

December 13, 2012

VIA ECFS

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Developing a Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers; Connect America Fund; High-Cost Universal Service Support; A National Broadband Plan for Our Future, CC Dkt. No. 01-92, WC Dkt. Nos. 07-135, 10-90, & 05-337, GN Dkt. No. 09-51*

Dear Ms. Dortch:

On October 15, 2012, I submitted an *ex parte* filing in the above referenced proceedings to which I attached a recent decision of the Puerto Rico Telecommunications Regulatory Board.¹ The attachment to that filing was improperly formatted; the properly formatted version of the document is attached hereto.

Please do not hesitate to contact me at (202) 303-1111 if you have any questions or concerns about this submission.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Counsel for tw telecom inc.

¹ See *Liberty Cablevision of Puerto Rico, LLC 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*, Puerto Rico Telecommunications Regulatory Board Docket No. JRT-2012-AR-0001, Report and Order, 12-15 (Sept. 25, 2012).

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

In the Matter of

**LIBERTY CABLEVISION OF PUERTO
RICO, LLC**

**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-2012-AR-0001

Re: Petition for Arbitration

REPORT AND ORDER

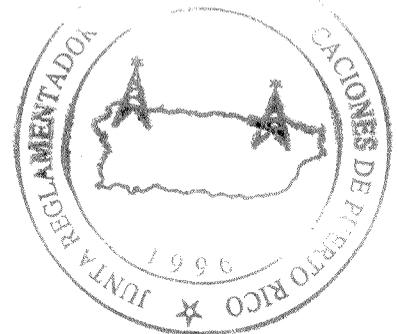
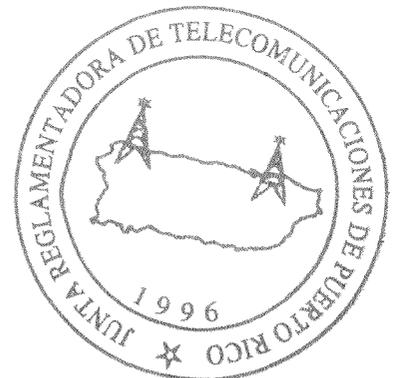


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Re: Petition for Arbitration

REPORT AND ORDER

Pursuant to the Regulations for the Negotiation, Arbitration and Approval of Agreements, approved September 3, 1997, the following *Report and Order* IS **ADOPTED** this 26th day of September, 2012.

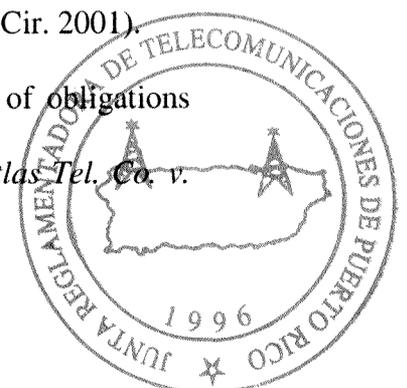
I. INTRODUCTION

This *Report and Order* resolves the remaining issues between Liberty Cablevision of Puerto Rico, LLC (“Liberty”) and Puerto Rico Telephone Company (“PRTC”) (collectively, the “Parties”) arising out of negotiations for interconnection under § 251 of the Communications Act. 47 U.S.C. § 251. Such negotiations are intended to result in an interconnection agreement (“ICA”), binding on the Parties and approved by the Board.

II. STATUTORY BACKGROUND

To spur competition in the telecommunications industry, Congress enacted the Telecommunications Act of 1996 (the “Act”). Congress intended the Act “to reduce regulation of the telecommunications industry and to end the historical monopoly of incumbent local exchange carriers [like PRTC] over local telecommunications services.” *Centennial Puerto Rico License Corp. v. Telecommunications Regulatory Board of Puerto Rico*, 634 F.3d 17, 21 (1st Cir. 2011). The Act mandates “that local service, which was previously operated as a monopoly overseen by the several states, be opened to competition.” *MCI Telecom. Corp. v. Bell Atlantic*, 271 F.3d 491, 497 (3d Cir. 2001).

To achieve these goals, the Act created “a three-tier[ed] system of obligations imposed on separate, statutorily defined telecommunications entities.” *Atlas Tel. Co. v. Oklahoma Corp. Comm’n*, 400 F.3d 1256, 1262 (10th Cir. 2005):



- Tier 1 Telecommunications carriers have a duty to interconnect, directly or indirectly, with the facilities and equipment of other telecommunications carriers.
- Tier 2 All local carriers have the duty not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on, the resale of telecommunications services; and
- Tier 3 “Incumbent” local exchange carriers (“ILECs”) must lease to competitors unbundled elements of their existing networks.

Centennial, 634 F.3d at 21.

Congress required that ILECs cooperate with competitive local exchange carriers, called “CLECs,” to allow CLECs to enter the local market in competition with ILECs. 47 U.S.C. §§ 253(a), (d). The Act requires ILECs to assist CLECs in several respects. 47 U.S.C. §§ 251(b)-(c). Specifically, 47 U.S.C. § 251(c)(2) requires ILECs to provide CLECs with the ability to:

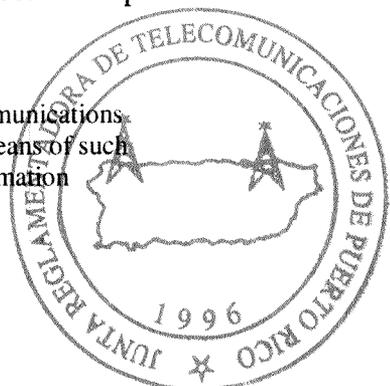
interconnect with the [ILEC's] network – (A) for the transmission and routing of telephone exchange service and exchange access; (B) at any technically feasible point within the [ILEC's] network; (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the [ILEC] provides interconnection; and (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory

A CLEC enters a local market either by connecting its equipment to an ILEC’s existing network or by purchasing or leasing existing “network elements” and services from the ILEC. *MCI*, 271 F.3d at 497.¹ ILECs are required to negotiate interconnection terms with CLECs in good faith and, if negotiations fail, either party “may petition a State commission to arbitrate any open issues.” *Id.*; 47 U.S.C. § 252(b)(1). Thus, ILECs and CLECs, either through negotiation or arbitration, enter into ICA’s that govern the relationship between the parties for a period of years, including the terms, rates and conditions under which they will operate. *Id.*

III. PROCEDURAL HISTORY

The Telecommunications Regulatory Board of Puerto Rico (the “Board”) is the telecommunications regulatory authority in the Commonwealth of Puerto Rico. On April

¹ A “network element” is “a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection used in transmission, routing, or other provision of a telecommunications service.” 47 U.S.C. § 153(29).



