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July 28, 2010

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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission's Rules, WC Docket No. 10-52*

Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. ("PRTC") and its affiliate, Puerto Rico Telephone Larga Distancia, Inc. ("PRTLTD") (collectively "Petitioners"), respectfully submit this additional information in support of the above-referenced petition for waiver of the structural separation requirements in Section 64.1903 of the Commission's rules.¹ Consistent with its delegated authority, the Wireline Competition Bureau should grant the Waiver Petition, which no party has opposed, because the Commission's structural separation requirements are not necessary to protect competition in Puerto Rico and Petitioners' continued compliance with these requirements is not in the public interest.

As detailed in the Waiver Petition and as the Commission previously has confirmed, customers in Puerto Rico enjoy numerous competitive alternatives for long-distance services, including from facilities-based providers, resellers, and Voice over the Internet ("VoIP") providers. In addition, customers in Puerto Rico increasingly rely upon wireless service to meet their long-distance needs, which further eviscerates any need for the Commission's structural separation requirements. Indeed, requiring that PRTC provide facilities-based, in-region, interstate, interexchange and international telecommunications services only through a separate affiliate imposes unnecessary costs and creates significant inefficiencies that hamper Petitioners' ability to compete.

¹ 47 C.F.R. § 64.1903; see Petition for Waiver of Section 64.1903, WC Docket No. 10-52 (filed Jan. 26, 2010) ("Waiver Petition").

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To protect against the potential of any consumer harm, Petitioners commit to the same safeguards to which the Bell Operating Companies (“BOCs”) agreed in connection with the Commission’s decision to allow the BOCs to provide in-region, interstate, interLATA telecommunications services on an integrated basis subject to nondominant carrier regulation.² Specifically, Petitioners commit to: (i) implementing the same special access performance metrics to prevent non-price discrimination in the provision of special access services; and (ii) offering certain calling plans to protect residential customers who make few long-distance calls.

I. Petitioners Lack Market Power Given The Level of Competition for Long-Distance Services In Puerto Rico.

As the outset, in seeking a waiver of the Section 64.1903, PRTC and PRTLD clarify that they are requesting the Commission to allow Petitioners to provide interstate, interLATA telecommunications services on an integrated basis subject to nondominant carrier regulation, just as the BOCs have been permitted to do. Petitioners should be treated as nondominant for these services because they lack market power -- that is, they do not “possess power over price.”³

Petitioners compete vigorously with a number of providers that offer long-distance services, including facilities-based providers, resellers, and VoIP providers. As the Commission recently recognized, consumers in Puerto Rico enjoy

² *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission’s Dominant Carrier Rules as they Apply after Section 272 Sunsets*, Memorandum Opinion and Order, 22 FCC Rcd 5207 (2007) (“*Qwest Section 272 Sunset Forbearance Order*”); *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (“*Section 272 Sunset Order*”).

³ *See Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, WC Docket No. 09-135, FCC 10-113 (rel. Jun. 22, 2010) (citations omitted).



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“numerous” competitive alternatives for long-distance services.⁴ According to the Commission’s own data, 96 percent of the zip codes in Puerto Rico are served by four or more competing local exchange carriers or non-incumbent VoIP providers, and 25 percent of zip codes on the island are served by eight or more competitors.⁵

In the business market, Petitioners compete against established providers offering integrated local and long distance services, including Centennial (now AT&T), Choice Cable, Liberty, OneLink, WorldNet, Telefónica Larga Distancia de Puerto Rico, PREPA.Net, Optivon, and Data Access. With AT&T’s acquisition of Centennial, Petitioners face even stiffer competition because AT&T can “provide its business customers in Puerto Rico a single point of contact for their telecommunication services instead of relying on local services provided by third parties” such as PRTC, and can offer business customers in Puerto Rico access to “AT&T’s global service offerings, including global Internet service, Enhanced VPN and other advanced managed services.”⁶ In the face of such competition, it is hardly surprising that Petitioners’ share of the business market is below 50 percent.⁷

Equally unsurprising is that Petitioners’ share of the residential long-distance market is also below 50 percent. As of June 30, 2010, PRTC served

⁴ See *Applications of AT&T Inc. and Centennial Communications Corp For Consent to Transfer Control of Licenses, Authorizations and Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13915 ¶ 62 (2009) (“After the transaction, customers in Puerto Rico will continue to have numerous alternatives to AT&T for long distance, including Telefónica Larga Distancia de Puerto Rico (TLD), PRT-Larga Distancia, Sprint, Verizon, and cable VoIP providers.”) (“*AT&T/Centennial Order*”).

