciliation notices provided beyond the measurement standard interval * 100 / number of account reconciliation notices due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of account reconciliation notices provided with within three (3) business days of receiving the subject order(s).

Objective Measurement Level:

95% of account reconciliation notices provided with within three (3) business days of receiving the subject order(s).

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-35 Wholesale Performance Measures

Metric number Name:

WL-35 Wholesale-Local Facilities Unavailable Notice

Definition:

Email notification of unavailable facilities.

Exclusions:

None.

Business Rules:

The clock starts on the Request Date, which is the day the telecommunications service provider receives the subject wholesale service order(s). For orders received after 3:00 PM, the Request Date is the next business day. The clock stops on the Completion Date which is the day that the telecommunications service provider personnel provide the facilities unavailable notice.

Notices of facilities unavailability will be provided by email to an email address designated by the receiving party. Notices of facilities unavailability will contain the PON number, order number, customer name, order date, and basis for determination that facility is unavailable.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of facilities unavailable notices provided beyond the measurement standard interval * 100 / number of facilities unavailable notices due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of facilities unavailable notices provided with within three (3) business days of receiving the subject order(s).

Objective Measurement Level:

95% of facilities unavailable notices provided with within three (3) business days of receiving the subject order(s).

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-36 Wholesale Performance Measures

Metric number Name:

WL-36 Wholesale-Local Facilities Unavailable Order Status Notice

Definition:

Response to facilities unavailable status inquiry.

Exclusions:

None.

Business Rules:

Responses to inquiries will be provided by email titled "Facilities Unavailable Update" and sent to an email address designated by the receiving party.

Responses shall include a detail of the progress of the subject order as well as information concerning efforts planned to make the facility available and expected availability date.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of inquiry responses provided beyond the measurement standard interval * 100 / number of inquiries responses due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of responses within five (5) business days of receiving a request for status.

Objective Measurement Level:

95% within the applicable measurement standard interval

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-37 Wholesale Performance Measures

Metric number Name:

WL-37 Wholesale-Local Service Suspend, Cancel, or Block

Definition:

Completion of orders to suspend, cancel, or block a wholesale service.

Exclusions:

None.

Business Rules:

For suspend, cancel, or block orders received after 3:00 PM, the receipt date is the next business day.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times suspend, cancel, or block orders completed beyond the measurement standard interval * 100 / number of times suspend, cancel, or block orders are required to be completed By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of suspend, cancel, or block orders completed within one (1) business day of receipt of order.

Objective Measurement Level:

95% of suspend, cancel, or block orders completed within one (1) business day of receipt of order.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval and waiver of any charges incurred after Measurement Standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-38 Wholesale Performance Measures

Metric number Name:

WL-38 Wholesale-Local Emergency Service Suspend, Cancel, or Block

Definition:

Completion of emergency orders to suspend, cancel, or block a wholesale service.

Exclusions:

None.

Business Rules:

The completion interval is the elapsed time from the order submission time stamp to the time stamp for the notice to the customer electronic interface.

A completion notice is sent on each order.

If an order is completed on a Saturday, Sunday or a Holiday, the day the order is completed will be counted

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times emergency suspend, cancel, or block orders completed beyond the measurement standard interval * 100 / number of times emergency suspend, cancel, or block orders are required to be completed By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of emergency suspend, cancel, or block orders completed within two (2) hours of receipt of order.

Objective Measurement Level:

95% of emergency suspend, cancel, or block orders completed within two (2) hours of receipt of order.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval and waiver of any charges incurred after Measurement Standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-39 Wholesale Performance Measures

Metric number Name:

WL-39 Wholesale-Local Service Restoration

Definition:

Restoration of suspended or blocked wholesale service.

Exclusions:

None.

Business Rules:

The completion interval is the elapsed time from the order submission time stamp to the time stamp for the notice to the customer electronic interface.

A completion notice is sent on each order.

If an order is completed on a Saturday, Sunday or a Holiday, the day the order is completed will be counted

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times restoration orders completed beyond the measurement standard interval * 100 /
number of times restoration orders are required to be completed By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of restorations completed within ten (10) minutes of receipt of order.

Objective Measurement Level:

95% of restorations completed within ten (10) minutes of receipt of order.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-40 Wholesale Performance Measures

Metric number Name:

WL-40 Wholesale-Local Service Change Notice

Definition:

Email notification of changes and additions to service offerings of the telecommunications service provider.

Exclusions:

None.

Business Rules:

Notices of changes and additions to service offerings will be provided by email to an email address designated by the receiving party.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of service changes and additions notices provided beyond the measurement standard interval * 100 / number of service changes and additions notices due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of service changes and additions notices provided as soon as reasonably possible and, in any event, no later than the telecommunications service provider notifies the public of such changes and additions or when such changes and/or additions become available and effective.

Objective Measurement Level:

95% of service changes and additions notices provided as soon as reasonably possible and, in any event, no later than the telecommunications service provider notifies the public of such changes and additions or when such changes and/or additions become available and effective.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-41 Wholesale Performance Measures

Metric number Name:

WL-40 Wholesale-Local OSS Change Notice

Definition:

Email notification of material changes to OSS interfaces of the telecommunications service provider.

Exclusions:

None.

Business Rules:

Notices of changes will be provided by email to an email address designated by the receiving party.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of change notices provided beyond the measurement standard interval * 100 / number of change notices due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of change notices provided at least ninety (90) calendar days before the subject changes are implemented.

Objective Measurement Level:

95% of change notices provided at least ninety (90) calendar days before the subject changes are implemented.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-42 Wholesale Performance Measures

Metric number Name:

WL-40 Wholesale-Local Process Change Notice

Definition:

Email notification of changes wholesale service procedures of the telecommunications service provider.

Exclusions:

None.

Business Rules:

Notices of changes will be provided by email to an email address designated by the receiving party.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of change notices provided beyond the measurement standard interval * 100 / number of change notices due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of change notices provided at least thirty (30) calendar days before the subject changes are implemented.

Objective Measurement Level:

95% of change notices provided at least thirty (30) calendar days before the subject changes are implemented.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-44 Wholesale Performance Measures

Metric number Name:

WL-42 Wholesale-Local Pending Order Notice (Migration)

Definition:

Email notification of pending orders on migrated service accounts.

Exclusions:

None.

Business Rules:

Notices of pending orders will be titled "Pending Orders Transferred in Migration" and provided by email to an email address designated by the receiving party.

Notices of pending orders will include order numbers, description of service pending, status of service, and estimated date of installation (as originally provided to the telecommunications service provider's end user customer).

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of pending order notices provided beyond the measurement standard interval * 100 / number of pending order notices due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of pending order notices provided on the effective date of the migration.

Objective Measurement Level:

95% of pending order notices provided on the effective date of the migration.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting

WL-46 Wholesale Performance Measures

Metric number Name:

WL-44 Wholesale-Local Resale to UNE & UNE to Resale Transfers

Definition:

Completion of transfers from local resale service to UNE-based service and UNE-based service to resale service.

Exclusions:

None.

Business Rules:

For transfer orders received after 3:00 PM, the receipt date is the next business day.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times transfers completed beyond the measurement standard interval * 100 / number of times completed transfers due in accordance with measurement standard interval By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of transfers completed within two (2) business days of receipt of order.

Objective Measurement Level:

95% of transfers completed within two (2) business days of receipt of order.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-47 Wholesale Performance Measures

Metric number Name:

WL-45 Wholesale-Local Retail to Resale Transfers

Definition:

Completion of transfers from telecommunications service provider local retail service to resale service.

Exclusions:

None.

Business Rules:

For transfer orders received after 3:00 PM, the receipt date is the next business day.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times transfers completed beyond the measurement standard interval * 100 / number of times completed transfers due in accordance with measurement standard interval By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of transfers completed within five (5) business days of receipt of order.

Objective Measurement Level:

95% of transfers completed within five (5) business days of receipt of order.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-48 Wholesale Performance Measures

Metric number Name:

WL-46 Wholesale-Local UNE Loop Provisioning (with conditioning)

Definition:

Provisioning of local UNE loop installation with requested loop conditioning.

Exclusions:

None.

Business Rules:

For orders received after 3:00 PM, the receipt date is the next business day.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times orders completed beyond the measurement standard interval * 100 / number of times provisioning due in accordance with measurement standard interval By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of orders completed within fifteen (15) business days of receipt of order.

Objective Measurement Level:

95% of orders completed within fifteen (15) business days of receipt of order.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-49 Wholesale Performance Measures

Metric number Name:

WL-47 Wholesale-Local UNE NID Provisioning

Definition:

Provisioning of UNE NID installation.

Exclusions:

None.

Business Rules:

For orders received after 3:00 PM, the receipt date is the next business day.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times orders completed beyond the measurement standard interval * 100 / number of times provisioning due in accordance with measurement standard interval By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of orders completed within ten (10) business days of receipt of order.

Objective Measurement Level:

95% of orders completed within ten (10) business days of receipt of order.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-50 Wholesale Performance Measures

Metric number Name:

WL-48 Wholesale-Local Number Portability Provisioning

Definition:

Provisioning of number portability.

Exclusions:

None.

Business Rules:

For orders received after 3:00 PM, the receipt date is the next business day.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times orders completed beyond the measurement standard interval * 100 / number of times provisioning due in accordance with measurement standard interval By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of orders completed within one (1) hour of facility transfer.

Objective Measurement Level:

95% of orders completed within one (1) hour of facility transfer.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-51 Wholesale Performance Measures

Metric number Name:

WL-49 Wholesale-Local SS7 Link Provisioning

Definition:

Provisioning of SS7 links.

Exclusions:

None.

Business Rules:

For orders received after 3:00 PM, the receipt date is the next business day.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times orders completed beyond the measurement standard interval * 100 / number of times provisioning due in accordance with measurement standard interval By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of orders completed within twenty (20) business days of receipt of order.

Objective Measurement Level:

95% of orders completed within twenty (20) business days of receipt of order.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-52 Wholesale Performance Measures

Metric number Name:

WL-50 Wholesale-Local Retail to UNE Transfer

Definition:

Completion of transfers from telecommunications service provider local retail service to UNE-based service.

Exclusions:

None.

Business Rules:

For transfer orders received after 3:00 PM, the receipt date is the next business day.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times transfers completed beyond the measurement standard interval * 100 / number of times completed transfers due in accordance with measurement standard interval By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of transfers completed within five (5) business days of receipt of order.

Objective Measurement Level:

95% of transfers completed within five (5) business days of receipt of order.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-53 Wholesale Performance Measures

Metric number Name:

WL-51 Wholesale-Local UNE Conversion Service Quality

Definition:

Conversion from a wholesale service or group of wholesale services to a UNE-based service.

Exclusions:

None.

Business Rules:

None.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times transfer not provided in accordance with the measurement standard interval * 100 / number of transfers performed

By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of conversions without adversely affecting the service quality perceived by the end user customer.

Objective Measurement Level:

95% of conversions without adversely affecting the service quality perceived by the end user customer.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-54 Wholesale Performance Measures

Metric number Name:

WL-52 Wholesale-Local Collocation Application Response

Definition:

Response to collocation application either accepting application with information concerning collocation availability or rejecting application with explanation for rejection.

Exclusions:

None.

Business Rules:

The clock starts on the Request Date, which is the day the telecommunications service provider receives the subject collocation application(s). For applications received after 3:00 PM, the Request Date is the next business day.

The clock stops on the Completion Date which is the day that the telecommunications service provider personnel provide the response.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of application responses provided beyond the measurement standard interval * 100 / number of application responses due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of responses provided within ten (10) calendar days of receiving a collocation application.

Objective Measurement Level:

95% of responses provided within ten (10) calendar days of receiving a collocation application.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-55 Wholesale Performance Measures

Metric number Name:

WL-53 Wholesale-Local Collocation Change Application Response

Definition:

Response to application requesting collocation changes involving HVAC and power changes to existing collocation arrangements.

Exclusions:

None.

Business Rules:

The clock starts on the Request Date, which is the day the telecommunications service provider receives the subject collocation application(s). For applications received after 3:00 PM, the Request Date is the next business day.

The clock stops on the Completion Date which is the day that the telecommunications service provider personnel provide the response.

Response must identify changes required and providing approximate costs and scheduling information.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of application responses provided beyond the measurement standard interval * 100 / number of application responses due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of responses provided within ten (10) calendar days of receiving a collocation application.

Objective Measurement Level:

95% of responses provided within ten (10) calendar days of receiving a collocation application.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-56 Wholesale Performance Measures

Metric number Name:

WL-54 Wholesale-Local Collocation Premises Tour

Definition:

Provision of tour of telecommunications service provider premises and detailed floor plans or diagrams of such premises upon denial by the telecommunications service provider of request for collocation on the basis that space is not available in the premises.

Exclusions:

None.

Business Rules:

The clock starts on the Request Date, which is the day the telecommunications service provider receives the request(s) for a tour and/or plans. For requests received after 3:00 PM, the Request Date is the next business day. The clock stops on the Completion Date which is the day that the telecommunications service provider personnel provide the tour and/or plans requested.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of request responses provided beyond the measurement standard interval * 100 / number of request responses due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of responses provided within ten (10) calendar days of receiving a request.

Objective Measurement Level:

95% of responses provided within ten (10) calendar days of receiving a request.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-57 Wholesale Performance Measures

Metric number: WL-55 Name: Wholesale-Local Collocation Space Availability Report

WL-55 Wholesale-Local Collocation Space Availability Report

Definition:

Provision of report describing in detail the space that is available for collocation in a particular telecommunications service provider's premises.

