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December 9, 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:

On December 7, 2010, Tom Navin and the undersigned of Wiley Rein LLP, counsel to Puerto Rico Telephone Company, Inc. ("PRTC"), spoke by telephone with Lisa Gelb of the Wireline Competition Bureau regarding the above-referenced proceeding. The purpose of the call was to discuss the petition filed by PRTC and its long distance affiliate, Puerto Rico Telephone Larga Distancia, Inc. ("PRTLTD"), seeking a waiver of the structural separation requirements in section 64.1903 of the Commission's Rules.

During the call, we were asked, if the Bureau were to grant the waiver petition, whether the Bureau also had the authority to waive on an interim basis any requirement that the integrated company file tariffs for its interstate, interLATA telecommunications services until the Commission had the opportunity to determine whether PRTC should be classified as a nondominant provider of such services. The answer is plainly "yes," as the Bureau has ample authority to waive on an interim basis federal tariffing requirements – authority that the Bureau routinely has exercised in the past.

For example, in the *Cellular Waiver Order*,¹ the Bureau granted a request by CTIA for an interim waiver of the Commission's tariff filing requirements applicable to dominant cellular carriers until the Commission adopted permanent rules and policies for the industry. CTIA's petition was precipitated by the D.C. Circuit's

¹ *Cellular Telecommunications Industry Ass'n Petition for Waiver of Part 61 of the Commission's Rules*, 8 FCC Red. 1412 (1993) ("*Cellular Waiver Order*").



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decision invalidating the Commission's permissive detariffing policy – a decision that would have required cellular carriers to file federal tariffs for the first time. In granting the waiver, which was unopposed, the Bureau noted that cellular carriers were treated as dominant in the provision of interstate services by regulatory fiat and not based “on any market analysis.” 8 FCC Rcd at 1412, ¶ 5. Despite “cellular’s status as an interstate dominant carrier,” *id.*, however, the Bureau determined that a waiver of the tariff filing requirement was appropriate:

Pending a final decision on the merits of CTIA’s petition, we find that real harm could result from applying tariff filing rules governing dominant carriers to cellular carriers at this time. Since these carriers have not previously filed interstate tariffs, there is a strong likelihood that detailed tariffing requirements would be burdensome, and ultimately may be unnecessary if the Commission grants these carriers the relief requested in the petition. Also, cost support materials might provide competitors with access to information that is competitively sensitive. We conclude that before we require cellular operators to reveal these interstate costs, we should first address the issue of cellular’s status as a dominant carrier on the merits.

Id. ¶ 6.

The *Cellular Waiver Order* is significant for several reasons. First, it illustrates the authority of the Bureau to waive tariff filing requirements, even for “dominant” carriers that had not previously filed tariffs. Second, like cellular carriers in 1993, the treatment of PRTC as a dominant carrier would not be based on any data-driven, “market analysis,” but rather would be the result of an antiquated regulatory policy adopted 13 years ago.² In fact, based on the Commission’s own analysis of the Puerto Rico telecommunications market, it is clear that PRTC and PRTLTD lack

² *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149, 96-61, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, 15763 ¶ 7 (1997), *recon. denied*, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd 10771 (1999).



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market power in the interexchange market in Puerto Rico.³ Third, the same harms identified by the Bureau from applying tariff filing rules to cellular carriers – subjecting carriers to burdensome regulation that causes competitive harm – would befall PRTC if it were required to tariff its long distance services. Fourth, like CTIA’s petition, no party has opposed the relief PRTC seeks, and, like cellular carriers, it would make no sense to subject PRTC to detailed tariffing requirements that ultimately would be unnecessary if the Commission determines that PRTC is a nondominant provider of long distance services in Puerto Rico.

The *Cellular Waiver Order* is but one example of situations when the Bureau has granted a waiver of tariff filing requirements until the Commission resolves related issues that may obviate the need for the filing of such tariffs.⁴ For instance, in the *PacTel Waiver Order*,⁵ the Bureau considered a request by Pacific Bell and Nevada Bell (“PacTel”) for an indefinite waiver of the federal tariffing requirements for two caller ID services, which, according to PacTel, it could not offer at the interstate level and still comply with applicable intrastate requirements. The Bureau noted that the Commission had a pending Caller ID Proceeding in which it was considering

³ Just last year the Commission affirmatively found that customers in Puerto Rico “have numerous alternatives” for long distance services. *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). Even in the local exchange market, the Commission found earlier this year that customers were routinely migrating from PRTC to other service providers. *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Linkup*, Order & Notice of Proposed Rulemaking, 25 FCC Rcd 4136 ¶ 27 (2010). And, the Commission’s own data underscore that PRTC faces significant competition in Puerto Rico. *See, e.g., Local Telephone Competition: Status as of June 30, 2009*, Industry Analysis and Technology Division, Wireline Competition Bureau at Table 10 (Sept. 2010) (noting that of June 30, 2009 non-incumbents serve 46% of the business switched access lines in Puerto Rico, which is the fourth highest percentage of non-ILEC market penetration in the United States, surpassed only by New Hampshire, New York, and Rhode Island).

⁴ *See, e.g., BellSouth Plan for Comparably Efficient Interconnection for Gateway Services; BellSouth Plan for Comparably Efficient Interconnection for Synchronous Protocol Processing Services*, 13 FCC Rcd. 10226 (1998) (waiving the requirement that BellSouth tariff its DataReach Service until the Commission resolved a related waiver petition filed by BellSouth).