2, 2012, Liberty, which is a CLEC, petitioned the Board for an arbitration to resolve twenty seven (27) open issues, relating to a 2012 interconnection agreement that it seeks with PRTC. PRTC did not file a Response to the Petition. Instead, PRTC filed two Motions to Dismiss, both of which the Board denied. Liberty then filed a Motion for Judgment on all issues for which PRTC had failed to respond. The Board denied Liberty's motion.

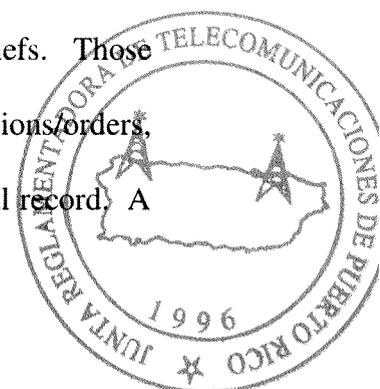
By the time of the hearing in this matter, the parties had resolved all but the four issues set forth below:

- (1) Whether and to what extent Liberty has rights under § 251 as a "telecommunications carrier" (Issue 1);
- (2) Performance levels and incentives (Issue 2);
- (3) Whether PRTC has a duty to facilitate discussions for directly connecting Liberty to PRTC's wireless subsidiary, Claro (Issue 19); and
- (4) IP-to-IP interconnection (Issue 21).

Pursuant to 47 U.S.C. § 252(b)(4)(C), the Board is required to resolve each remaining open issue and respond no later than nine months after the date on which the Parties initiated interconnection negotiations, which in this case was on October 25, 2011. Normally, the Board would have been obligated to conclude the arbitration no later than August 25, 2012. Here, however, the parties jointly asked that the hearing in this case be continued from June to August and twice extended, by mutual agreement, the Board's deadline until September 26, 2012.

The Board appointed Laurin H. Mills as Hearing Examiner for the arbitration. The Hearing Examiner, subject to the Board's oversight and approval, supervised a period of discovery and conducted a two-day hearing that took place in San Juan, Puerto Rico, from August 13-14, 2012. Seven witnesses testified at the hearing. The President of the Board, Sandra Torres Lopez, and associate member of the Board, Gloria Escudero Morales, attended the hearing.

Prior to the hearing, the Parties submitted direct and reply testimony, along with related exhibits. The Parties also filed pre-hearing briefs, made opening statements and closing oral arguments, and filed post-hearing briefs, including reply briefs. Those documents, along with all discovery-related motions/orders, evidentiary motions/orders, and the transcripts of the hearing and closing arguments constitute the official record. A



list of the materials that constitute the official record is attached as Appendix “A” to this *Report and Order*.

IV. LEGAL PRINCIPLES

A. General Federal Standards

Section 252(c) of the Telecommunications Act, 47 U.S.C. § 252(c), provides the federal standards with regard to the arbitration of interconnection agreements. Pursuant to § 252, the Board is required to:

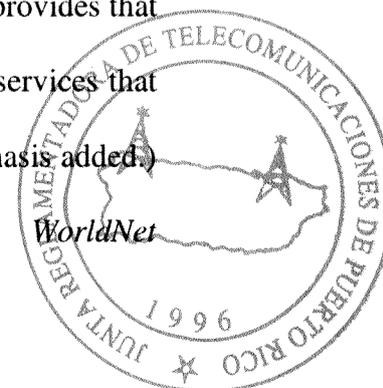
- (1) Ensure that the resolution of the arbitration, and any conditions imposed, meet the requirements of 47 U.S.C. § 251 and the Federal Communications Commission’s (“FCC”) requirements;
- (2) Establish any rates for interconnection, services or network elements; and
- (3) Provide a schedule for implementation of the terms and conditions by the parties to the agreement.

The Parties are accorded great freedom in negotiating the terms and conditions of their ICA and without regard to the standards set forth in 47 U.S.C. §§ 251(b) & (c). 47 U.S.C. § 252(a)(1); *see also* 47 C.F.R. § 51.3. The Act requires that the Parties negotiate in good faith. 47 U.S.C. § 251(c)(1). If the Parties, after a period of good faith negotiation, cannot reach a voluntary ICA, then either Party is permitted to initiate an arbitration to resolve any open issues. 47 U.S.C. § 252(b)(1).

The arbitration required under the Communications Act is not “baseball-style” arbitration because the Board is not limited to selecting between the final offers or proposals submitted by the Parties on a given issue. *WorldNet Telecommunications, Inc. v. Telecommunications Reg. Bd. of Puerto Rico*, 2009 U.S. Dist. LEXIS 75560 at *93-94 n.11 (D.P.R. Aug. 25, 2009). Rather, the Board is free to select either of the proposals of the Parties, or to fashion an entirely different approach, so long as the approach adopted is consistent with 47 U.S.C. §§ 251 & 252, Puerto Rico Law 213, and the rules of the FCC (47 C.F.R. Part 51) and the Board. *Id.*

B. Local Principles

The Act does not specifically require ILECs to offer superior service to CLECs, but neither does it forbid such a result. For example, 47 U.S.C. § 252(c)(2), provides that ILECs have an obligation to provide CLECs with transmission and routing services that are “*at least equal* in quality to that provided by the [ILEC] to itself.” (Emphasis added.) There is, however, no right of “superior access” under federal law.