Exclusions:

None.

Business Rules:

The clock starts on the Request Date, which is the day the telecommunications service provider receives the request(s) for a report. For requests received after 3:00 PM, the Request Date is the next business day. The clock stops on the Completion Date which is the day that the telecommunications service provider personnel provide the report requested. The report must specify the amount of collocation space available at each requested premises, the number of collocators, any modifications in the use of the space since the last report, and any measures that the telecommunications service provider is taking to make additional space available for collocation.

Levels of Disaggregation:

N/A

Calculation: Number of request responses provided beyond the measurement standard interval * 100 / number of request responses due Report Structure/Geography Area: By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of responses provided within ten (10) calendar days of receiving a request.

Objective Measurement Level:

95% of responses provided within ten (10) calendar days of receiving a request.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-58 Wholesale Performance Measures

Metric number Name:

WL-56 Wholesale-Local Caged & Cageless Collocation Provisioning

Definition:

Provision of caged and cageless collocation.

Exclusions:

None.

Business Rules:

For collocation applications received after 3:00 PM, the receipt date is the next business day. Collocation forecasts provided by parties requesting collocation must be provided biannually and contain the following information: the premise(s) where collocation is sought; the month and year of expected application for collocation in the identified premise(s); the preferred in-service month; whether virtual or physical collocation is preferred; the anticipated square footage required for each premises (physical collocation only); and a high-level list of equipment to be installed (virtual collocation only).

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times orders completed beyond the measurement standard interval * 100 / number of times provisioning due in accordance with measurement standard interval By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of orders completed within ninety (90) calendar days of receipt of collocation application if requesting party provides confirmation of the telecommunications service provider's acceptance of the associated collocation application within seven (7) calendar days.

100% of orders completed within ninety (90) calendar days of receipt of collocation application plus one (1) calendar day for each day beyond seven (7) calendar days that it takes a requesting party to confirm the telecommunications service providers acceptance of the associated collocation application.

100% of orders completed within one hundred ten (110) calendar days of receipt of collocation application if requesting party has not provided collocation forecast.

Objective Measurement Level:

95% of orders completed within applicable measurement standard interval.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-59 Wholesale Performance Measures

Metric number Name:

WL-57 Wholesale-Local Virtual Collocation Provisioning

Definition:

Provision of virtual collocation.

Exclusions:

None.

Business Rules:

For collocation applications received after 3:00 PM, the receipt date is the next business day. Collocation forecasts provided by parties requesting collocation must be provided biannually and contain the following information: the premise(s) where collocation is sought; the month and year of expected application for collocation in the identified premise(s); the preferred in-service month; whether virtual or physical collocation is preferred; the anticipated square footage required for each premises (physical collocation only); and a high-level list of equipment to be installed (virtual collocation only).

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times orders completed beyond the measurement standard interval * 100 / number of times provisioning due in accordance with measurement standard interval By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of orders completed within sixty (60) calendar days of receipt of collocation application if requesting party provides confirmation of the telecommunications service provider's acceptance of the associated collocation application within seven (7) calendar days and space and power are available.
100% of orders completed within sixty (60) calendar days of receipt of collocation application plus one (1) calendar day for each day beyond seven (7) calendar days that it takes a requesting party to confirm the telecommunications service providers acceptance of the associated collocation application.
100% of orders completed within one hundred ten (110) calendar days of receipt of collocation application if requesting party has not provided collocation forecast or space and power are not available.

Objective Measurement Level:

95% of orders completed within applicable measurement standard interval.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-61 Wholesale Performance Measures

Metric number Name:

WL-59 Wholesale-Local Collocation Construction Corrections

Definition:

Completion of corrections to collocations noted in collocation acceptance walk-through.

Exclusions:

None.

Business Rules:

The clock starts on the date of the acceptance walk-through.

The clock stops on the Completion Date which is the day that the telecommunications service provider personnel complete the correction.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of corrections completed beyond the measurement standard interval * 100 / number of correction completions due

By CLEC, Provider Affiliate and Wholesale
Local

Measurement Standard:

100% of corrections provided within ten (10) calendar days of the walk-through.

Objective Measurement Level:

95% of corrections provided within ten (10) calendar days of the walk-through.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-62 Wholesale Performance Measures

Metric number

Name:

WL-60

Wholesale-Local Collocation Drawings

Definition:

If a collocating party installs the cable, provision by the telecommunications service provider of detailed drawings depicting the exact path, with dimensions the outside plant fiber ingress and egress into the requested collocated space and/or detailed telephone equipment drawings depicting the exact location, type, and cable termination requirements (i.e., connector type, number and type of pairs, and naming convention) within a collocation.

Exclusions:

None.

Business Rules:

The clock starts on the Request Date, which is the day the telecommunications service provider receives the request(s) for drawings. For requests received after 3:00 PM, the Request Date is the next business day. The clock stops on the Completion Date which is the day that the telecommunications service provider personnel provide the drawings requested.

Levels of Disaggregation:

N/A

Calculation:

Report Structure/Geography Area:

Number of request responses provided beyond the measurement standard interval * 100 / number of request responses due

By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of responses provided within twenty (20) business days of receiving a request.

Objective Measurement Level:

95% of responses provided within twenty (20) business days of receiving a request.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-64 Wholesale Performance Measures

Metric number Name:

WL-62 Wholesale-Local Collocation Guidelines & Procedures

Definition:

Provision of the following collocation information:

Work restriction guidelines.

The telecommunications service provider's or industry technical publication guidelines that impact the design of collocated equipment.

Telecommunications service provider contacts (names and telephone numbers) for the following areas: Engineering Physical & Logical Security Provisioning Billing (Related to Collocated Services) Operations Site and Building Managers Environmental and Safety, as well as emergency contacts reachable outside of business hours.

Escalation process for the telecommunications service provider's employees (names, telephone numbers and the escalation order) for any disputes or problems that might arise pursuant to collocation.

Exclusions:

None.

Business Rules:

The clock starts on the Request Date, which is the day the telecommunications service provider receives the request(s) for information. For requests received after 3:00 PM, the Request Date is the next business day. The clock stops on the Completion Date which is the day that the telecommunications service provider personnel provide the information requested.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of request responses provided beyond the measurement standard interval * 100 / number of request responses due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of responses provided within ten (10) business days of receiving a request.

Objective Measurement Level:

95% of responses provided within ten (10) business days of receiving a request.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such

penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-66 Wholesale Performance Measures

Metric number Name:

WL-64 Wholesale-Local Hot Cut Preordering Information

Definition:

Provision of preorder hot cut information.

Exclusions:

None.

Business Rules:

The clock starts on the Request Date, which is the day the telecommunications service provider receives the request(s) for information. For requests received after 3:00 PM, the Request Date is the next business day. The clock stops on the Completion Date which is the day that the telecommunications service provider personnel provide the information requested. Requests for information are limited to up to 5000 lines.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of request responses provided beyond the measurement standard interval * 100 / number of request responses due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of responses provided within twenty (20) business days of receiving a request.

Objective Measurement Level:

95% of responses provided within twenty (20) business days of receiving a request.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-67 Wholesale Performance Measures

Metric number Name:

WL-65 Wholesale-Local Hot Cut Process Trial

Definition:

Completion of hot cut process trial and testing.

Exclusions:

None.

Business Rules:

The process trial will commence on or within five (5) business days of the date that the telecommunications service provider and the party seeking hot cuts both agree that all reasonably necessary collocation facilities and arrangements are in place to enable the hot cut of lines.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Completion of process trial and testing beyond the measurement standard interval By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of process trial and testing completed within fourteen (14) calendar days of process trial commencement.

Objective Measurement Level:

100% compliance with measurement standard interval(s).

Penalty:

Penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-68 Wholesale Performance Measures

Metric number Name:

WL-66 Wholesale-Local Hot Cut Performance

Definition:

Provision of hot cuts.

Exclusions:

None.

Business Rules:

For orders received after 3:00 PM, the receipt date is the next business day.
Orders for hot cuts may include a maximum of one hundred (100) lines per central office per day.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times orders completed beyond the measurement standard interval * 100 / number of times provisioning due in accordance with measurement standard interval By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of orders completed within fourteen (14) business days of receipt of order.

Objective Measurement Level:

100% of orders completed within fourteen (14) business days of receipt of order.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-69 Wholesale Performance Measures

Metric number Name:

WL-67 Wholesale-Local Hot Cut Ordering Discrepancy Notice

Definition:

Provision of notice of discrepancies or problems in hot cut orders.

Exclusions:

None.

Business Rules:

The clock starts on the Request Date, which is the day the telecommunications service provider receives the subject hot cut order(s). For orders received after 3:00 PM, the Request Date is the next business day. The clock stops on the Completion Date which is the day that the telecommunications service provider personnel provide the discrepancy notice. Discrepancy notices will include a code identifying the discrepancy.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of notices provided beyond the measurement standard interval * 100 / number of notices due By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of notices provided with within three (3) business days of receiving the subject order(s).

Objective Measurement Level:

95% of notices provided with within three (3) business days of receiving the subject order(s).

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

WL-70 Wholesale Performance Measures

Metric number Name:

WL-68 Wholesale-Local Hot Cut Trouble Resolution

Definition:

Resolution of hot cut trouble reports.

Exclusions:

None.

Business Rules:

The completion interval is the elapsed time from the trouble report submission time stamp to the time stamp for the notice of resolution to the customer electronic interface.
A completion notice is sent on each order.

Levels of Disaggregation:

N/A

Calculation: Report Structure/Geography Area:

Number of times trouble reports cleared beyond the measurement standard interval * 100 / number of times trouble reports required to be cleared in accordance with measurement standard interval By CLEC, Provider Affiliate and Wholesale Local

Measurement Standard:

100% of trouble reports cleared within twelve (12) hours of receipt of trouble report.

Objective Measurement Level:

95% of trouble reports cleared within twelve (12) hours of receipt of trouble report.

Penalty:

After missing objective level in a month, penalty shall be \$500.00 per each individual failure within the subject month to meet the measurement standard interval. The penalty for specific individual failures that recur in consecutive months shall be \$500 times the number of consecutive months that such failure has occurred, with such penalty applicable for such consecutive failure regardless of the telecommunications service provider's satisfaction of the objective measurement level.

Impact on Provider's Regulatory Burden:

A statistic collected by a telecommunications provider that provides wholesale measurement. Some impact for new wholesale measuring and reporting.

189005.1

ATTACHMENT 2

**RECORD EVIDENCE OF OPERATIONAL PROBLEMS ASSOCIATED
WITH ACCESSING PRTC'S INTERCONNECTION AND WHOLESALE
SERVICES**

**COMMONWEALTH OF PUERTO RICO
TELECOMMUNICATIONS REGULATORY BOARD
OF PUERTO RICO**

FCC's Triennial Review Order	)	Case Number JRT-2003-CCG-0004
)	
	)	Re: Review of High Capacity Business
	)	Customer Local Circuit Switching
)	

**DIRECT TESTIMONY OF
DAVID L. BOGATY
ON BEHALF OF WORLDNET TELECOMMUNICATIONS, INC.**

1 **Q. What is your name and business address?**

2

3 A. My name is David L. Bogaty. I am the founder and president of WorldNet
4 Telecommunications, Inc. My business address is Plaza Caparra, Ave Roosevelt, Suite
5 206, San Juan, Puerto Rico 00922.

6

7 **Q. What is your professional background and experience?**

8

9 A. I have approximately twelve years of professional experience in the telecommunications
10 industry. From 1991 to 1993, I served as a financial analyst at Chase Manhattan Bank in
11 the North American Corporate Finance Division, Media and Telecommunications Group.
12 In 1993, I helped to create and found MetraCom Corporation a local and long distance
13 telecommunications provider in Boston, Massachusetts. As Director of Business
14 Development at MetraCom, I helped build the company from \$0 to over \$18,000,000 in
15 current annual revenues, primarily concentrating on the resale of ILEC local and long
16 distance telephone service.

17

18 In 1996, I left MetraCom to start WorldNet, the first full reseller of telecommunications
19 services in Puerto Rico. Since 1996, I have helped build WorldNet into a full service
20 telecommunications provider in Puerto Rico, offering customized, upgraded, and
21 personalized telecommunications services to business and residential customers
22 throughout the island.