⁵ *Pacific Bell and Nevada Bell, Notice of Petition for Removal of the Structural Separation Requirement and Waiver of Certain Federal and State Tariffing Requirements*, Memorandum Opinion & Order, 8 FCC Rcd. 3982 (1993) (“*PacTel Waiver Order*”).



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the compatibility of interstate and intrastate caller ID regulatory systems. The Bureau granted PacTel “a limited temporary waiver to delay the federal tariffing of its caller ID services until 90 days after the Commission reaches a decision in the Caller ID Proceeding.” *PacTel Waiver Order*, 8 FCC Rcd at 3983, ¶ 6.

Likewise, in a case involving PRTC, the Bureau granted PRTC’s request for a waiver of section 61.41 of the Commission’s rules that otherwise would have required the company to file an initial price cap tariff as a result of its acquisition by GTE.⁶ The Bureau extended the date by which PRTC may be required to file its initial price cap tariff while the Commission weighed the merits of PRTC’s request that it remain subject to rate-of-return regulation. As the Bureau reasoned, “[i]n light of the time constraints caused by PRTC’s impending conversion to price cap regulation, and the need for full review by the Commission of the arguments and cost data submitted, we will extend the deadline for PRTC’s conversion to price cap regulation [and the submission of its initial price cap tariff] until July 1, 2000” 15 FCC Rcd at 1787, ¶ 5.

Even in the absence of a related matter pending before the Commission, the Bureau has not hesitated to waive tariff filing requirements when there is good cause for doing so.⁷ Just four years ago, for example, the Bureau granted a petition seeking a waiver of dominant carrier tariffing requirements in connection with hurricanes or

⁶ *Puerto Rico Telephone Company; Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission’s Rules*, Order, 15 FCC Rcd 2785 (2000).

⁷ *See, e.g., Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation Petitions Pertaining to Originating Line Screening Services*, Memorandum Opinion and Order, 12 FCC Rcd 14857, 14863, ¶ 9 (1996) (waiving for eight months the requirement to file federal tariffs offering enhanced Originating Line Screening service); *The Bell Atlantic Telephone Companies Offer of Comparably Efficient Interconnection to Intranet Management Service Providers*, 13 FCC Rcd. 15617, ¶ 11 (1998) (waiving federal tariffing requirement for Intranet Management Service); *Southwestern Bell Telephone Company’s Offer of Comparably Efficient Interconnection to Providers of Enhanced Services*, 11 FCC Rcd. 7041, 7052, ¶ 26 (1996) (extending deadline for filing tariffs for Direct Inward Dialing and Simplified Message Desk Interface services); *Bell Atlantic Telephone Companies Offer of Comparably Efficient Interconnection to Providers of Internet Access Services*, 11 FCC Rcd. 6919, 6930, ¶ 33 (1996) (“we waive presently the federal tariffing requirement regarding the underlying basic ISDN services, provided that, if in the future, a customer requests these services on an interstate basis, Bell Atlantic must federally tariff these services or seek a further waiver of the federal tariffing requirement”).

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other disasters.⁸ The Bureau determined that a waiver of the obligation to file tariffs was appropriate for a 45-day period after the petitioning carriers invoked their disaster recovery plans. The Bureau also found that if the petitioning carriers required additional time beyond 45 days to operate without complying with applicable tariff filing requirements, “we expect that each of the petitioners will request additional time from the Commission” 21 FCC Rcd. at 6521, ¶ 15.⁹

In short, there is ample precedent for the Bureau, in the exercise of its delegated authority, to waive on an interim basis any requirement that PRTC file tariffs for its interstate, interLATA telecommunications services. Doing so would give the Commission the opportunity to develop the factual record necessary to find that PRTC should be classified as a nondominant provider of long distance services in Puerto Rico, which would obviate any need for PRTC to tariff such services in the first place.

⁸ *Petition of BellSouth Corp. for Special Temporary Authority and Waiver to Support Disaster Planning and Response; Petition of Verizon for Special Temporary Authority and Waiver to Support Disaster Planning and Response; Petition of Qwest Communications Int'l, Inc. for Special Temporary Authority and Waiver to Support Disaster Planning and Response*, Order, 21 FCC Rcd. 6518 (2006).

⁹ Under 47 C.F.R. § 20.15(d), CMRS providers were required to file tariffs for international calls to certain countries where the CMRS provider had a foreign affiliate. The Bureau waived this tariff filing requirement on numerous occasions. *See, e.g., GTE Airfone, Inc.; Petition for Waiver of Section 20.15(d) of the Commission's Rules*, Order, 14 FCC Rcd. 7903 (1999) (granting waiver of requirement to file tariffs for international calls to the Dominican Republic and Venezuela); *Stratos Mobile Networks (USA), LLC and Marine Satellite Services, Inc.; Petition for Waiver of Section 20.15(d) of the Commission's Rules*, Order, 15 FCC Rcd. 79 (1999) (granting waiver of requirement to file tariffs for international calls to Canada); *Iridium, US, LP, Motorola Cellular Service, Inc., and Motorola Worldwide Information Network Services; Petition for Waiver of Section 20.15(d) of the Commission's Rules*, Order, 14 FCC Rcd. 13868 (1999) (granting waiver of requirement to file tariffs for international calls to the Dominican Republic).



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Pursuant to 47 C.F.R. § 1.1206, please include this ex parte filing in the above-referenced docket.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Bennett L. Ross", written over a horizontal line.

Bennett L. Ross

cc: Sharon Gillett
Lisa Gelb
William Dever
William A. Kehoe III
Jennifer Prime
Claudia Pabo
Pam Megna