Telecomms., Inc. v. Puerto Rico Tel. Co., 497 F.3d 1, 9 (1st Cir. 2007). The Board, however, has the power to adopt superior performance standards, so long as such standards are not inconsistent with federal law or regulations. *Id.* at 12. This authority is specifically set forth in the Communications Act. 47 U.S.C. §§ 252(e)(3), 261(c). The Act sets a floor of equal service, but state commissions, such as the Board, retain the authority to “raise the bar.” *Id.* citing *Ind. Bell Tel. Co. v. AT&T*, 363 F.3d 378, 391-93 (7th Cir. 2004).

Under Puerto Rico Law 213, all actions of the Board shall be guided by the Communications Act, the public interest and, especially, the protection of the rights of consumers. Law 213, Ch. II, Art. 7(f). It has long been the tradition of the Board to insist on continuous improvement in ILEC service to consumers, and not to allow any “backsliding” from commitments made in earlier interconnection arbitrations between the parties without a compelling reason. The Board is also required, pursuant to Law 213, Ch. 1, Art. 2(j), to endeavor to keep the ICA and the delivery of services between the Parties, as free of needless complication as possible. Some of these policies are in tension. It is the Board’s obligation to attempt to harmonize and balance the competing policy considerations in reaching an appropriate resolution of disputed issues.

V. RESOLUTION OF ISSUES

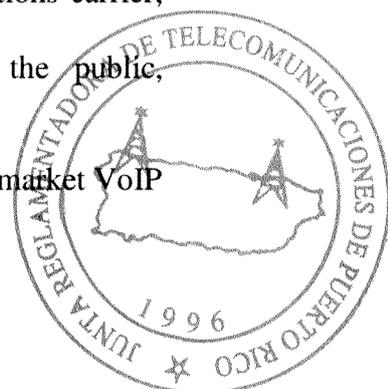
This case began with twenty seven (27) unresolved issues, two of which also included multiple sub-issues. As of the date of this *Report and Order*, there remain just four open issues. Set forth below is the resolution of each of the remaining open issues.

A. Liberty’s § 251 Rights (Issue No. 1)

The first issue is somewhat unusual in that it does not relate to *how* Liberty will receive services under 47 U.S.C. § 251(c), but *whether* Liberty is even qualified to do so. Liberty contends that it is entitled to full § 251(c) interconnection rights; PRTC, by contrast, contends that Liberty is not.

Liberty asserts that it is a CLEC with § 251(c) interconnection rights because:

1. Liberty has been certified by the Board as a telecommunications carrier;
and
2. Liberty plans to offer telecommunications services to the public,
specifically:
 - a. bulk local exchange service to its own and other mass-market VoIP operations,



- b. exchange access to long distance carriers, and
- c. various local services using PRTC's UNEs (local loops and EELs) or by reselling PRTC's services.

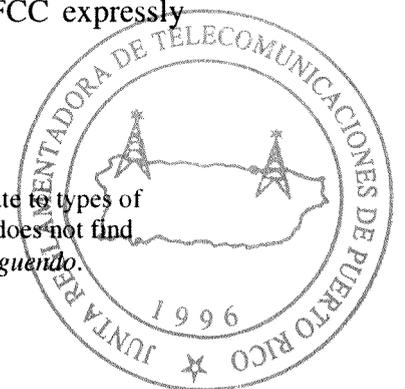
PRTC argues that Liberty is not entitled to full § 251(c) interconnection rights because the FCC has not ruled that “entities such as Liberty” are entitled to rights under § 251(c), as opposed to more limited rights under §§ 251(a) and (b). PRTC's argument hinges on several factors, each of which is addressed below.

First, PRTC emphasizes that the burden that § 251(c) places on ILECs to assist entry of competitors into the telecommunications market is “intrusive” and, therefore, “should be carefully administered.” *PRTC Post-Hearing Brief* at 3-7. PRTC does not explain how the necessarily “burdensome” and “intrusive” nature of § 251(c) excuses PRTC from its duties under § 251(c) to negotiate, interconnect, provide unbundled access to network elements, or provide for telecommunications services for resale, or why its allegations of intrusiveness are more relevant to this arbitration than to the hundreds of other ICAs in place across the country.

Instead, PRTC argues that because cable companies do not “need” assistance in entering the voice market, the FCC “has deliberately not extended to them the more expansive rights of Section 251(c).” PRTC, however, provides no legal authority to demonstrate that the FCC has determined that § 251(c) rights do not apply to entities such as Liberty because they do not “need” them, nor has PRTC provided any legal basis for the Board to reach such a conclusion.

Next, PRTC argues that the FCC, not the Board, has authority to determine who has rights under § 251(c). *PRTC Post-Hearing Brief* at 11. In support, PRTC provides two examples in which, PRTC argues, the FCC determined that certain types of telecommunications carriers were not entitled to § 251(c) rights: (1) “pure interexchange carriers” (long distance), and (2) mobile wireless providers (cell phones).² *Id.* Neither example applies to Liberty. The implication, however, is that these examples are not exceptions to a broad application of § 251(c) rights, but rather are proof that § 251(c) does not enjoy broad application, and is only applied if and when the FCC expressly extends § 251(c) rights to a particular type of carrier.

² Liberty disputes PRTC's characterization, arguing that the FCC decisions in question relate to types of service, not types of carriers. *Liberty Post-Hearing Reply Brief* at 25. Because the Board does not find PRTC's argument relevant under either guise, PRTC's characterization is accepted here *arguendo*.