23

24 **Q. What is the purpose of your testimony?**

25

26 A. The purpose of my testimony is to provide the Board information as it considers whether
27 to seek a waiver of the FCC's finding of no impairment with regard to the availability of
28 unbundled PRTC local circuit switching for DS1 capacity and above loops. I am not a
29 lawyer or a regulatory expert. However, based on my businessman's understanding of

1 the rules and issues, it seems clear that impairment *does* exist in Puerto Rico, a very
2 nascent competitive market, and that, consequently, the Board *should* seek such a waiver.
3

4 **Q. Are you familiar with the criteria that the FCC has instructed the Board to use in**
5 **challenging its finding of no impairment?**
6

7 A. I understand generally that the FCC has provided two basic tasks for the Board. First, the
8 Board must divide Puerto Rico into appropriate markets for high capacity local
9 switching. Second, the Board must determine whether there are operational or economic
10 barriers in those markets. For operational barriers, the FCC has instructed that the Board
11 to consider the ability of PRTC to provide UNE loops, collocation, and cross-connects to
12 competitors. For economic barriers, the FCC has instructed the Board to consider the
13 cost of entry into a market (including those caused by operational barriers), potential
14 revenues, and prices that competitors will likely be able to charge for high capacity
15 services.
16

17 **Q. Why do you believe that the Board should petition for a waiver of the FCC's**
18 **finding?**
19

20 A. Simply put, there are significant operational and economic barriers in Puerto Rico
21 markets for providers like WorldNet to deploy their own high capacity switching.
22

23 **Q. What are these barriers?**
24

25 A. I believe that several of these barriers have been identified by other WorldNet-sponsored
26 witnesses, including, but not limited to, the fact that PRTC owns about 98% of the high
27 capacity local switches in Puerto Rico and that Puerto Rico simply does not yet have the
28 experience or supporting infrastructure in place to make competitor high capacity switch
29 deployment operationally or economically feasible. In my opinion, however, the most
30 obvious operational and economic barriers to effective competitor switch deployment in
31 Puerto Rico can be traced to one thing – PRTC.
32

33 **Q. How is PRTC the source of operational and economic barriers?**
34

35 A. PRTC is neither prepared nor equipped to make competitive facilities deployment
36 operationally and economically feasible. Indeed, in my opinion, PRTC is so far behind
37 other ILECs in its efforts to provide services and facilities to competitors that the Board
38 probably has one of the most obvious and best cases for rebuttal of the FCC's no
39 impairment finding than any other jurisdiction that is subject to the FCC's new rules. It
40 is not even a close call.
41

42 **Q. Can you be more specific?**
43

44 A. Yes. The FCC has instructed state commissions to examine whether an ILEC can
45 adequately provide UNE loops, collocation, and cross-connects. In most jurisdictions,
46 state commissions will be faced with extensive records documenting years of ILEC

1 process development and provisioning history for these things. In Puerto Rico, the Board
2 is faced with one simple fact (based on the discovery responses so far in this proceeding)
3 -- PRTC has not completed a single order for stand-alone UNE loops, collocation, or
4 cross-connects. Indeed, even if PRTC has completed a few orders for these services and
5 facilities of which I am not aware, I doubt it has completed many or has much experience
6 with these things at all. Moreover, it is my understanding that PRTC has not only not
7 provided these things, the only orders that it has received for these services and facilities
8 promptly resulted in a formal complaint to the Board alleging undue PRTC delay and
9 grossly inadequate PRTC performance.

10
11 **Q. What does PRTC's inexperience in providing UNE loops, collocation, and cross-**
12 **connects mean in this proceeding?**

13
14 A. I believe it means that the Board has an obvious case for waiver of the FCC's no
15 impairment finding. Simply put, according to the discovery responses submitted so far in
16 this proceeding, PRTC has not provided a single stand-alone UNE loop to its
17 competitors. It has not finished a single collocation for its competitors. It has not
18 performed a single cross-connect for its competitors. Instead, the only documented track
19 record that PRTC has established on these three focal activities in the Board's analysis is
20 a formal Board complaint about the inadequacy of new and completely untested PRTC
21 processes and procedures that PRTC is essentially still making up as it goes. In looking
22 at the analysis before the Board, it is difficult to imagine any stronger showing of an
23 operational and economic barrier than an ILEC that has absolutely no experience in
24 successfully providing UNE loops, collocation, or cross-connects.

25
26 **Q. Do you think it would be reasonable to assume that, despite its inexperience, PRTC**
27 **is nevertheless presently able to provide UNE loops, collocation, and cross-connects**
28 **effectively?**

29
30 A. No. First, the only evidence available shows that PRTC is not ready to provide these
31 things. PRTC has had documented problems with all of the orders for UNE loops,
32 collocation, and cross-connects that it has received to date.

33
34 Second, PRTC's processes and procedures for providing UNE loops, collocation, and
35 cross-connects (whatever they may ultimately be) are new, untested, and (to a large
36 extent) unknown. In other jurisdictions, ILECs have spent years developing and refining
37 their processes and procedures for these activities. It is unrealistic to assume that PRTC
38 will become anywhere near as efficient or capable as those other providers in the course
39 of a few weeks. In the end, competitors in Puerto Rico will be forced to endure the initial
40 start-up delays and costs that competitors ordering the same services and facilities in
41 other jurisdictions simply no longer have to face.

42
43 Third, and perhaps most importantly, I believe that it would be unreasonable to assume
44 that PRTC will all of a sudden provide UNE loops, collocation, and cross-connects
45 effectively when in the past PRTC has had an abysmal track record in providing other
46 wholesale services to its competitors.

1
2 **Q. What do you mean when you refer to PRTC's poor track record with competitors?**
3

4 **A.** For example, PRTC has been providing services to WorldNet for resale for over four
5 years. Yet, despite continuing complaints, meetings, and promises from PRTC, PRTC is
6 still repeating many of the same billing errors that WorldNet encountered on its initial
7 invoice from PRTC over four years ago. In fact, currently, WorldNet is forced to make
8 approximately 5,000 manual adjustments to PRTC invoices *each month*. In short, PRTC
9 has been doing resale billing for over four years and it still has not committed the
10 resources to make the system work correctly or efficiently.
11

12 Similarly, in the shadow of a pending arbitration petition, PRTC reluctantly agreed in
13 2001 to provide UNE-P circuits to WorldNet starting almost one year later on October 1,
14 2002. In the months leading up to October 1, 2002, WorldNet expended significant time
15 and resources in an effort to work cooperatively with PRTC in preparing for the
16 deployment of UNE-P. These efforts were not matched by PRTC, prompting another
17 filing by WorldNet with the Board to ensure that PRTC would satisfy its agreed
18 obligation to provide UNE-P by October 1, 2002. WorldNet's complaint spurred some
19 PRTC effort, resulting in the tacit completion of some WorldNet DS0-level UNE-P
20 orders by PRTC by the October 1, 2002 deadline. The completion of these initial orders,
21 however, was plagued with significant and costly process breakdowns that, in some
22 cases, are still occurring over a year later. These breakdowns include widespread billing
23 errors, completely unnecessary disconnections of WorldNet customer lines, and a billing
24 system that, according to PRTC, was (and is still) not yet configured to charge WorldNet
25 based on WorldNet customers' actual usage of UNE-P lines.
26

27 In short, based on PRTC's past efforts and continuing problems in providing other
28 services and facilities to competitors in Puerto Rico, it is almost laughable to assume that
29 PRTC will suddenly provide UNE loops, collocation, or cross-connects in an
30 operationally or economically efficient manner.
31

32 **Q. Are resale billing and UNE-P the only examples of PRTC service failures?**
33

34 **A.** No. For more examples, I would direct the Board to WorldNet's filings in JRT-2001-
35 AR-0002, JRT-2002-Q-0076, and JRT-2003-SC-0005.
36

37 Notably, I used the specific examples above because I think they illustrate particularly
38 well how, even after two to four years of experience and opportunity, PRTC has failed to
39 devote the resources or attention necessary to provide even the most basic services and
40 facilities on an operationally or economically efficient basis. These examples also
41 demonstrate how far PRTC is behind other ILECs in its provision of required services
42 and facilities to competitors – a fact that I believe makes this case one of the easier cases
43 for rebuttal that the FCC will see.
44

45 In my opinion, PRTC is determined to block the advance of competition, or at least
46 willing to let it languish by starving its wholesale efforts of resources. It is commonly

1 said among the competitors that PRTC's negotiation strategy is to delay, delay, delay
2 while trying to drain competitors of their resources. In fact, because of this common
3 perception, WorldNet saved its resources for one year prior to beginning negotiations on
4 its last interconnect agreement and was forced to use its entire contingency fund.
5 Moreover, after this WorldNet was forced to file a complaint at the board one year later
6 to force PRTC to comply with its contractual obligations. This forced WorldNet to spend
7 an additional \$200,000. And, even after all of this, PRTC has still not adequately
8 implemented UNE-P in accordance with its contract obligations. The invoicing is
9 consistently filled with errors, has only very recently been automated, and PRTC has yet
10 to reconcile the first month of UNE-P invoicing disputes. As recently as October 28,
11 2003, PRTC just informed us that in the transition to UNE-P billing it has been unable to
12 invoice some of the charges and will be forced to invoice for five months back billing.
13 Further, there are no official pre-ordering and ordering procedures and there is extremely
14 limited and inadequate OSS for UNE-P provisioning. All of these deficiencies still exist
15 despite the obligations to be prepared for UNE-P since 1996 and after a two year old
16 active contract to provide UNE-P to WorldNet.

17
18 This is meant to serve as an illustration of how PRTC responds to competitive requests
19 and obligations. I have no reason to believe that PRTC will perform differently now. In
20 fact, I believe that history serves as strong evidence that they will perform in the same
21 manner in its obligations to provide loops, cross connects and collocation. Intentionally
22 or not, PRTC is not prepared to provide these services and facilities and has shown no
23 indication that it will in the near future without a competitor willing to spend hundreds of
24 thousands or millions of dollars and fight for at least a year.

25
26 **Q. Is PRTC's inexperience with UNE loops, collocation, and cross-connects the only**
27 **source of operational or economic barriers caused by PRTC?**

28
29 **A.** No. To begin with, PRTC has either had documented problems with or does not have
30 much if any experience in providing other services or cooperation that are necessary for
31 competitors like WorldNet to deploy their own high capacity local switching effectively
32 in Puerto Rico. For example, PRTC has been the subject of a complaint filed with the
33 Board alleging that PRTC is not providing local number portability to competitors.
34 Similarly, with only a handful of competitor switches deployed in Puerto Rico, PRTC has
35 little to no demonstrated experience or track record in cooperating with competitors
36 wanting to deploy additional facilities to gain or share access to easements or rights-of-
37 way provided by third parties.

38
39 **Q. Are there any other operational or economic barriers caused by PRTC?**

40
41 **A.** Yes. The fact that PRTC is so far behind other ILECs does not just make this an easy
42 case because PRTC is not ready to provide UNE loops, collocation, or cross-connects
43 effectively. It also makes this an easy case as a matter of policy.

44
45 In the rest of the jurisdictions covered by the FCC's no impairment finding, competitive
46 carriers have arguably had the benefit of the scheme that Congress created to promote

1 competition. In that scheme, Congress sought to give competitors mechanisms like resale
2 and UNEs to establish a market presence that would allow them to transition to facilities-
3 based service. In Puerto Rico, however, competitors have not yet had this opportunity.
4 Although PRTC has offered resale for several years, it did not provide a UNE to a
5 competitor in Puerto Rico until late last year (i.e., more than 7 years after it was required
6 by law to do so). And, and perhaps more importantly, PRTC has still (despite numerous
7 pending orders) not provided to a competitor a single high capacity UNE circuit.
8

9 At a minimum, the unavailability of UNE-based service as a transition to facilities-based
10 service (as Congress intended) has created an obvious operational and economic barrier
11 for competitors in Puerto Rico that competitors in almost every other jurisdiction simply
12 do not face. Simply put, PRTC has not given competitors in Puerto Rico the opportunity
13 to establish a market presence through the all of the tools that Congress provided. And,
14 in this proceeding, it would be completely absurd to preserve a presumption in Puerto
15 Rico markets that competitors no longer need a transition mechanism that PRTC has not
16 even made available to them yet.
17

18 The FCC's presumption of no impairment simply does not reflect the reality of a
19 competitive market that PRTC has kept years behind the markets served by its ILEC
20 counterparts in the states. Substantial and unique operational and economic barriers exist
21 in Puerto Rico markets, and the Board should seek an immediate waiver of the FCC's no
22 impairment finding at the conclusion of this proceeding. Puerto Rico is a perfect
23 example of why the FCC gave the states and territories the opportunity to rebut the
24 national finding no impairment.
25

26 **Q. Does this conclude your testimony?**

27
28 A. Yes, although I reserve the right to amend or supplement it based on discovery
29 information that WorldNet has yet to receive from PRTC and other parties in this
30 proceeding.

**COMMONWEALTH OF PUERTO RICO
TELECOMMUNICATIONS REGULATORY BOARD
OF PUERTO RICO**

FCC's Triennial Review Order	)	Case Number JRT-2003-CCG-0004
)	
	)	Re: Review of High Capacity Business
	)	Customer Local Circuit Switching
)	

**DIRECT TESTIMONY OF
ROBERT W. WALKER
ON BEHALF OF WORLDNET TELECOMMUNICATIONS, INC.**

1 **Q. What is your name and business address?**

2
3 A. My name is Robert W. Walker. I am sixty-seven years old. I am the founder and
4 president of Comsource, Inc., a telecommunications regulatory and technology consulting
5 firm located at 22W343 Arbor Lane, Glen Ellyn, Illinois 60137

6
7 **Q. What is your professional background and experience?**

8
9 A. I have nearly 44 years of direct and full time experience in the telecommunications
10 industry, with 33 of those years spent employed at Illinois Bell and Ameritech. I have
11 held a wide range of technical staff and management positions within Illinois Bell and
12 Ameritech in the switching, transport and operational support systems ("OSS") areas.

13
14 Prior to my departure from Ameritech, I held the position of Director of Transport
15 Planning and, before that, Director of Transmission at Illinois Bell. Prior to that I was
16 director of Technical Development for Ameritech Development Corporation. I was
17 responsible, as part of my duties for this major incumbent local exchange carrier, for a
18 wide range of network planning and implementation issues relating to its provision of
19 telecommunications services to its customers. Further, I was responsible for helping
20 Ameritech to anticipate and prepare for the advent of competition, and to address
21 appropriate implementation systems to accommodate new competitive technical and legal
22 requirements.