⁵ *Local Telephone Competition: Status as of December 31, 2008*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 20 (rel. Jun. 2010) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-299052A1.pdf (“*Local Telephone Competition Report*”).

⁶ *AT&T/Centennial Order*, ¶ 107.

⁷ See Declaration of Adail Ortiz Santiago, ¶ 2 (noting that “[a]s of September 30, 2009, PRT’s share of the business market was approximately 45 percent”).

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537,436 residential access lines, and PRTLD is the designated Preferred Interexchange Carrier (PIC) on 309,705 of those lines. Given that there are 1,210,537 households in Puerto Rico and in light of the Commission's determination that approximately 92 percent of Puerto Rico residents have telephone service, Petitioners' share of the residential long-distance market is less than 30 percent.⁸

The competition faced by Petitioners in the residential market is underscored by the precipitous decline in the number of residential access lines served by PRTC. The 537,436 residential access lines served by PRTC as of June 30, 2010 reflects a decline of nearly 45 percent from the 974,016 residential access lines that PRTC served a decade ago. As the Commission recently concluded, "PRTC's line losses have resulted from customer migration to new service providers, not from the decisions of customers to terminate service entirely"⁹

Indeed, residential customers in Puerto Rico increasingly are relying upon wireless to meet all of their telecommunications needs, including long-distance services. There are multiple facilities-based wireless carriers -- including such nationwide carriers as AT&T, Sprint, and T-Mobile -- and two resellers in Puerto Rico, all of which offer a variety of service plans that include unlimited nationwide calling.¹⁰ The Commission has found that "mobile wireless coverage in Puerto Rico

⁸ See 2006-2008 American Community Survey 3-Year Estimates, Puerto Rico Community Survey (available at <http://www.factfinder.census.gov>); *Universal Service Monitoring Report*, CC Docket No. 98-202, Table 6.4 (rel. Dec. 2009) (available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295442A1.pdf).

⁹ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 4136, ¶ 27 (2010) ("*Insular Order*") ("find[ing] support for this conclusion in the record," citing comments by Sprint-Nextel that attributed "lower wireline subscribership to customers abandoning traditional wireline service for wireless and VoIP services") (footnote omitted).

¹⁰ *Local Telephone Competition Report*, at 28, Table 17; *AT&T/Centennial Order*, ¶ 134.



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is nearly ubiquitous” and that wireless subscribership has increased dramatically in Puerto Rico.¹¹ As of December 2008 – which is the most current Commission data – there were 2.6 million wireless subscribers in Puerto Rico, up from 1.1 million in 2001.¹²

With robust competition for business and residential customers in Puerto Rico, Petitioners plainly lack market power in the interstate, interLATA telecommunications services market. Accordingly, the Commission should grant the Waiver Petition and allow Petitioners to provide interstate, interLATA telecommunications services on an integrated basis subject to nondominant carrier regulation.

II. Petitioners Commit to Adhere to Special Access Performance Metrics and Maintain Low-Volume Usage Plans.

In relieving the BOCs from the obligation of complying with similar separate affiliate requirements in providing interstate, interLATA telecommunications services, the Commission required the BOCs to implement special access performance metrics. According to the Commission, these “metrics and the associated reporting requirements” adequately addressed concerns about the “incentives and ability” of the BOCs “to engage in non-price discrimination in their provisioning of special access services in order to impede competition in the market for in-region, interstate, long distance services.”¹³

To the extent there are similar concerns here, Petitioners are willing to commit to the same special access performance metrics if their Waiver Petition is

¹¹ *Insular Order* ¶¶ 19 & 28.