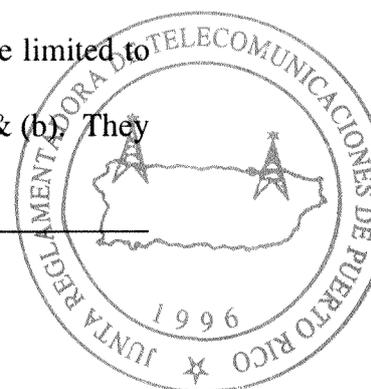


The Board disagrees. “Congress sought to encourage competition by mandating that carriers interconnect with one another and by requiring incumbent LECs to share elements of their existing telecommunications infrastructure with competing LECs.” *Liberty Post-Hearing Brief* at 58 (quoting *Centennial*, 634 F.3d at 20). Given Congress’s strong emphasis on encouraging competition, the Board cannot assume, as PRTC does, that the FCC intended to exclude from § 251(c) any telecommunications carrier not explicitly included via an FCC decision. Such a presumption runs contrary to the overarching policies of the Telecommunications Act.

PRTC then argues that the FCC has not classified retail VoIP services as either a telecommunications service or an information service. *PRTC Post-Hearing Brief* at 13. This is relevant, PRTC argues, because the FCC has preempted state application of traditional telephone company regulations to IP-based voice service. *Id.* (citing *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, Memorandum Opinion and Order*, 19 FCC Rcd 22404 (2004)). However, the negotiation and arbitration of a Liberty/PRTC ICA has nothing to do with the imposition of additional regulations on Liberty’s VoIP service. Therefore, whether the FCC has taken care to ensure that VoIP service is not overburdened with regulation, and whether the FCC has preempted the imposition of such regulations by the states, is not relevant here. Further, the FCC has made clear that it “is not persuaded . . . that all VoIP-PSTN traffic must be subject exclusively to federal regulation.” *Connect America Fund (“CAF”) Order*, FCC 11-161 (Nov. 18, 2011) at ¶ 934. Thus, the Board cannot conclude that the FCC intended to preempt state action relative to VoIP service.

PRTC also identifies several instances in which the FCC has affirmed that VoIP providers have §§ 251(a) & (b) rights. *PRTC Post-Hearing Brief* at 17-20. PRTC concludes that because the FCC has affirmed §§ 251(a) & (b) rights for VoIP providers, it has, *by implication*, limited § 251 rights for telecommunications carriers that provide interconnected VoIP service to only those two subsections.

The Board, again, disagrees. The decisions on which PRTC relies are limited to whether an ILEC can be required to provide interconnection under §§ 251(a) & (b). They



are silent with respect to § 251(c). Thus, for the Board to glean some limitation on § 251(c) rights based on the decisions PRTC cites requires taking a leap of faith that the FCC, through its silence, intended to curtail competition by cable-based voice service providers rather than to encourage competition in the local telecommunications market. The Board declines to take such a leap.

PRTC's argument also seems illogical. The FCC's determination (that requiring §§ 251(a) & (b) interconnection would promote the deployment of broadband) should be compared to its opposite – the effect of not requiring ILECs to comply with §§ 251(a) & (b) – which the FCC stated “would impede the important development of wholesale services to interconnected VoIP providers.” *PRTC Post-Hearing Reply Brief* at 13 quoting *CRC Communications*, 26 FCC Rcd at 8262. The FCC's determination should not be compared to an unrelated question – the application of § 251(c), which was not the basis of any of the decisions. Any such comparison is irrelevant to the interconnection rights at issue here.

PRTC also argues that the services Liberty provides, or will provide, are interconnected VoIP services or “wholesale connectivity associated therewith.” *PRTC Post-Hearing Brief* at 23. PRTC dissects the technical structure of Liberty's current voice service to refute any notion that Liberty's voice service could be anything but interconnected VoIP. *Id.* at 23-50. Because the technical details of the means by which Liberty provides voice service today are not relevant to whether Liberty is entitled to full CLEC rights on a forward-looking basis, no detailed evaluation of that question is required to resolve this issue.

Finally, PRTC casts doubt on the extent to which Liberty plans to provide public switched telephone network (“PSTN”) access, proposing that Liberty will ultimately provide such service only to itself, which, PRTC argues, does not make Liberty a common carrier with § 251 rights. PRTC also casts doubt on the extent to which Liberty will provide exchange access to interexchange carriers (“IXC's”). *PRTC Post-Hearing Br.* at 50-59. Like the arguments presented above, speculation regarding the future success of Liberty's efforts to sell the services it provides to the public does not provide a basis for determining the scope of its rights.



The Board concludes that Liberty is entitled to full § 251 rights, without any of the limitations that PRTC seeks to apply. The Board reaches this conclusion because Liberty has been certified by the Board as a telecommunications carrier and because Liberty has stated its intention to act as a telecommunications carrier, by providing telecommunications services. The Board's decision is **not based on the regulatory classification of VoIP, nor is it based on the nature of the voice services currently provided by Liberty.** The Board does not need to reach the question of whether VoIP providers have rights under § 251(c) to find in favor of Liberty, because Liberty has provided more than adequate justification to obtain full § 251 rights and judicial economy counsels against deciding unnecessary issues.

Liberty holds a certificate to operate as a CLEC in Puerto Rico and seeks an interconnection agreement to lease UNEs and to obtain resale to provide local telephone service and exchange access. This is sufficient to qualify for full interconnection rights. If all of Liberty's other capabilities (such as VoIP) were to disappear tomorrow, and Liberty were to seek negotiation of an ICA with nothing but the naked intent of developing into a functioning CLEC to provide the services listed above, there would be no question that it would be entitled to an interconnection agreement based purely on what it proposes to do. The Board does not believe, and FCC authority contradicts, PRTC's theory that Liberty's history as a VoIP provider precludes or limits Liberty's ability to operate as a CLEC. The *CAF* Order expressly refers to "providers' ability to use existing section 251(c)(2) interconnection arrangements to exchange VoIP-PSTN traffic," *CAF* Order, FCC 11-161 at ¶ 933; thus, the Board finds no limitation on Liberty's rights based on its history.

Furthermore, the entire tenor of the Telecommunications Act, as well as the Board's duty under Law 213, is to **promote competition**, not to limit a carrier's ability to compete. Liberty seeks to expand competition, and in doing so, intends to increase its investment in telecommunications infrastructure in Puerto Rico. Liberty's expressed intent is not only in keeping with federal and Puerto Rico law, but it will benefit consumers in Puerto Rico by increasing access to a variety of telecommunications services. Lacking any express federal preemption that would prohibit the Board from encouraging Liberty's competitive activities, the Board must find in favor of Liberty.