23
24 I established Comsource, Inc., in 1994. Comsource's efforts are largely focused on a
25 range of issues in the competitive telecommunications industry, including among others
26 assisting competitive local exchange carriers ("CLECs") entering the telecommunications
27 business with technical and regulatory matters. Through Comsource, I have been
28 involved with, among other things, more than 85 interconnection agreements, coast-to-
29 coast with every major U.S. incumbent telephone company, including all of the RBOCs,
30 Sprint, GTE, CenturyTel, Alltel, and Puerto Rico Telephone. I have also had extensive

1 experience, through Comsource, in working with competitive carriers to articulate and
2 implement their deployment of a facilities based competitive offering, including among
3 other things the planning, acquisition, and deployment of switches, and the myriad of
4 associated processes and issues associated with competitive deployment.
5

6 **Q. What issues are you addressing in your testimony?**
7

8 A. My testimony will address unique operational and economic impairments to competitive
9 local exchange service providers attempting to provide service within the Puerto Rico
10 market, especially in comparison to mainland markets.
11

12 **Q. Have you had experience in both the mainland and in Puerto Rico?**
13

14 A. Yes. I have had extensive experience working on competitive telecommunications issues
15 with both CLECs and mainland ILECs on service implementation. My experience with
16 PRTC dates back to the passage of the federal Telecommunications Act in 1996. As part
17 of an arbitrated agreement between KMC and PRTC, among many other things, I wrote,
18 at PRTC's request, PRTC's CLEC and Reseller manuals. I participated in the KMC
19 arbitration proceeding to its conclusion. I have continued my active involvement in
20 Puerto Rico competitive telecommunications issues since that date. Among other things,
21 I was involved in negotiations between WorldNet and PRTC in 2001 to establish a
22 comprehensive interconnection contract, including participating in direct discussions with
23 PRTC and offering expert testimony in the arbitration proceeding before the Board on
24 interconnection and related issues. More recently, I served on the joint WorldNet - PRTC
25 implementation team established to facilitate unbundled network element ("UNE")
26 combinations, detailed billing, and performance standards set forth in the parties'
27 interconnection agreement. Through this implementation process, I had the opportunity,
28 again, to interact directly and frequently with PRTC representatives on a range of issues
29 relating to implementing an interconnection agreement and, more specifically, evaluating
30 PRTC preparedness to move into a UNE-P, and ultimately, facilities based, competitive
31 environment.
32

33 **Q. How does the competitive situation in Puerto Rico differ from the mainland?**
34

35 A. Unlike most of its ILEC counterparts on the mainland, PRTC simply does not have the
36 systems in place to provide UNEs and other facilities to competitors effectively or
37 efficiently, nor is it close to being ready to accommodate robust facilities-based
38 competition. PRTC has shown little inclination to develop such systems on their own,
39 preferring instead to require the CLEC to participate in endless and largely ineffective
40 implementation meetings where little, if anything, is accomplished. Based upon my
41 experience, PRTC is light years behind the mainland ILECs, many of whom have long
42 since established process and systems to address CLEC requirements. Remember, in the
43 development of local competition, the natural progression for an ILEC begins with
44 offering resale, shifts to UNE-P, and then ultimately to accommodate full facilities-based
45 service through, among other things, interconnection and collocation. Each of the tasks

1 associated with this progress becomes more challenging. PRTC has not even come close
2 to demonstrating competence for the first two steps (i.e., resale and UNE-P). Their track
3 record is one of substantial delay, roadblocks, and ultimately throwing their hands in the
4 air and requiring their competitors to figure out appropriate methods, procedures and
5 systems for various provisioning issues -- a tactic I witnessed firsthand in our
6 implementation meetings with PRTC. This approach foists an incredible additional
7 burden of cost and delay upon competitors in Puerto Rico, which I have not seen
8 anywhere on the mainland. Therefore, in my opinion, there is no way PRTC could
9 possibly be ready to accommodate full-fledged facilities-based competition without
10 imposing astronomical costs, risks, and delays upon competitors.

11
12 This is one of the reasons competition is underdeveloped in Puerto Rico. My review of
13 the September 2003 Local Exchange Routing Guide ("LERG"), identifies nine purported
14 CLECs in Puerto Rico. However, after specific investigation of each, it is apparent that
15 several are defunct. In fact, my review of the data and accompanying investigation
16 shows that only one switched based voice competitor is currently in operation on the
17 island, Lambda Communications, Inc., a subsidiary of Centennial Wireless of Puerto
18 Rico. While the records also apparently show a company called Islanet, Inc.- PR, my
19 investigation revealed that they are not a switch-based provider of local voice service to
20 customers, but rather a niche company, providing Internet access and data transport to
21 business customers. It is my understanding that Primus has indicated that they also will
22 be entering the Puerto Rico market, although the September 2003 LERG lists no switch
23 entry for Primus in LATA 820. In their response to the Board's information request,
24 Primus stated that they expect to install a Nortel DMS 250 switch and interconnect to a
25 number of PRTC offices. The DMS 250 is a tandem, class 4, long distance switch, not
26 really suited for local exchange service. In Primus' response to the Board, they indicated
27 that they expect to provide local service in Puerto Rico through resale. In short, as far as
28 I could tell, these are the only competitor facilities on the island. This is incredible when
29 one considers that mainland cities comparable in size to San Juan have dozens, if not
30 hundreds, of switch-based local exchange competitors. Indeed, in my experience, Puerto
31 Rico may be the least developed market in the country for facilities-based competition.

32
33 **Q. Why, based upon your experience in Puerto Rico and in the mainland, hasn't**
34 **competition been as robust in Puerto Rico as elsewhere?**

35
36 **A.** A critical factor in the lack of competition is the difficulty in working with PRTC (a
37 difficulty which appears sometimes to stem from downright intransigence on PRTC's
38 part) and the inability of competitors to obtain collocation space and to secure UNEs in a
39 prompt and cost effective fashion. Dealing with PRTC imposes a set of operational,
40 financial, and planning hurdles beyond what is the norm and must clearly be considered
41 as an additional and significant barrier and cost of doing local competitive business in
42 Puerto Rico.

1 **Q. Beyond your extensive experience dealing with PRTC, are you aware of any other**
2 **evidence of the competitive problems created by PRTC?**

3
4 A. Yes. For instance, Centennial, in their response to the Board's information request,
5 admitted that Centennial early on abandoned that company's efforts to secure loops and
6 other UNEs from PRTC, finding the effort nonproductive. As a result, Centennial was
7 forced to construct their own facilities to access Centennial's subscribers. Very few
8 CLECs could afford such an undertaking. Moreover, there are distinct differences in
9 Puerto Rico that made it very difficult for a competitor to obtain UNEs and to establish
10 collocation sites in PRTC offices.

11
12 **Q. What are those differences?**

13
14 A. Over the course of the last seven years, the mainland ILECs have developed operational
15 support systems (OSS) to process and track CLEC local service requests (LSRs) in
16 response to pressure from the CLEC community and the regulatory agencies. The typical
17 RBOC may process thousands of LSRs daily with few difficulties. Nothing resembling
18 this process exists at PRTC. Thus, a competitor is faced with developing such a process
19 with PRTC from scratch -- a very time consuming and costly undertaking.

20
21 Similarly, mainland ILECs have processes in place that routinely port hundreds of
22 working telephone numbers to their competitors with minimum service disruption. There
23 is little to suggest and, based on my experience, I highly doubt that PRTC will match or
24 even come close to that level of performance.

25
26 Likewise, on the mainland, the collocation process, while not as formalized as the LSR
27 process, has largely been defined, with detailed pricing and firm schedules established
28 and approved by arbitration with the regulatory agencies. In short, the process has
29 become routine. This has not occurred in Puerto Rico where Centennial found it
30 necessary to file a complaint with the Board about both the time necessary to construct a
31 collocation site and the costs.

32
33 Finally, unlike on the mainland, PRTC cannot now efficiently provision individual UNE
34 orders, let alone even begin to think about the bulk UNE provisioning that robust
35 competition requires. Further, it is years away from being able to do so. As the
36 experience on the mainland illustrates, it takes years of diligent effort by the ILEC,
37 regulators and competitors to get the necessary UNE provisioning and ordering process in
38 place.

39
40 **Q. What other barriers are there to competition?**

41
42 A. A key issue is the need for competitors to install a switch. Indeed, a switch is an essential
43 element in providing service. However, a switch alone without the supporting network
44 infrastructure is useless. Facilities-based competition requires, in addition to substantial
45 and appropriate interaction with the ILEC, a host of supporting facilities and network

1 arrangements besides just purchasing and installing a switch. And, among other things,
2 because there is such a paucity of local competition in Puerto Rico compared to other
3 markets, the associated support infrastructure and services are not as easily and cost
4 effectively available to service such a deployment. For many such supporting services,
5 Puerto Rico competitors need to turn outside the island. This drives up cost and operates
6 as an operational and economic barrier to facilities-based competition. Few competitors
7 can do what Centennial has done (i.e., construct their own fiber network from scratch).
8 Centennial admits to spending over \$500 million on its facilities in Puerto Rico. This
9 represents a significantly larger amount than many mainland CLECs typically spend.
10 The higher cost presents, in my opinion, a prime example of the added operational and
11 economic barriers associated with deploying a facilities-based network in Puerto Rico.
12

13 **Q. Does the inability to secure UNEs impose other limitations?**

14
15 A. Yes. It is neither practical nor cost effective for a CLEC to build facilities to every
16 possible customer. Thus, even CLECs such as Centennial must ultimately seek
17 accommodation with PRTC in order to secure UNE loops. This also requires collocation.
18 Unfortunately, PRTC has made little progress in developing an efficient and effective
19 means for provisioning UNE loops or developing the means to construct reasonably
20 priced collocation. Thus, the costs continue to escalate as the CLEC attempts to reconcile
21 these issues in implementation meetings with PRTC.
22

23 In most mainland locations, the largest single cost is the switch, which, for planning
24 purposes, has an installed price typically of about \$150 per line. However, if the CLEC
25 is unable to secure UNEs from the ILEC, the largest capital cost will be for the
26 construction of transport facilities. This constitutes a major impairment to competition,
27 as is amply demonstrated in Puerto Rico.
28

29 **Q. Besides failure to offer UNEs, are there other operational impairments in PRTC's**
30 **systems today?**

31
32 A. Yes. Their OSS system is now somewhat of a joke among those in the industry. PRTC
33 required WorldNet to defer for ten months ordering UNE-P (even though legally PRTC
34 should have been required to provide such combinations immediately) so that PRTC
35 could clean up and prepare its OSS system to accommodate UNE-P. Even with the ten
36 month extension, PRTC did not come close to meeting this commitment. Among many
37 other things, we ultimately had to hand-calculate a number of key items and create so
38 called "composite" estimates because PRTC's OSS was not ready. Worse, after
39 nevertheless touting this new system, it now appears they have scrapped the whole thing
40 and are now starting over. Suffice it to say that the prospect of dealing with such a level
41 of problematic, untested, and unreliable OSS systems is highly unattractive to competitor
42 wishing to enter the Puerto Rico market.
43

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**WAIVER PETITION OF THE TELECOMMUNICATIONS
REGULATORY BOARD OF PUERTO RICO
FOR ENTERPRISE MARKET SWITCHING IMPAIRMENT IN
DEFINED PUERTO RICO MARKETS**

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)	
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**WAIVER PETITION OF THE TELECOMMUNICATIONS
REGULATORY BOARD OF PUERTO RICO
FOR ENTERPRISE MARKET SWITCHING IMPAIRMENT IN
DEFINED PUERTO RICO MARKETS**

The Telecommunications Regulatory Board of Puerto Rico ("Board") hereby submits this Waiver Petition that rebuts the Federal Communications Commission's ("Commission") national finding of no impairment for the unbundling of local circuit switching to serve end users using DS1 capacity and above loops ("Enterprise Customers") in defined Puerto Rico markets. Said Waiver Petition is filed under Section 51.319(d) of the Commission's rules. Based on the record of an expedited proceeding before the Board these past three months, the Board requests that the Commission waive its rule exempting Puerto Rico Telephone Company, Inc. ("PRTC")¹ from unbundling circuit switching used by competitive local exchange carriers ("CLECs") to provide service to the Board-defined Enterprise Customer markets in Puerto Rico.

¹ At present PRTC is the only incumbent local exchange carrier serving the Commonwealth of Puerto Rico.

1. INTRODUCTION

In its *Triennial Review Order*,² the Commission found that, at a nationwide level, CLECs are not impaired without access to local circuit switching to serve Enterprise Customers. The Commission also stated that state commissions may rebut this finding by showing that operational or economic barriers exist in a particular market that result in impairment for local circuit switching serving Enterprise Customers. Based on the record of an expedited proceeding, the Board finds that due to operational barriers present in the local telecommunications market in Puerto Rico, CLECs are impaired without the ability to obtain unbundled local switching to serve customers Enterprise Customers. While operational barriers impair requesting carriers serving Enterprise Customers, the record before the Board did not contain sufficient information to rebut the economic criteria identified by the Commission. Notwithstanding the lack of a specific finding regarding economic criteria, the Board's findings rebut the Commission's national finding of no impairment; and are in accord with the Commission's rules emanating from the *TRO* and with the discussions contained within the *TRO* itself.

Because of the reasons established herein, the Board has determined to revisit whether CLECs continue to be impaired serving Enterprise Customers without access to local circuit switching under the operational criteria after a two-year period. The Board is

² 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, FCC 03-36, Report and Order and Order on Remand and Notice of Proposed Rulemaking (rel. August 21, 2003) ("*Triennial Review Order*" or "*TRO*").

committed to conduct a six-month proceeding in two-years that would determine whether the Board's findings no longer justify a waiver of the national impairment rules.