¹² *See id.* at n.52 (citing *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Thirteenth Report, 24 FCC Rcd 6185, Table A-2 (WTB 2009)); *Local Telephone Competition Report* at Table 17.

¹³ *See Section 272 Sunset Order* ¶ 98.



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granted.¹⁴ Petitioners will implement these metrics for the first full quarter following provision of any in-region, interstate, interexchange telecommunications service on an integrated basis. Petitioners will continue to abide by the special access performance metrics until there is an affirmative Commission determination that such metrics are no longer necessary.

While finding that the BOCs lacked market power in the provision of in-region, interstate, long distance services, the Commission expressed concern about the competitive choices available to customers who make relatively few interstate long distance calls and who do not also subscribe to wireless or broadband Internet access service. To address this concern, the BOCs committed to offer rate plans tailored to these customers' needs for a specified period of time.¹⁵

To the extent there are similar concerns here, Petitioners are willing to commit to maintain the following low-volume long distance plans:

- The "Discount Plan," which allows customers to place long distance calls throughout the United States for \$0.12 per minute during the day and \$0.10 per minute at night with a minimum monthly usage commitment of \$0.99.
- The "Single Rate Plan," which allows customers to place long distance calls throughout the United States for \$0.40 per minute for no additional monthly fee or minimum.

These low-volume usage plan commitments would become effective 60 days after the effective date of an order granting the Waiver Petition and would remain in effect for 36 months from the effective date of any such order.

¹⁴ See *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd 5207, ¶¶ 64-66 & Appendix C.

¹⁵ See *Section 272 Sunset Order* ¶ 98; *Qwest Section 272 Sunset Forbearance Order* ¶ 71.



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III. Petitioners Will Continue to Comply With Their Obligations Under Section 63.10(c).

Petitioners clarify that they are not seeking a waiver of Section 63.10(c) of the Commission's rules. As noted in the Waiver Petition, the Commission has classified PRTLTD as a dominant U.S.-international carrier on the U.S.-Mexico, U.S.-Brazil, U.S.-Guatemala, U.S.-Nicaragua, U.S.-El Salvador, and U.S.-Dominican Republic routes.¹⁶ As a result of this classification, Petitioners are obligated to comply with Section 63.10(c), and Petitioners are not seeking to be relieved of this obligation. After grant of the requested waiver, Petitioners will continue to provide services as entities separate from América Móvil and its affiliates and will continue to file the quarterly reports required by the rule.¹⁷

IV. Conclusion

In sum, there is no competitive reason or policy justification for Petitioners' continued compliance with the Commission's structural separation requirements. These requirements are not necessary to protect competition and only impose costs and inefficiencies that make it more difficult for Petitioners to meet the needs of the residents of Puerto Rico. Because "strict compliance" with the Commission's structural separation requirements is "inconsistent with the public interest," the special circumstances justifying a waiver of section 64.1903 are plainly present in this case.¹⁸

¹⁶ Waiver Petition at 1, n.1 (citing *Verizon Communications, Inc., Transferor, América Móvil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, ¶ 45 (2007)).

¹⁷ 47 C.F.R. § 63.10(c).

¹⁸ See *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 7 FCC Rcd 4355, 4364, n.118 (1992) (subsequent history omitted).



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The Bureau can and should grant the Waiver Petition on delegated authority. Section 0.91(b) expressly authorizes the Bureau to “[a]ct on requests for ... waiver of rules.” Furthermore, given the overwhelming evidence regarding Petitioners’ lack of market power and the voluntary commitments by Petitioners, the Waiver Petition does not “present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.” *See* 47 C.F.R. § 0.291(a)(2).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Bennett L. Ross", with a long horizontal flourish extending to the right.

Bennett L. Ross

cc: Sharon Gillett
Donald Stockdale
Cathy Seidel
William Dever
William Kehoe
Jennifer Prime