B. Performance Levels, Intervals, and Incentives (Issue No. 2)

See Appendix B.

C. Facilitating Interconnection with Claro (Issue No. 19)

Liberty seeks to interconnect with PRTC's wireless carrier subsidiary, Claro. Liberty requests that PRTC be ordered to facilitate interconnection discussions between Liberty and Claro, to permit Liberty to avoid what it believes are unnecessary "transit" charges. Transit services are the delivery of telecommunications traffic originating on one carrier's network to a different carrier's network for termination. PRTC argues that direct interconnection is not required under the law.

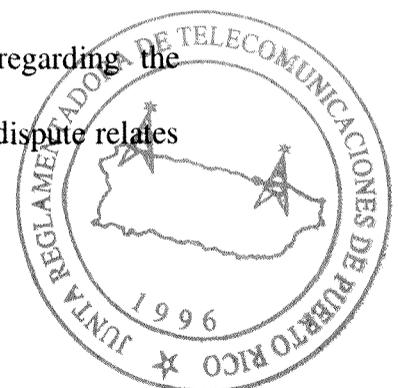
The Board believes and rules that this issue is controlled by *Centennial Puerto Rico License Corp. v. Telecommunications Regulatory Board of Puerto Rico*, 634 F.3d 17 (1st Cir. 2011). There, the First Circuit held that the failure of the FCC to promulgate regulations imposing interconnection obligations on mobile service carriers did not limit state authority to require PRTC to make commercially reasonable efforts to facilitate a direct connection with its wireless subsidiary, Claro. *Id.* at 32. Although the factual scenarios are not identical, the differences are not material. In the Centennial matter, Centennial and Claro already had a direct DS3-level connection. Here, Liberty and Claro do not have a direct connection. However, Liberty and Claro already exchange enough traffic to justify a DS-3.³ Whether the direct connection already exists does not change the policy underlying the Board's 2008 ruling – to preclude PRTC from imposing inefficiencies and unnecessary costs on traffic between other carriers and Claro. Accordingly, the Board orders PRTC to make commercially reasonable efforts to facilitate Liberty's direct connection with Claro.

D. IP-to-IP Interconnection, Issue No. 21

Liberty's network runs in Internet Protocol ("IP") format. *Petition* at 12-13. PRTC also employs IP format for a portion of its network. *PRTC Response to Liberty's Second Data Request*, 21-8; Hearing Transcript at 48. Issue Number 21 relates to the establishment of IP-to-IP interconnection between Liberty and PRTC.

The Parties agree that the ICA should contain a provision regarding the implementation of IP-to-IP interconnection, upon mutual agreement. The dispute relates

³ Approximately 3 million minutes per month in each direction. *Hearing Transcript* at 54.



to whether there is any recourse if negotiation of IP-to-IP interconnection reaches an impasse.

Liberty seeks to include the following provisions to allow it to pursue various means of dispute resolution if the parties are unable to reach agreement regarding IP-to-IP interconnection:

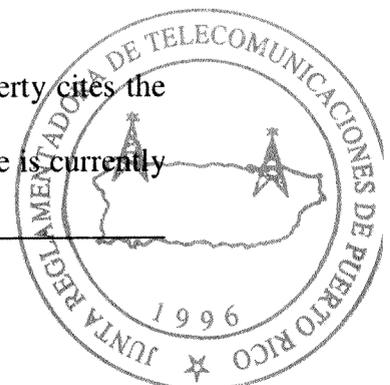
14. IP-to-IP Interconnection

- 14.1 Upon mutual agreement to do so in writing, the Parties shall establish IP-to-IP interconnection between their networks for the exchange of voice traffic.
- 14.2 To establish IP-to-IP interconnection at any existing or to-be-established POI, Liberty shall send a written request for such interconnection to PRTC.
- 14.3 Promptly following PRTC's receipt of such written request, the Parties shall negotiate in good faith in response to the request for IP-to-IP interconnection for the exchange of voice traffic.
- 14.4 If the Parties have not agreed on any aspect of the arrangements to be used for IP-to-IP interconnection, either Party by a date which is sixty (60) days from the date on which Liberty's written request was received by PRTC, then Liberty may pursue any remedy available to it under this Agreement, at law, in equity or otherwise, including, but not limited to, instituting an appropriate proceeding before the Board, the FCC or a court of competent jurisdiction or binding arbitration as provided in Section 29 of the General Terms and Conditions.

Although PRTC agrees that the ICA should provide for IP-to-IP interconnection upon mutual agreement of the Parties, PRTC does not agree with the remainder of Liberty's proposal for two reasons. First, PRTC argues that the inconclusive nature of the FCC's review of this issue means that the Board cannot enforce IP-to-IP interconnection. *PRTC Pre-Hearing Br.* at 18-19. Second, PRTC argues that Liberty's proposal is inappropriately one-sided because, under Liberty's proposal, only Liberty can make a request for IP-to-IP interconnection and only Liberty can pursue other remedies should negotiations fail. *PRTC Pre-Hearing Br.* at 20. Thus, PRTC proposes to include only the following reference to IP-to-IP interconnection in the Intervals Attachment to the ICA:

- 2.6 Upon mutual agreement to do so in writing, the Parties shall establish IP-format interconnection between their networks.