2. BACKGROUND

The Commonwealth of Puerto Rico is an insular territory of the United States. Notwithstanding its insular status, Puerto Rico has several metropolitan areas that have a high population density. In addition to a high population density, the Commission's Top 100 MSA List places the San Juan metropolitan area as the 27th largest metropolitan statistical area in the United States.³ Despite these significant population characteristics, telecommunications competition has been slow to develop in Puerto Rico.

The telecommunications market in Puerto Rico has developed from a set of historical, cultural, technical, and political dimensions that are unique within the United States. From 1974 through 1999, a state-owned monopoly dominated the market in Puerto Rico. The Puerto Rico Legislature created the Board in 1996. Subsequent to its creation, a majority share of the state-owned incumbent local exchange carrier ("ILEC"), PRTC, has been purchased and is now controlled by Verizon Communications, Inc. as part of its international holdings.

Since its creation, the Board has worked to promote a transition from a market dominated by a state-controlled monopoly (and characterized by a level and quality of service less than experienced in much of the mainland), to an open and competitive market. This

³ The U.S. Department of Commerce Census Bureau 2000 Census shows the San Juan area to have a total population of 1,595,333. *See* Brief of Puerto Rico Telephone Company, Inc., page 9.

process has been difficult, but the Board has made significant progress given the unique obstacles the Puerto Rico market represents. Nevertheless, competition in the local telephone market in Puerto Rico has been slow to develop, and robust, facilities-based competition has yet to take root.

The Board concludes that the circumstances that enabled the Commission to make a finding of no impairment for unbundled switching for Enterprise Customers nationally are not present in the Puerto Rico market. The Board believes that when the Commission takes into account the uniqueness of the Puerto Rico market, as set forth below, it will find that waiver of its earlier finding of “no impairment” for competitors seeking to utilize unbundled switching to serve Enterprise Customers is appropriate.

While the Commission cited as evidence of no impairment on a national level the “widespread switch deployment” to provide DS1 and higher capacity service;⁴ the widespread switch development that the Commission highlighted in the *TRO* does not yet exist in Puerto Rico. According to the Board’s record, only one facilities-based competitor exists on the island. There are six resellers on the island, with the top two resellers controlling nearly 95% of the reseller market.⁵ This is in contrast to the multitude of resellers and facilities providers that have entered many markets of similar size on the mainland. The factors that the Commission found justified a finding of no impairment for enterprise customers simply are not yet present in the Puerto Rico markets. In evaluating the Puerto Rico markets, it appears that because of a variety of

⁴ See *TRO* at ¶ 419.

⁵ The top reseller has 80 percent of the reseller market in Puerto Rico.

reasons, the markets are more embryonic than corresponding markets on the mainland. The Board believes that the discontinuation of local circuit switching for Enterprise Customers would impair CLECs from growing into robust competitors in vibrant competitive markets.

The Board respectfully requests that the Commission waive its rule exempting ILECs from unbundling local switching for Enterprise Customers in Puerto Rico.

3. DISCUSSION

In this Waiver Petition, the Board will first review the authority and standard for review required by the Commission in its rebuttal of the national finding. Thereafter, the Board will define the various markets that exist for Enterprise Customers and it will review its findings related to operational barriers and economic barriers that rebut the national finding for the Puerto Rico enterprise markets.

A. Commission Authorization of Waiver Petition

In the *TRO*, the Commission made a national finding based on the record evidence but allows the Board, as a state commission, to rebut that finding based on a more granular inquiry. In explaining its standard, the Commission states:

We conclude that a more targeted, granular unbundling analysis is needed in light of the lessons learned over the last three years. To achieve the successful implementation of our new framework, we have examined what role the states should play. The policy framework we adopt in this Order is based on carefully targeted impairment determinations. Where appropriate, based on the record before us, we adopt uniform rules that specify the network elements that must be unbundled by incumbent LECs in all markets and the network elements that must not be unbundled, in

any market, pursuant to federal law. In doing so, we exercise our authority pursuant to sections 201(b) and 251(d) of the Act. As we explain in this Order, we find that setting a national policy for unbundling some network elements is necessary to send proper investment signals to market participants and to provide certainty to requesting carriers, including small entities. We find that states do not have plenary authority under federal law to create, modify or eliminate unbundling obligations.⁶

One of the targeted impairment determinations that the Commission allows the Board to rebut is the provisioning of local circuit switching for Enterprise Customers. The Commission has specifically defined Enterprise Customers and state commission rebuttals in the following note:

For purposes of determining whether impairment exists according to our standard, we define DS1 enterprise customers as those customers for which it is economically feasible for a competing carrier to provide voice service with its own switch using a DS1 or above loop. We determine that this includes all customers that are served by the competing carrier using a DS1 or above loop, and all customers meeting the DS0 cutoff described below in paragraph 497. As discussed below, however, we determine that the state commissions are best situated to identify potential enterprise customers, *i.e.*, those customers for whom it could be economically feasible to serve using a DS1 or above loop. See *infra* para. 497. Because of the expected difficulties and detailed information needed in conducting this inquiry, we allow the states nine [*sic*] months to make this identification, which would include determining the maximum number of lines that a carrier may obtain from a particular customer before that customer is classified as a enterprise customer. We expect such analysis to be conducted at the same time as the analysis of the mass market. State commissions have discretion to define the relevant markets for purposes of this inquiry, provided they follow the guidelines described here and below. See *infra* Part VI.D.6.a.(ii)(b)(i) (discussing the market definition to be used by states).⁷

Furthermore, the Commission specifically authorized the Board to rebut its national finding based on a more granular analysis. In the *TRO*, the Commission states:

⁶ *TRO* at ¶ 187, notes omitted.

⁷ *TRO* at note 1376.

While the record in this proceeding does not contain evidence identifying any particular markets where competitive carriers would be impaired without unbundled access to local circuit switching to serve enterprise customers, state commissions are uniquely positioned to evaluate local market conditions and determine whether DS1 enterprise customers should be granted access to unbundled incumbent LEC circuit switching. To that end, we permit state commissions to rebut the national finding of no impairment by undertaking a more granular analysis utilizing the economic and operational criteria contained herein. State commissions will have 90 days from the effective date of this Order to petition the Commission to waive the finding of no impairment. State commissions wishing to do so must make an affirmative finding of impairment showing that carriers providing service at the DS1 capacity and above should be entitled to unbundled access to local circuit switching in a particular market. State commissions have discretion to define the relevant markets for purposes of this inquiry, provided they follow the guidelines described here and below. After the 90-day period, states may wish, pursuant to state-determined procedures, to revisit whether competitive LECs are impaired without access to unbundled local circuit switching to serve enterprise customers due to changes in the specified operational and economic criteria.⁸

Based on this authorizing language, the Board has the authority to file this Waiver Petition specifically rebutting the Commission's national finding of no impairment. The Commission codified the authorization of a Waiver Petition in 47 CFR § 51.319(d)(3):

(3) DS1 capacity and above (i.e., enterprise market) determinations.

An incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops except where the state commission petitions this Commission for waiver of this finding in accordance with the conditions set forth in paragraph (d)(3)(i) of this section and the Commission grants such waiver.

And in 51.319(d)(5):

(5) State commission proceedings. A state commission shall complete the proceedings necessary to satisfy the requirements in paragraphs (d)(2)

⁸ *TRO* at ¶ 455, notes omitted. The ninety-day deadline established by the Commission is December 31, 2003. Despite a stay of the *TRO* by the Second Circuit, US Court of Appeals which may extend this deadline, the Board files this Waiver Petition in a timely manner regardless of the effectiveness of the stay.

and (d)(3) of this section in accordance with paragraphs (d)(5)(i) and (d)(5)(ii) of this section.

(i) *Timing.* A state commission shall complete any initial review applying the triggers and criteria in paragraph (d)(2) of this section within nine months from the effective date of the Commission's Triennial Review Order. A state commission wishing to rebut the Commission's finding of non-impairment for DS1 and above enterprise switches must file a petition with the Commission in accordance with paragraph (d)(3) of this section within 90 days from that effective date.

(ii) *Continuing review.* A state commission shall complete any subsequent review applying these triggers and criteria within six months of the filing of a petition or other pleading to conduct such a review.

In the discussion hereafter, the Board's record evidence satisfies the requirement to rebut the Commission's finding of non-impairment. Additionally, the Board will open, on its own motion, a continuing review of its impairment findings in two years from the filing date of this Waiver Petition to determine whether the operational barriers that exist today have been sufficiently removed, thereby allowing the Board to withdraw its waiver of the Commission's national policy.

B. Standard for Review

In addition to authorizing the Board to rebut the Commission's national finding regarding the present matter, the Commission has established a specific standard for review in both its discussion in the *TRO* and its rules emanating from the *TRO*. In this section, the Board will review this standard for review.

In the *TRO*, the Commission develops the standard for review state commissions must use in rebutting the national finding of non-impairment. Specifically, the Commission states:

... while the record shows that cut over cost differentials are eliminated and other operational challenges may be mitigated when competitive carriers use their own switches to serve enterprise customers, the characteristics of enterprise markets do not eliminate all of the cost and operational disadvantages. For example, in a local market with low retail rates, it is possible that difficulties in obtaining collocation space, costs accompanying collocation, high UNE rates for local loops, and backhaul costs could make it uneconomic for competitive LECs to self-deploy switches specifically to serve the enterprise market. In particular, the record suggests that such factors make impairment more likely in rural areas.⁹

The Commission specifies two criteria that must be used in the Board's rebuttal. In addressing operational and economic criteria, the Commission states:

Operational Criteria. In order to rebut the Commission's finding of no impairment as it relates to operational barriers, the states must examine whether operational factors are impairing competitors, according to our impairment standard discussed above. In particular, state commissions must consider whether incumbent LEC performance in provisioning loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC, or difficulties in obtaining cross-connects in an incumbent's wire center, are making entry uneconomic for competitive LECs. We believe, based on the large record in this proceeding, that these factors can raise barriers to entry. We lack, however, sufficient specific evidence concerning whether and where they will be significant enough to constitute impairment. We therefore ask state commissions to consider evidence, which could include performance metrics and standards for BOCs or other types of evidence for non-BOC incumbent LECs, of whether these factors are impairing entrants in the enterprise market, and whether unbundling will overcome this impairment.

Economic Criteria. To rebut the Commission's finding that competitive LECs are not impaired by the lack of access to unbundled local circuit switching, the states must find that entry into a particular market is uneconomic in the absence of unbundled local circuit switching. To make this determination, states must weigh competitive LECs' potential revenues from serving enterprise customers in a particular geographic market against the cost of entry into that market. In evaluating competitive LECs' potential revenues, the states should consider all likely revenues to be gained from entering the enterprise market (not necessarily any carrier's individual business plan), including revenues derived from local exchange and data services. The states should also consider the

⁹ TRO at ¶ 454, notes omitted.

prices entrants are likely to be able to charge, after considering the prevailing retail rates the incumbents charge to the different classes of customers in the different parts of the state. In determining the cost of entry into a particular geographic market, the states should consider the costs imposed by both operational and economic barriers to entry.¹⁰

It is noteworthy to indicate that while the requirements listed by the Commission must be addressed, the Commission did not exclude other operational considerations that the Board could examine in rebutting the national finding. As will be shown hereafter, the record evidence in the Board's proceeding rebuts the operational criteria specifically established by the Commission and rebuts the general notion of PRTC operational efficiency in its dealings with CLECs operating within Puerto Rico. The Board finds that there is substantial operational evidence in the record that rebuts the impairment standard that points to the establishment and maintenance of barriers to entry making such entry into the market uneconomic.

In addition to these two criteria, the Commission states a general requirement that the Board consider all relevant factors that would lead to uneconomic entry by CLECs :

The states must consider all relevant factors in determining whether entry is uneconomic in the absence of unbundled access to local circuit switching. For example, even in a market where retail rates would give competitive carriers the opportunity to earn considerable revenues, entry may nonetheless be uneconomic. For example, the potential revenues could be outweighed by a combination of even higher economic and operational costs, such as untimely and unreliable provisioning of loops, transport, or collocation by the incumbent LEC at high non-recurring charges, and significant costs to purchase equipment and backhaul the local traffic to the competitor's switch. However, where competitive LECs have the opportunity to earn revenues that outweigh the costs associated with entry, carriers are not impaired without unbundled access to local circuit switching for DS1 enterprise customers.¹¹

¹⁰ TRO at ¶ 456-457, notes omitted.

¹¹ TRO at ¶ 458.

This requirement emphasizes that the mere existence of operational or economic barriers are not sufficient to rebut the national finding. Rather, the rebuttal must determine that any potential revenue from Enterprise Customers is insufficient to overcome the economic cost resulting from the operational, economic or other barriers to entry. The Board has considered this requirement in the context of the Puerto Rico markets and, as is discussed hereafter, has found that the operational barriers are so significant as to satisfy this requirement and rebut the national finding of non-impairment for local circuit switching provided to Enterprise Customers.

The Commission has codified these requirements in one section of the CFR. Section 51.319(d)(3), which states:

(i) State commission inquiry. In its petition, a state commission wishing to rebut the Commission's finding should petition the Commission to show that requesting telecommunications carriers are impaired without access to local circuit switching to serve end users using DS1 capacity and above loops in a particular geographic market as defined in accordance with paragraph (d)(2)(i) of this section if it finds that operational or economic barriers exist in that market.

(A) In making this showing, the state commission shall consider the following operational characteristics: incumbent LEC performance in provisioning loops; difficulties associated with obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC; and the difficulties associated with obtaining cross-connects in the incumbent LEC's wire center.