Both Parties rely on the *CAF* Order to support their proposals. Liberty cites the *CAF* Order for the proposition that "[t]he voice communications marketplace is currently



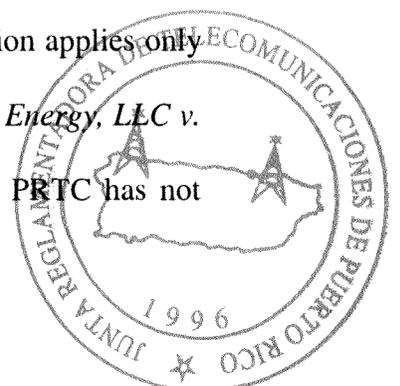
transitioning from traditional circuit-switched telephone service to the use of IP services.” *Liberty Pre-Hearing Brief* at 19, n.42 (citing *CAF Order* at ¶ 1339). PRTC cites to the *CAF Order* to support the proposition that “[t]he FCC has not even resolved to regulate IP-to-IP interconnection, and it certainly has not established that IP-to-IP interconnection is even subject to the legal provisions under which the forthcoming interconnection agreement is developed.” *PRTC Pre-Hearing Br.* at 19-20.

In the *CAF Order*, the FCC is clear that it is committed to the promotion of broadband service, including VoIP service, and that it sees IP-based services as the wave of the future.

- “The reforms also . . . promote innovation by eliminating barriers to the transformation of today’s telephone networks into the all-IP broadband networks of the future.” *CAF Order* ¶ 648.
- “We also make clear our expectation that carriers will negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic.” *CAF Order* ¶ 652.
- “We also seek comment on ways to implement our expectation of good faith negotiations for IP-to-IP interconnection for the exchange of voice traffic, ways to promote IP-to-IP interconnection” *CAF Order* ¶ 653.
- “[O]ur reforms will promote the nation’s transition to IP networks, creating long-term benefits for customers, businesses, and the nation.” *CAF Order* ¶ 655.
- Regarding the application of §252(b)(5) to IP: “our goal is to facilitate the transition to an all-IP network and to promote IP-to-IP interconnection.” *CAF Order* ¶ 783.

These examples are just a few of the numerous times in the *CAF Order* that the FCC states its intention to promote IP broadband networks, and its expectation that IP broadband networks will continue to grow. Liberty’s request for a means to drive IP-to-IP interconnection negotiations to conclusion is consistent with the FCC’s perspective. PRTC’s request, which would let negotiations languish without ever reaching a resolution, is contrary to the spirit of the FCC’s endorsement of the transition to all-IP broadband networks.

PRTC, nevertheless, claims the Board is preempted from accepting Liberty’s proposal because “the FCC occupied the field and adopted a binding framework that applies nationally.” *PRTC Post-Hearing Reply Br.* at 72. Field preemption applies only when Congress creates a pervasive scheme of regulation. *Weaver’s Cove Energy, LLC v. R. I. Coastal Res. Mgmt. Council*, 589 F.3d 458, 472 (1st Cir. 2009). PRTC has not



identified a “pervasive scheme” by which the FCC has precluded state agencies from taking action to encourage IP-to-IP interconnection, either in the *CAF* Order or elsewhere. Furthermore, “Congress took pains . . . to preserve traditional state authority over telecommunications services and to maintain a role for states within the dual regulatory regime.” *Centennial, Inc.*, 634 F.3d at 32. PRTC has not identified any way in which Liberty’s request conflicts with § 251 or any other federal law. Thus, the Board is not preempted from promoting IP-to-IP interconnection.

In resolving this issue, the Board is guided by its duties to promote (1) competition, (2) investment in telecommunications infrastructure, and (3) interconnection between telecommunications companies under Law 213, as well as the FCC’s extensive discussion of its intention to “promote innovation by eliminating barriers to . . . the all-IP broadband networks of the future.” *CAF* Order ¶¶ 648.

Viewed in this light, Liberty’s request must be adopted. Liberty’s request is narrow in scope – seeking only to ensure Liberty’s right to seek review of negotiations that have reached an impasse. Liberty does not seek to compel IP-to-IP interconnection. Rather, Liberty merely seeks a means to reach a decision regarding IP-to-IP interconnection under the specific factual circumstances to be presented to the tribunal, in which Liberty seeks review.

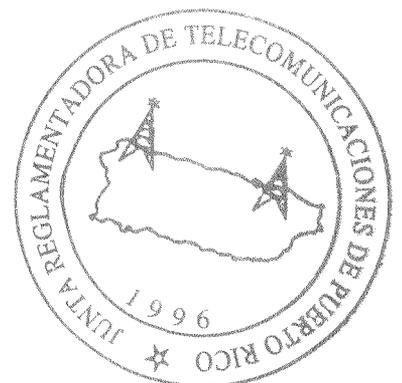
Liberty’s request is reasonable, not prohibited by federal law, consistent with the FCC’s guidance regarding promotion of IP broadband networks, and consistent with the Board’s duty to promote competition, investment, and interconnection in Puerto Rico. Thus, Liberty’s proposal to allow for resolution of negotiations that have reached an impasse is adopted.

However, the Board believes that the ability to request IP-to-IP interconnection, and to seek a means to resolve a deadlock in negotiations, should be equally available to both Parties. Thus, Liberty’s proposal must be re-written to make it symmetrical between Liberty and PRTC on that point.

VI. CONCLUSION AND ORDER

IT IS HEREBY ORDERED THAT:

- (1) *The April 2, 2012, Petition for Arbitration filed by Liberty is GRANTED IN PART AND DENIED IN PART,*



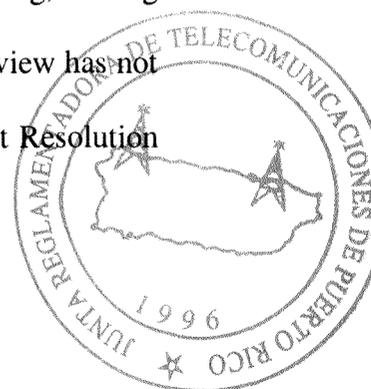
consistent with this Report and Order and Appendices hereto; and

- (2) *The Parties will, within 20 days of this Order, submit an executed interconnection agreement, including updated attachments, consistent with the terms and conditions of this Report and Order.*

Provided, that any party adversely affected by the instant Resolution and Order approving (or rejecting, as it may apply) the above stated Interconnection Agreement, may file a motion for reconsideration before the Clerk's Office of the Puerto Rico Telecommunications Regulatory Board ("Board"), within the term of twenty (20) days from the date of the filing of the notice of this order. The petitioner party shall send a copy of such motion, by mail, to the parties in this case.

The Board shall consider the motion for reconsideration within fifteen (15) days of its filing. Should it reject it forthright or fail to act upon it within said fifteen (15) days, the term to request review shall recommence from the date of notice of such denial, or from the expiration of the fifteen (15) day term, as the case may be. If a determination is made in its consideration, the term to petition for judicial review shall commence from the date a copy of the notice of the order or resolution of the Board definitely resolving the motion, is filed in the record of the case. Such order or resolution shall be issued and filed in the record of the case within ninety (90) days after the motion to reconsider has been filed. If the Board accepts the motion to reconsider, but fails to take any action with respect to such motion within ninety (90) days of its filing, it shall lose jurisdiction of the same, and the term to file for judicial review before the United States District Court for the District of Puerto Rico shall commence upon the expiration of said ninety (90) day term, unless the Board, for just cause and within those ninety (90) days, extends the term to resolve for a period that shall not exceed thirty (30) additional days.

Notwithstanding, the Board may accept or make a determination with respect to a timely filed motion for reconsideration, even after fifteen (15) days of its filing, as long as the term to seek judicial review has not elapsed and a petition for such review has not been filed. The Board may also reconsider, by its own initiative, the instant Resolution



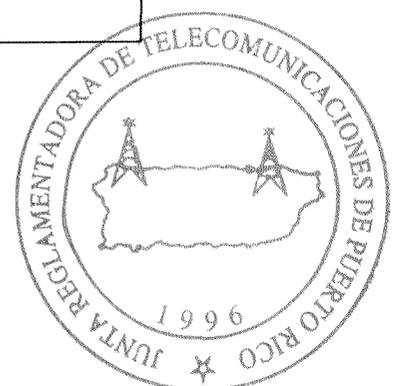
and Order (or Administrative Order, as it may apply), as long as the term to seek judicial review has not elapsed and a petition for such review has not been filed.

If the party adversely affected or aggrieved by the instant order or final resolution chooses not to file for reconsideration, pursuant to Sections 252 (e)(1) and 252 (e)(4) of the Communications Act of 1934, as amended, and Section 269d (e)(5) of the Puerto Rico Telecommunications Act of 1996, as amended (Act No. 213 of September 12, 1996, as amended), said party may seek judicial review before the United States District Court for the District of Puerto Rico.

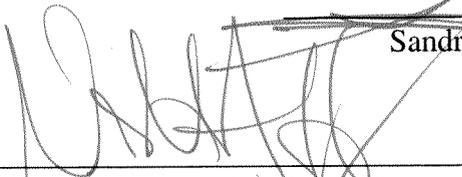
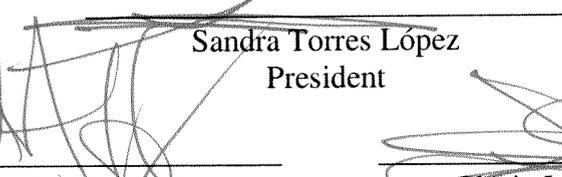
NOTIFY this Order to the parties as follows: to Puerto Rico Telephone Company, Inc, Walter Arroyo Carrasquillo, PO Box 360998, San Juan, PR 00936-0998; Joe Edge, Esq., Mark F. Dever, Esq., Eduardo R. Guzmán, Esq., Drinker, Biddle & Reath LLP, 1500 K Street, NW, Suite 1100, Washington, DC 20005; Cynthia Fleming Crawford, LeClair Ryan, 1101 Connecticut Avenue, N.W., Suite 600, Washington, DC 20036, Laurin H. Mills, LeClair Ryan, 2318 Mill Road, Suite 1100, Alexandria, VA 22314; Lcdo. Omar Martínez Vázquez, Martínez & Martínez, PBM 37, Calaf 400, San Juan, PR 00918; Christopher W. Savage, Davis Wright Tremaine, .L.L.P., 1919 Pennsylvania Ave., N.W., Suite 800, Washington, D. C. 20006; Douglas Meredith, 7852 Walker Drive, Suite 200 Greenbelt, Maryland 20770.

NOTIFY this Order to the parties, to their respective e-mail addresses, as follows:

Omar E. Martínez Vázquez Martinez &Martnez, P.L.L.C.	omartinez@martinezmartinezlaw.com
Laurin H. Mills LeClair Ryan	laurin.mills@leclairryan.com
Cynthia Crawford LeClair Ryan	Cynthia.crawford@leclairryan.com
Douglas Meredith	dmeredith@jsitel.com
Walter Arroyo Carrasquillo Puerto Rico Telephone Company, Inc.	warroyo@claropr.com
Mark F. Dever, Esq. Drinker, Biddle & Reath LLP	mark.dever@dbr.com
Eduardo R. Guzmán, Esq. Drinker, Biddle & Reath LLP	eduardo.guzman@dbr.com
Joe Edge, Esq., Drinker, Biddle & Reath LLP	joe.edge@dbr.com
Christopher W. Savage Davis Wright Tremaine, .L.L.P.	chrissavage@dwt.com



So the Board approved on September 25, 2012.

 _____ Nixyvette Santini Hernández Associate Member	 _____ Sandra Torres López President	 _____ Gloria I. Escudero Morales Associate Member
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CERTIFICATE OF SERVICE

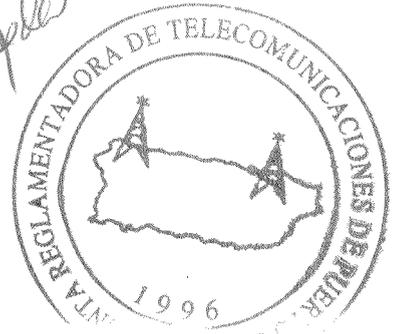
I hereby CERTIFY that the foregoing document is a true and exact copy of the Order approved by the Board on September 25, 2012. I further CERTIFY that today, September 25, 2012, I mailed a copy of the Order to the parties' attorneys of record, and I have proceeded to file the instant order.