(B) In making this showing, the state commission shall consider the following economic characteristics: the cost of entry into a particular market, including those caused by both operational and economic barriers to entry; requesting telecommunications carriers' potential revenues from serving enterprise customers in that market, including all likely revenues to be gained from entering that market; the prices requesting telecommunications carriers are likely to be able to charge in that market, based on a consideration of the prevailing retail rates the incumbent LEC charges to the different classes of customers in the different parts of the state.

The remaining standard necessary for the Board to review is the Commission's rule related to the definition of markets. In 47 CFR § 51.319(d)(2)(i), the Commission states:

Market definition. A state commission shall define the markets in which it will evaluate impairment by determining the relevant geographic area to include in each market. In defining markets, a state commission shall take into consideration the locations of mass market customers actually being served (if any) by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets profitably and efficiently using currently available technologies. A state commission shall not define the relevant geographic area as the entire state.

In defining the markets for Puerto Rico, there are three islands on which telecommunications services are generally made available: Puerto Rico, Culebra, and Vieques. All three islands are within the Commonwealth of Puerto Rico, and all three islands are identified within the market definitions adopted by the Board for its review.

C. Overview of Board's Proceeding

On October 1, 2003, the Board established a procedural schedule in order for interested parties to participate in providing argument, testimony and other evidence related to the Board's determination of whether to file a Waiver Petition to rebut the national finding of non-impairment for local circuit switching for Enterprise Customers.

The Board is pleased with the record evidence gathered in this proceeding. Despite the need to rush discovery, testimony and briefing schedules, as well as the need to adjust the schedules because of the Second Circuit stay of the *TRO*, the Board believes that a substantial amount of evidence was gathered and recognizes the efforts of all participating parties in this matter. The principal parties involved in this proceeding

include PRTC, WorldNet Telecommunications, Inc. (“WorldNet”), Telefónica Larga Distancia de Puerto Rico (“TLD”), Inc., and Centennial Puerto Rico License Corp. (“Centennial”).

Through the process of discovery, testimony and briefs, the Board has been able to develop a record that supports the Board’s finding that significant operational barriers exist in Puerto Rico. The record also provides ample evidence in the establishment of the Enterprise Customer markets in Puerto Rico. It is the market definition to which we first turn.

D. Establishment of Enterprise Customer Markets

The parties were not uniform in their proposals for defining Enterprise Customer markets. Among the proposals was the development of an island-wide market, the development of wire center markets and the development of three metropolitan markets and one rural market for all other portions of the Puerto Rico Commonwealth.

The Board examined each proposal and has found that the most appropriate market definition is the one that identifies three specific markets for three distinct metropolitan areas: San Juan, Ponce, and Mayagüez; and one market comprising the rural portions of the Commonwealth. The record evidence demonstrates that this market definition, proposed by PRTC, more accurately corresponds to the market characteristics of Enterprise Customers. Moreover, the other market definitions were not satisfactory in

that they were either too large – island wide, or too narrowly defined – wire center, to provide a reasonable market definition.¹²

Notwithstanding the above discussion, the Board notes to the Commission that, although the Board has identified separate markets in its analysis, the separation of Puerto Rico into these distinct markets effectively does not matter. As explained by the record evidence, specifically WorldNet's witness testimony and Centennial's discovery responses and oral arguments, the operational barriers existing in Puerto Rico to CLEC switch deployment do not vary throughout the Commonwealth. In particular, the operational and economic barriers flowing from PRTC's actions involving collocation appears to extend to every Puerto Rico market equally. Although certain individualized distinctions between markets may still exist (*e.g.*, different PRTC pricing for services provided in different areas of Puerto Rico), the core operational barriers in Puerto Rico apply without geographic distinction to the entire Commonwealth and alone lead to the ultimate conclusion that regardless of the geographic market definition employed, CLECs are impaired without access to unbundled PRTC high-capacity switching.¹³

¹² Some parties argued that the island wide definition was inconsistent with the Commission's requirement that the market definition not include the entire state or territory. As indicated above, there are three islands on which telecommunications services are provided; thus, an island wide definition would create three markets. However, this definition, while technically correct, is too large because the largest island, Puerto Rico, comprises nearly all if not all of the current Enterprise Customers.

The proposal to have markets defined as wire centers is too narrow of a definition and suffers from the same problem of an island-wide market; to wit, there would be separate markets that do not have any current Enterprise Customers and there is no rational reason in the record to define these areas separately.

¹³ See WorldNet Closing Brief.

Having established a market definition consistent with the Commission's rules, the Board now briefly reviews the record evidence related to the non-impairment finding adopted by the Commission.

4. NATIONAL NON-IMPAIRMENT STANDARD

Section 1.3 of the Commission's rules states that "[a]ny provision of the rules may be waived by the Commission . . . on petition if good cause therefore is shown."¹⁴ In finding that CLECs are not impaired without unbundled local circuit switching when serving Enterprise Customers, the Commission recognized that "a more geographically specific record may reveal such impairment in particular markets and thus allow states to rebut this national finding based on certain operations and economic criteria."¹⁵ In the *TRO*, the Commission recognized that "special circumstances" could create impairment without access to local circuit switching to serve enterprise customers in particular markets.¹⁶ Such is the case in all four markets in Puerto Rico.

1. **The Commission's National Findings are not Consistent with the Board's Record Evidence for Puerto Rico markets.**

The Commission based its national no impairment finding with regard to high-cap switching on two primary conclusions. Neither of these conclusions reflects the market conditions in Puerto Rico.

a. **There has not been a "significant" deployment of local wireline switches by CLECs in Puerto Rico.**

¹⁴ 47 U.S.C. § 1.3.

¹⁵ See *TRO* at ¶ 411.

¹⁶ See *TRO* at ¶ 421

The first conclusion that the Commission based its national no impairment finding on high-cap switching was that there has been a “significant nationwide deployment of switches by competitive providers to serve the enterprise market.”¹⁷ Although this may be true from a national perspective, it is not true in Puerto Rico.

The record in this case reflects that PRTC owns all but four (4) of the one hundred and eight (108) local service switches currently installed and operating in Puerto Rico.¹⁸ CLECs have deployed only about 3 percent of the local circuit switches in Puerto Rico. The Board believes that this is not “significant” CLEC deployment. In fact, 3 percent is the same small market penetration percentage that the FCC cited in finding impairment with regard to mass market local circuit switching.¹⁹

Moreover, the four CLEC switches in Puerto Rico are all owned by a single CLEC, Centennial.²⁰ According to expert testimony, mainland markets comparable in size to San Juan alone have numerous switch-based local providers.²¹ The entire Commonwealth of Puerto Rico has one. This, too, cannot be found to be “significant” CLEC deployment. The FCC’s national finding about “significant” CLEC switch deployment is simply not consistent with the market reality in Puerto Rico.

¹⁷ See *TRO* at ¶ 435.

¹⁸ See Reynolds Direct Testimony at Exhibit 1, p. 4; Centennial Response to Board Initial Information Request II.2.

¹⁹ See *TRO* at ¶ 438.

²⁰ See Centennial Response to Board Initial Information Request II.2.

²¹ See Walker Direct Testimony at 3 (lines 27-31).

b. No CLECs are competing in Puerto Rico using UNE-L (successfully or otherwise).

The second conclusion that the FCC based its national no impairment finding on high-cap switching was that CLECs “are competing successfully in the provision of switched services, using collocation network with associated backhaul transport, to medium and large enterprise customers without unbundled [high-cap switching].”²² Again, although this may be true in other parts of the nation, it is not true in Puerto Rico.

The record evidence reflects that CLECs in Puerto Rico are not “competing successfully” in providing switched services via collocation and backhaul transport (*i.e.*, UNE-L). In fact, they are not competing at all. Not one CLEC in Puerto Rico is providing switched services using UNE-L. Indeed, the only CLEC to deploy its own local switches in Puerto Rico has been asking PRTC to provide the collocation necessary for a UNE-L based service platform for more than three years without success.²³

Like the FCC’s national finding about “significant” CLEC switch deployment, the FCC’s national finding about “successful” UNE-L based competition has no basis in fact in

²² See *TRO* at ¶ 453.

²³ See Bogaty Rebuttal Testimony at 3 (lines 5-11) (relying on *Centennial Puerto Rico License Corp. v. PRTC*, Request for Emergency Order and Complaint, Case No. JRT-2003-Q-0070 (filed May 13, 2003).

Moreover, PRTC urges the Board to place considerable weight on the ability of competitors to utilize currently deployed wireless switches that serve customers throughout the Commonwealth. (Brief of Puerto Rico Telephone Company, Inc. page 11-12) PRTC points to Centennial as having modified its existing wireless switches thereby allowing it to serve both wireline and wireless customers. The Board declines to place considerable weight on this apparent competitive anomaly. The Board does not believe that competition should come exclusively from wireless carriers’ attempts to modify switches to accommodate wireline deployment. If the Board were to place undue weight on this fact, the number of competitive wireline providers would be circumscribed by the number of wireless carriers serving the Commonwealth. The Board’s ultimate vision is to have a robust competitive marketplace with a multitude of competitors in the significant Puerto Rico markets – a goal that has not yet been realized.

Puerto Rico. It is the Board's view that these disparities alone justify rebuttal of the FCC's no impairment finding.

- c. **Requiring CLEC to compete using a facilities-based approach is an appropriate policy for a mature competitive market. The markets in Puerto Rico are not yet mature that would justify adopting this policy approach.**

In addition to the two explicit justifications for the Commission's finding of non-impairment is the determination that facilities-based competition is the preferred avenue for CLECs. The Board understands the Commission's preference for facilities-based competition; however, the Board urges the Commission to consider that the three avenues of competitive entry: resale, UNE, and facilities-based provisioning all have a public interest benefit. One of which that is noted in the Board's record evidence is the evolutionary nature of CLEC operations. One CLEC operating in Puerto Rico has an extensive resale operation and is planning to migrate to a UNE platform in the eventual development of a facility-based operation. The evolutionary nature of competitive entry was anticipated by Congress when it adopted a three-prong approach. Other national markets may be at a point of evolution so that the encouragement of facilities-based entry is appropriate. However, the markets in Puerto Rico have not reached that evolutionary threshold where facilities-based competition should receive preferential policy treatment. As is demonstrated herein, there are significant operational issues regarding collocation, and possibly operational issues regarding UNE loops and cross-connects that warrant the continuation of the requirement that PRTC provide access to local circuit switching on

an unbundled basis to CLECs for the purpose of serving end-user customers using DS1 capacity and above loops.

2. Operational Criteria

Aside from attempts to clarify the record evidence, PRTC's response to all operational issues is that it is ready, willing and able to provide collocation, UNE loops and cross connects in a timely and efficient manner. It recommends that the Board conclude that no operational impairment exists in Puerto Rico markets. In examining the record evidence, the Board finds that there exists significant operational impairment in Puerto Rico markets that the Board believes are sufficient to rebut the Commission's national finding of no impairment.

a. **Despite its claim, PRTC is not ready or able to provide stand-alone UNE loops, collocation, or cross-connects.**

The *TRO* states that the Board may rebut the FCC's national no impairment finding if it finds that operational barriers exist in Puerto Rico markets.²⁴ According to the Commission:

In making this showing, the state commission shall consider the following operational characteristics: incumbent LEC performance in provisioning loops; difficulties associated with obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC; and the difficulties associated with obtaining cross connects in the incumbent LEC's wire center.²⁵

²⁴ See *TRO* at ¶ 456; 47 C.F.R. § 51.319(d)(3).

²⁵ See 47 C.F.R. § 51.319(d)(3)(i).

The record developed and reviewed by the Board shows that PRTC has not provided a stand-alone UNE loop to a CLEC in Puerto Rico.²⁶ PRTC has only recently completed two collocations and their final acceptance is a matter of dispute between PRTC and Centennial.²⁷ And, PRTC has not provided a cross-connect to a CLEC in Puerto Rico.²⁸ Simply put, the FCC identified three specific activities that it considers to be critical to switch-based competition, and apparently PRTC has not successfully done any of them. Evidence from Centennial's collocation experience unmistakably suggests that there are significant operational impediments to collocating with PRTC. This alone would satisfy the operational criteria outlined by the Commission.

Moreover, the Board's record evidence does not support the contention by PRTC in the proceedings before the Board that, despite its inexperience, PRTC is nevertheless "ready, willing, and able" to provide stand-alone UNE loops, collocation, and cross-connects effectively. As a general matter, it is unrealistic to assume that any ILEC can provide a service without difficulties or delays when it has never provided the service before.²⁹ Indeed, PRTC witness Correa readily admitted in his direct testimony that problems with

²⁶ See Correa Direct Testimony at 8 (lines 1-3). Mr. Correa mistakenly testified that PRTC has provided as contemplated in the FCC's analysis because it has provided UNE-P circuits to WorldNet that include UNE loops. The Commission's analysis, however, refers to providing stand-alone UNE loops -- a fundamentally different process that, unlike UNE-P, involves the physical cutover of loops to a CLEC collocation or switch. See Bogaty Rebuttal Testimony at 5 (lines 19-33); Walker Rebuttal Testimony at 3 (lines 42-45) & 4 (lines 1-6).

²⁷ See Correa Direct Testimony at 4 (lines 4-6). In Oral Arguments on December 16, 2003 the Board understood that there is a dispute regarding the finality of two Centennial collocation requests that have been fraught with unexpected delays and costs. Centennial's singular evidence is compelling and signals the various operational impediments CLECs face when attempting to collocate with PRTC.

²⁸ See Correa Direct Testimony at 10 (lines 2-5).

²⁹ See Bogaty Direct Testimony at 3 (lines 34-41); Walker Rebuttal Testimony at 1 (lines 27-30) & 2 (lines 1-3).

new service offerings should be expected.³⁰ Under the best circumstances, therefore, it would be difficult for the Board to find that PRTC that has never provided a UNE loop, cross-connect would nevertheless be able to do so well enough to validate the FCC's no impairment finding.

The record reveals beyond this, however, that PRTC's case does not even involve the best circumstances. Rather, the record documents 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.

With regard to collocation, the record simply does not support PRTC contentions that it is "ready, willing, and able," that it is providing collocation "apace," or that it has met all of its interconnection agreement deadlines in dealing with collocation requests.³¹ In reality, the only attempt that PRTC has made to provide collocation in Puerto Rico resulted in a formal complaint filed with the Board earlier this year. 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

³⁰ See Correa Direct Testimony at 4 (lines 15-16).

³¹ See Correa Direct Testimony at 5 (lines 11-13). Notably, Mr. Reynolds' testimony that PRTC is ready to provide collocation simply because collocation space is available is also not supported by law. The FCC analysis requires consideration of space availability, but also of difficulties and delays in obtaining that collocation space. See *TRO* at ¶ 456.

have been pending with PRTC for over three years.³² And, Centennial has commented on the record in this proceeding that despite its settlement of its complaint against PRTC, the collocation process devised by PRTC is still “highly problematic” and that “many issues remain.”³³

Very similarly, the record also reveals that in 2001, PRTC committed to be “ready, willing, and able” to make UNE-P available for the first time in Puerto Rico by no later than October 1, 2002. On October 1, 2002, however, PRTC did not provide UNE-P as required or promised. Although PRTC tacitly accepted and processed initial UNE-P orders, it did so without processes or systems in place for a host of important UNE-P arrangements, including, importantly, detailed usage billing.³⁴ Moreover, the completion of WorldNet’s initial orders was (and, over a year later, still is) plagued with significant and costly process breakdowns, including widespread and recurring billing errors, completely unnecessary disconnections of WorldNet customers, and a billing system that, according to PRTC, was (and still is) not yet configured to charge WorldNet based on WorldNet customers’ actual usage of UNE-P lines.

Finally, the record also reveals that PRTC has had four years of experience in providing resale services to WorldNet. Yet, despite continuing WorldNet complaints, meetings, and PRTC promises, PRTC is providing bills to WorldNet that require, according to

³² See Bogaty Rebuttal Testimony at 3 (lines 5-11) (relying on *Centennial Puerto Rico License Corp. v. PRTC*, Request for Emergency Order and Complaint, Case No. JRT-2003-Q-0070 (filed May 13, 2003)).

³³ See Centennial Response to Initial Board Information Requests II.9 & II.17.

³⁴ In like manner, the PRTC processes and plans described by Mr. Correa in his direct testimony do not address a number important provisioning issues with which PRTC has historically had substantial and crippling problems, including most prominently, billing.

WorldNet, it to make approximately 5,000 manual adjustments each month and, in some cases, reflect errors that have been included on every WorldNet bill for the past four years.³⁵

In conducting its analysis, the Board found it 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. The Board finds this evidence compelling enough to rebut the Commission's national finding and to warrant a Waiver Petition.

b. PRTC is not ready or able to provide other services necessary for CLEC switch deployment.

In the *TRO*, the Board notes that the Commission did not limit the Board to considering only PRTC's performance with regard to providing UNE loops, collocation, and cross-connects. Instead, the FCC went on to ask state commissions also to consider "other evidence" regarding potential operational barriers.³⁶

³⁵ See Bogaty Direct Testimony at 4 (lines 4-10).

³⁶ See *TRO* at ¶ 456.

In this case, the record includes “other evidence” of operational barriers in Puerto Rico markets, which, again, reflects problems created by PRTC inexperience and its history of ignoring service obligations until forced to confront them. For example, the record indicates that there is a complaint regarding PRTC’s provisioning of local number portability to a CLEC in Puerto Rico.³⁷ Local number portability is a vital and necessary component to CLEC switch deployment, and it is an obligation and issue that PRTC has largely ignored.

Similarly, the record indicates that PRTC has little to no experience in cooperating with competitors to gain or share access to necessary easements or rights-of-way provided by third parties.³⁸ Quite simply, without this experience or any existing service commitments or processes with regard to this necessary service, PRTC has placed itself in another very powerful position to frustrate CLEC efforts to deploy facilities and, accordingly, to create a significant operational barrier.

Moreover, as noted above, CLEC switch deployment in Puerto Rico has been negligible in comparison to other jurisdictions governed by the *TRO*. Puerto Rico simply has not yet had the opportunity to establish the support systems and vendors, consultants, technical experts, and other critical resources that have become readily available in other jurisdictions.³⁹ In essence, without access to PRTC high-cap switching, CLECs would be

³⁷ See Bogaty Direct Testimony at 5 (lines 29-33); Walker Rebuttal Testimony at 4 (lines 2-6).

³⁸ See Bogaty Direct Testimony at 5 (lines 34-37).

³⁹ See WorldNet Response to Initial Board Interrogatory No. 17.

forced to incur the time, resources, and expense of creating these support systems nearly from scratch.

The Board finds that there are substantial operational barriers related to PRTC operations that strongly rebut the national finding of non-impairment. CLECs interested in the Puerto Rico market have entered and then have exited the marketplace, even after extensive interconnection agreements have been arbitrated. This suggests to the Board that the operational hurdles carry a significant financial burden so as to make entry into the Puerto Rico markets uneconomic. The Board is hopeful that in the next 2 years, the track record of PRTC in cooperating with CLECs and in the provisioning of network components will justify a removal of the provisioning of high-capacity switching. As it indicated earlier, the Board will open a proceeding within two years of the filing deadline of this Waiver Petition to determine whether PRTC's actions have improved to warrant removal of the operational considerations mentioned above. Thus, the Board requests that the Commission grant this Waiver Petition so that the markets in Puerto Rico may mature in the next two years, thereby justifying the removal of local circuit switching for Enterprise Customers that would integrate Puerto Rico into the national uniform policy envisioned by the Commission.

5. ECONOMIC CRITERIA

In addition to the costs imposed by the operational criteria discussed above, the Commission also identified economic criteria that also cause barriers to entry. The Commission's rules state that a successful rebuttal of the national finding of non-

impairment can be obtained by either showing the existence of economic characteristics of costs caused by operational barriers, economic barriers to entry, or both.⁴⁰ The evidence supporting operational barriers is so strong that the Board determines that it does not need to examine, at this time, the specific economic barriers evidence in the record.

If it were to do so, the Board would find that the record evidence is incomplete as to economic barriers and therefore cannot make any findings regarding the same. Hence, the Board will leave to another time a complete examination of economic barriers. The 90-day schedule did not provide sufficient time for a second round of Board interrogatories that would be necessary to develop the record evidence sufficient to support explicit findings related to economic barriers.

6. CONCLUSION

The Board respectfully requests that the Commission grant this Waiver Petition that would require the continuation of PRTC's provision of local circuit switching for Enterprise Customers. This waiver would apply to each of the four Enterprise markets described by PRTC and adopted by the Board in this Waiver Petition. The operational barriers to CLECs exist and are significant. The Board finds that these operational barriers pose a significant barrier to entry that makes entry into the Puerto Rico markets uneconomic.

⁴⁰ 47 CFR § 51.319(d)(3)(i).

The Board finds also that the record evidence is incomplete and therefore does not make any determination regarding economic barriers at this time. This finding is not a limitation to the Waiver Petition because the Commission's rules provide that operational barriers, economic barriers or both can successfully rebut the national finding of non-impairment. The granular findings made by the Board regarding operational barriers sufficiently rebut the national finding.

Furthermore, the Board will initiate a proceeding in two years to determine whether its findings regarding operational barriers have been removed by a successful track record posted by PRTC in the next two years.

Respectfully submitted,

/s/

Phoebe Forsythe Isaacs
Chair

**COMMONWEALTH OF PUERTO RICO
PUERTO RICO TELECOMMUNICATIONS REGULATORY BOARD**

Petition of

WORLDNET TELECOMMUNICATIONS, INC.

**Petition for arbitration pursuant to
Section 47 U.S.C. 252(b) of the Federal
Communications Act and Section 5 (b),
Chapter III, of the Puerto Rico
Telecommunications Act, regarding
interconnection rates, terms and conditions with**

PUERTO RICO TELEPHONE COMPANY, INC.

Docket No. JRT-2003-AR-0001

ARBITRATORS ORDER

March 29, 2004

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C. Status of PRTC and Competition in the Puerto Rico Market

On several occasions in the course of this hearing, and in virtually all its filed pleadings, PRTC has referred to itself as a "mid-size" ILEC. Indeed, in its Post Hearing Brief, PRTC claims status as a "small to medium-size" ILEC:

WorldNet wants to impose penalties for performance standards that go far beyond the penalties in an interconnection agreement involving a small to medium-size ILEC, such as PRTC.

PRTC Post Hearing Brief at 78.

In fact, PRTC is the ninth largest Local Exchange Carrier in the country, with approximately 1.3 million access lines, and its parent holding company is the largest LEC in the country with almost 58 million access lines. *See Phone Lines 2003*, JSI Capital Advisors, LLC (2003). Considering that there are over 1000 LECs in the United States and that the large majority have less than 100,000 access lines, characterizing PRTC as "small to medium-size" is disingenuous. Only 10 companies have more than a million lines and PRTC is one of them. PRTC may belong to "mid-size" industry groups (at least prior to acquisition of a controlling interest by Verizon), but it does not suffer from the lack of resources that true small to medium-size companies suffer from.

I also take notice of the Board's recent proceeding to consider whether to seek a waiver of the FCC's national finding of non-impairment for local circuit switching for "Enterprise" customers. *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 and 98-147, FCC 03-36, released August 21, 2003. That proceeding led to the filing of a Petition for Waiver on December 30, 2003. *Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico*, CC Docket No. 01-338 et al, December 30, 2003 ("Waiver Petition").

The *Waiver Petition* identified the market conditions in Puerto Rico that led to the Board's conclusion that there exist operational barriers in the local telecommunications market that impair CLECs without the ability to obtain unbundled local switching to some customers. Among the Board's conclusions, based on record evidence, is that PRTC has not successfully provided a standalone UNE loop to a CLEC in Puerto Rico, that PRTC has not completed a successful and timely collocation, and has not provided a successful cross-connect. *See Waiver Petition* at 20. The Board found that the track record of PRTC regarding wholesale failures makes claims of competence not credible:

[i]ndeed, 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.

Waiver Petition at 21.

The decisions I make today will be based upon the requirements of the Act, taking into consideration the Board's conclusions regarding the commitment of PRTC to the development of competition in Puerto Rico.

D. The "Opt In" Matter

Pursuant to Section 252(i) of the Act:

[a] local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

47 U.S.C. § 252(i).

This section, known as the Most Favored Nation clause, is reflected by the FCC in Section 51.809, which requires all ILECs to make available:

B. Billing and Payment Issues

The billing and payment issues can be grouped into two subsets: first, those that relate to WorldNet's creditworthiness and the timeliness of payment and second, those that are concerned with the clarity and quality of PRTC's bills to WorldNet. The subsets are related because the quality and clarity of PRTC's bills directly affect the timeliness of payment.

I turn first to the question of WorldNet's creditworthiness and the timeliness of payment. In essence, the dispute is whether it takes more than 30 days to review a PRTC bill. If it does, then the delays in payment by WorldNet are understandably related to a failure to receive a complete and accurate invoice. If a PRTC bill can be reviewed in substantially less time, then payment delay can be laid at the feet of WorldNet.

I believe that the record shows a history of problems with PRTC bills. Mr. Bogaty testified to PRTC billing errors requiring over 5,000 manual adjustments each month. *Bogaty Direct Testimony at 4; see also Hearing Transcript at 458.* He also testified that some billing disputes continue to be unresolved after almost eighteen months. *Bogaty Direct Testimony at 5.* Even PRTC seems to concede that its billing systems need improvement:

PRTC understands that some of its systems and facilities need to be upgraded, and it has committed financial resources and personnel to doing so in order to benefit all of its customers, both retail and wholesale.

PRTC Post Hearing Brief at 3. I commend PRTC on its recognition that things need improving, but I do not have great confidence in success in the near term. Improvements in the PRTC billing systems have been promised before, to no avail. *See e.g., Hearing Transcript at 631; 639-641.* Indeed, Ms. Caballero testified to an inability, despite repeated efforts, to retain personnel dedicated to the WorldNet billing process. *Hearing Transcript at 754.* Without

adequate staffing, it seems unlikely that the significant billing problems will be solved in the near term.

Based upon this evidence, I generally conclude that problems with the PRTC bills persist to this day and that it is entirely believable that review of the PRTC bills could take significantly more than 30 days. This conclusion is reflected in the individual issue resolutions in Appendix A.

I turn now to the other subset of billing issues, those that have to do directly with the quality and clarity of PRTC's bills and whether they are of a level that provides WorldNet a "meaningful opportunity to compete." In the context of Section 271 proceedings, the FCC requires that Bell Operating Companies demonstrate that their wholesale billing provides competing carrier's with a "meaningful opportunity to compete." *See, e.g. SBC Communications Inc.*, 18 FCC Rcd 21543 at ¶115 (2003); *SBC Communications, Inc.*, 16 FCC Rcd 6237 at ¶163 (2001); *Verizon of Pennsylvania*, 16 FCC Rcd 17419 (2001), *affirmed sub nom. Z-TEL Communications Inc. v. FCC*, 333 F.3d 262 (D.C. Cir. 2003). If so, then those carriers are found to have satisfied one of the aspects of the requirements of the competitive checklist at Section 271(c)(2)(B), specifically the requirement that the BOC provides non-discriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1). *See 47 U.S.C. § 271(c)(2)(B)(ii)*. Understanding that PRTC is not a Bell Operating Company subject to Section 271 (although its affiliates are), I nevertheless believe the "meaningful opportunity to compete" standard is appropriate for considering whether PRTC's wholesale billing meets the requirements of Section 251(c)(3).

When judged against that standard, it is clear that PRTC's wholesale billing fails. The record shows use of non-standard billing formats, *see Bogaty Direct Testimony at 10*, "decimal

point rounding up,” *see Bogaty Direct Testimony at 8*, use of estimates for billing, *see Caballero Direct Testimony at 8*, recurring “billing errors” that are known to be errors, but go unfixed, *see Hearing Transcript at 458*, and a host of other problems.

There is no doubt that these problems deprive WorldNet of a “meaningful opportunity to compete.” There is also no doubt that the PRTC wholesale billing system is considerably below par. My decisions in Appendix A generally reflect these conclusions.²

C. Performance Standards

As an initial matter, I address whether I have the authority to impose performance standards in an arbitration. PRTC maintains that performance standards can be contained in an interconnection agreement by agreement of the parties, or can be imposed globally on all carriers through a generic rulemaking proceeding. *PRTC Post Hearing Brief at 79*.

The law is clear that that performance standards can be imposed in this arbitration proceeding. In *MCI Telecommunications Corp. v. BellSouth Telecommunications Inc.*, 298 F.3d 1269 (11th Cir. 2002), after the Florida Public Service Commission concluded that it lacked authority to impose performance standards, the Eleventh Circuit reversed:

[t]he provision requested by MCI, however, clearly falls within the FPSC’s authority. Under 47 U.S.C. § 252(b)(4)(C), “the State commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement” the arbitrated agreement. Clearly, enforcement and compensation provisions, including the liquidated damages

² It is likely that, in order to meet the requirements of this Order, PRTC may be required to hasten its financial commitment to improve its billing system. The question of who should pay for necessary enhancements has been raised. *See Caballero Reply Testimony at 5*. There are, I believe, two separate kinds of billing involved in this arbitration. The first is “billing” as part of Operation Support Systems, an unbundled network element. Proper charging for UNEs is on a TELRIC basis, which assumes a modern, efficient network. Therefore, upgrades to the outdated, inefficient PRTC billing system cannot be charged to CLECs who acquire billing as an OSS UNE. The second kind of billing involved in this arbitration is “billing” as invoicing for services rendered by PRTC to WorldNet. In this kind of billing, WorldNet is no different than any other PRTC customer that receives a regular bill. Upgrades to the billing system in this capacity are a normal cost of doing business and are not specifically charged to any one customer.

provision desired by MCI, fall within the realm of “conditions . . . required to implement” the agreement. For example, 47 U.S.C. § 252(c) – to which § 252(b)(4)(C) expressly refers – specifically mandates that the state commission “provide a schedule for implementation of the terms and conditions by the parties to the agreement.” 47 U.S.C. §252(c)(3). A schedule for implementation would be potentially meaningless without some mechanism to enforce it; thus, enforcement mechanisms like those desired by MCI are clearly contemplated by the Act and within the FPSC’s authority.

Id. at 1274. *See also, MCI Communications Corp. v. U.S. West Communications*, 204 F.3d 1262, 1271-72 (9th Cir. 2000) (holding that FCC’s *Local Competition Order* “indicated that the general rules [of nondiscriminatory access] would ‘rely’ on the states to develop more specific ones ‘in arbitrations and other state proceedings.’” and stating that the FCC wanted states to impose performance standards). Having resolved that there is no legal impediment to the imposition of performance standards, I turn to whether they should be imposed here.

Performance standards have been imposed in interconnection agreements for several years. *See Hearing Transcript at 360* (Walker: “almost all of them [Interconnection Agreements since 1996] have some level of performance standards”). Indeed, PRTC’s Brief notes that performance standards affecting service are important to robust wireline competition. *See PRTC Brief at 71* (citing *Application of Bellsouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, Interlata Services in South Carolina, MO&O*, 13 FCC Rcd. 539, ¶ 137 (1997) (“The most competitively significant performance measures are those that describe the end-to-end quality of service from a customer’s viewpoint” (citation omitted)).

In addition to a long history of the inclusion of performance standards in interconnection agreements in the United States, there is also local support for their inclusion. Notably, in the 2000 arbitration between PRTC and RSV Telecom, Inc., the Board required the inclusion of

performance standards. *See RSV Report and Order at 16.* Moreover, the agreement that PRTC and WorldNet have been operating under for the past two years includes performance standards, albeit ones that were reached via negotiation.

The testimony introduced during the arbitration by witnesses, through pre-filed direct and rebuttal testimony as well as live testimony, reveals that performance standards are required here. The question is which: the “performance standards” proposed by WorldNet or the “performance measures” offered by PRTC, or some combination of the two?

WorldNet proposed 85 performance standards in this arbitration. The testimony revealed that WorldNet’s performance standards were the product of careful consideration, involving WorldNet personnel prioritizing the “real world” problems that it has encountered with PRTC, and their effect on WorldNet’s business. *See Hearing Transcript at 496, 569.* The testimony of Mr. Bogaty revealed that WorldNet considered PRTC’s system capabilities³ and considered the cost to WorldNet’s business from failures (both reputation and out-of-pocket) in developing the standards. *See Hearing Transcript at 497, 500, 570, 649.* The same testimony shows that the performance standards were developed as a result of problems and issues that WorldNet had experienced with PRTC throughout the years. *See Hearing Transcript at 504.*

The testimony showed that the WorldNet performance standards, which were developed by WorldNet internally, were vetted by Mr. Walker. Mr. Walker testified that he was asked by WorldNet to review the WorldNet performance standards to make sure “that they weren’t too severe or unreasonable, or be impossible to achieve.” *Hearing Transcript at 361-62.* He testified, based upon his significant experience in the field, and review of other interconnection

³ Mr. Bogaty was cross-examined on a statement he made about PRTC’s capabilities being “irrelevant.” *See Hearing Transcript at 582.* He persuasively explained that WorldNet believed that PRTC’s capabilities were irrelevant to the performance standards, but nevertheless considered them in developing the proposed performance standards. *See Hearing Transcript at 583.*

agreements, that the WorldNet performance standards were “fair and reasonable, and achievable.” *Hearing Transcript at 362.*⁴ He further testified that the performance standards could be achieved even if other CLECs opted into them. *Hearing Transcript at 409.*

PRTC proposed 20 performance measures in this arbitration. The testimony of Mr. Dick was that PRTC’s performance measures were aimed at those areas that were “service impacting.” *Hearing Transcript at 1114.* Mr. Dick also considered the FCC’s requirements of non-discrimination, the correlation between penalties and actual damages and the realistic possibility that the standards could be achieved in crafting PRTC’s performance measures. *Hearing Transcript at 1114-1115.*

Mr. Dick, however, was generally unfamiliar with the performance standards in the current PRTC/WorldNet Interconnection Agreement, although he testified that he was aware of their presence. *Hearing Transcript at 1097.* Mr. Dick also testified that he had not discussed any performance issues with any WorldNet employee (*id. at 1098-99*), and had not made any determinations on how WorldNet’s services were affected. *Hearing Transcript at 1136.* Moreover, for those performance measures with a retail analogue, as explained by Mr. Dick, PRTC’s performance measures rely upon a modified Z-test to compare the PRTC retail customer service with that provided to WorldNet to determine if any difference is statistically significant. *Hearing Transcript at 1131-1132, 1141-1142.*

In addition to the pre-filed and live testimony on performance standards, both parties expanded on their respective positions in post-hearing briefs. PRTC argues, as it did during the arbitration, that “parity” is the relevant criteria when considering performance standards for which there is a retail analogue. According to PRTC, the Eighth Circuit’s decision in *Iowa*

⁴ Notably, PRTC did not dispute that Mr. Walker has had many years of experience and that he has reviewed many interconnection agreements. *See Hearing Transcript at 397.*

Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and rev'd in part*, 525 U.S. 366 (1999) ("*Iowa Utilities I*"), makes clear that it cannot be required to provide superior service to WorldNet (or any other CLEC) than it provides to its own retail customers. *PRTC Post Hearing Brief at 66*. According to PRTC, adopting the WorldNet performance standards would lead to this impermissible result occurring. *Id.*

WorldNet, on the other hand, maintains that state commissions have the right to create and enforce a higher standard of service performance, and that state commissions have rejected an ILEC's attempt to measure quality according to its own performance. *WorldNet Post Hearing Brief at 142-43* (citing *In the Matter of the Petition of Sprint Communications Company L.P. for Arbitration of Interconnection Rates, Terms, Conditions and Prices with US West Communications, Inc., Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, Opinion, Docket No. P-466,421/M-96-1097, 1997 Minn. PUC LEXIS 35, 53 (Minn. PUC 1997)).

I find the testimony of the WorldNet witnesses on the creation, need and achievability of the WorldNet performance standards, especially that of Mr. Bogaty and Mr. Walker, to be credible and persuasive. As set forth above, the record reflects that WorldNet carefully created these performance standards based upon its prior experience with PRTC. The standards take into account the damage suffered by WorldNet (time spent, out-of-pocket and reputation) and the achievability of the standards by PRTC. PRTC's standards, on the other hand, do not sufficiently cover all the areas that must be addressed here, and would be confusing to implement and monitor.

For those reasons, I prefer the WorldNet performance standards. However, I am persuaded by PRTC's argument that it is not required to give superior service to a CLEC than it

provides to itself. I believe the Eight Circuit's decision in *Iowa Utilities I* is correctly interpreted to have struck down the FCC's "superior quality" rules, Sections 51.305(a) and 51.311(c).

It is nevertheless distressing to conclude that, in the context of this arbitration, I am unable to require PRTC to improve the level of service it provides. I strongly disagree with PRTC's argument that "competitive imperatives will compel it to improve service to all of its customers." *PRTC Post-Hearing Brief at 96*. I believe that the experience to date in Puerto Rico proves otherwise. So long as inferior service is provided to all CLECs – and to PRTC's customers as well – there is no competitive goad. Without that goad, there is no reason to devote the resources necessary to improve the quality of service provided to the consumers on Puerto Rico.

The only protection against such an outcome is the Board, which can conduct a meaningful generic proceeding to establish performance standards and provisioning intervals, with liquidated damages. This generic proceeding was suggested by PRTC and I agree that it can be very helpful. I recommend to the Board that such a proceeding be undertaken expeditiously.

The problem is what to do pending the outcome of that proceeding. PRTC recommends the adoption of its 20 performance standards as an interim approach. However, for reasons discussed above, I find the PRTC performance standards lacking. Nor is it appropriate simply to omit performance standards from this Agreement.

I therefore turn again to the WorldNet performance standards, and to the question of whether in adopting those standards I am requiring PRTC to provide "superior" service to WorldNet. As an initial matter, I note that I am not unsympathetic to PRTC's concern that 100% performance at the benchmarks set by WorldNet is currently unattainable. *See PRTC Post*

Hearing Brief at 76-77. I believe a reasonable opportunity to “ramp up” is desirable. That “ramp up” opportunity, not specifically discussed in the context of each of the WorldNet performance standards, may affect the issue of whether adoption of the WorldNet performance standards requires PRTC to provide superior service.

In addition, the record does not contain clear evidence, for each of the proposed WorldNet performance standards, that adoption of the standard, with the “ramp up” opportunity, would actually require PRTC to provide superior service. The record contains allegations that some of the performance standards violate some PRTC “internal interval,” but it does not contain actual times for provisioning each of the services contemplated in the WorldNet performance standards. A PRTC “internal interval” may be “within 45 days,” while the actual time that PRTC is able to provide the service to itself is five days. In short, the record is not clear on actual provisioning intervals for each WorldNet performance standard.

I conclude that PRTC has not shown that adoption of the WorldNet performance standards, with the “ramp up” opportunity described below would require it to provide superior service to WorldNet in the case of each performance standard. Therefore, I adopt the WorldNet performance standards, modified to include a “ramp up.” However, I offer PRTC an opportunity to demonstrate that adoption of any of the 85 WorldNet performance standards would require it to provide WorldNet a superior quality service. I require any reconsideration of this point to include, for each performance standard in controversy, PRTC’s recommended provisioning interval and breach unit, as well as specific evidence as to why adherence to the WorldNet performance standard would represent superior quality.

For example, Performance Standard 27, Facilities Unavailable Notice, requires that in the event that PRTC cannot complete a WorldNet order because necessary facilities are unavailable,

ATTACHMENT 3

DECLARATION OF LAWRENCE R. FREEDMAN

**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)	

DECLARATION OF LAWRENCE R. FREEDMAN

I, Lawrence R. Freedman, under penalty of perjury declare and say as follows:

1. I am the President for WorldNet Telecommunications.
2. I have read and am familiar with both the present Reply of WorldNet Telecommunications, Inc. and the Petition to Deny of WorldNet Telecommunications, Inc., previously filed in the above-referenced matter.
3. The facts alleged in the Petition are true and correct to the best of my knowledge, information and belief.



Lawrence R. Freedman

Dated: July 31, 2006

Certificate of Service

I do hereby certify that I have this 31st day of July 2006 served the following with a copy of the foregoing **REPLY 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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