In witness whereof, I sign the present Order in San Juan, Puerto Rico, on September 25, 2012.



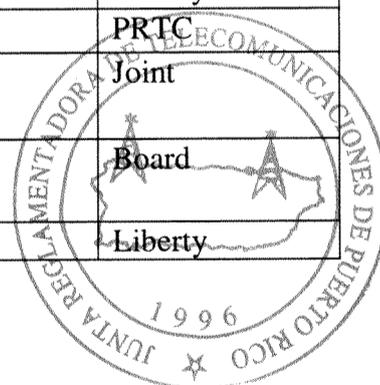
ZAIDA E. CORDERO LÓPEZ
Secretary of the Board

per: 



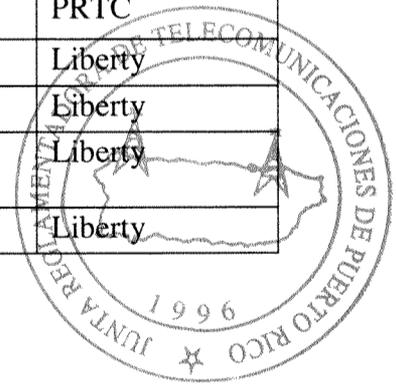
APPENDIX A

Date	Exh. No.	Description	Party/ies
03/20/2012		Informative Motion Changing Name of Corporation	Liberty
04/02/2012		Petition for Arbitration	Liberty
04/17/2012		Motion to Dismiss the Petition "MTD I"	PRTC
04/27/2012		Motion to Dismiss Pricing Issues from Arbitration "MTD II"	PRTC
05/07/2012		Opposition to PRTC's Motion to Dismiss Carrier Status from Arbitration	Liberty
05/07/2012		Opposition to PRTC's Motion to Dismiss Pricing Issues from Arbitration	Liberty
05/07/2012		Motion for Judgment with Respect to Non-Contested Open Arbitration Issues	Liberty
05/09/2012		Informative Motion Correcting Clerical Error in Arbitration Petition	Liberty
05/09/2012		ORDER – Granting Extension of Time to Liberty to Respond to PRTC's MTD I and II	Board
05/21/2012		Opposition to Motion for Judgment with Respect to Non-Contested Open Arbitration Issues	PRTC
05/23/2012		Response to PRTC's Opposition to Motion for Judgment with Respect to Non-Contested Open Arbitration Issues	Liberty
05/23/2012		Sur-reply to PRTC's Reply to Opposition to PRTC's Motion to Dismiss Pricing Issues from Arbitration	Liberty
05/24/2012		ORDER – Scheduling Order	Board
05/25/2012		ORDER – Informative Order Regarding Payment of Arbitration Fees and Costs	Board
05/25/2012		ORDER – Denying Motion to Dismiss Petition for Arbitration	Board
05/25/2012		ORDER – Denying Motion to Dismiss Pricing Issues from Arbitration	Board
05/25/2012		Liberty-PRTC Issues Matrices	Liberty
05/25/2012		Liberty-PRTC Issue Sub-Matrix	Liberty
05/29/2012		Data Requests and Interrogatories to Liberty Cablevision of Puerto Rico LLC	PRTC
05/29/2012		Data Requests to PRTC	Liberty
05/29/2012		PRTC Designation of Witnesses	PRTC
05/29/2012		Witness List	Liberty
05/29/2012		Submission of Completed Issues Matrices	PRTC
06/04/2012		Urgent Joint Motion for Extension of Procedural Schedule	Joint
06/04/2012		Order Granting Joint Motion for Extension of Procedural Schedule	Board
06/13/2012		Liberty's Witness List	Liberty



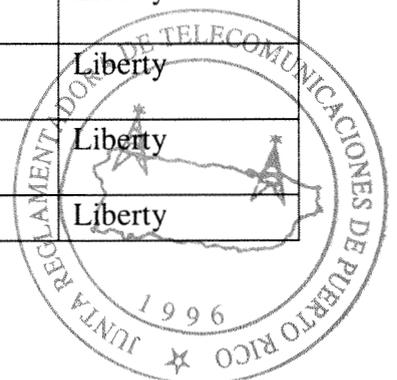
APPENDIX A

Date	Exh. No.	Description	Party/ies
06/13/2012		Amended Scheduling Order	Board
06/25/2012		Informative Motion – Pro hac vice admission of D. Edge	PRTC
06/25/2012		Informative Motion – Pro hac vice admission of M. Dever	PRTC
06/27/2012		ORDER – Denying Liberty’s Motion for Judgment with Respect to Non-contested Issues	Board
06/27/2012		Liberty’s Pre-filed Direct Testimony	Liberty
06/28/2012		Informative Motion – Pro hac Vice admission of C. Savage	Liberty
06/28/2012		Informative Motion – Liberty’s Direct Testimony	Liberty
06/29/2012		Liberty’s Revisions to Data Request Responses 29, 30 and 33	Liberty
07/01/2012		PRTC’s Notice of Deposition of Alejandro Guisasola	PRTC
07/01/2012		PRTC’s Notice of Deposition of Juan Soto	PRTC
07/01/2012		PRTC’s Notice of Deposition of Michael Starkey	PRTC
07/01/2012		PRTC’s Notice of Deposition of Naji Khoury	PRTC
07/01/2012		PRTC’s Notice of Deposition of Rafael Otano	PRTC
07/01/2012		PRTC’s Notice of Deposition of Timothy J. Gates	PRTC
07/02/2012		Liberty’s Second Data Requests	Liberty
07/02/2012		PRTC’s Second Data Requests and Interrogatories	PRTC
07/11/2012		Liberty’s Responses to Second Data Requests and Interrogatories	Liberty
07/11/2012		PRTC’s Responses to Liberty’s Second Data Request	PRTC
07/16/2012		Joint Motion to Modify date for Submission of Pre-filed Reply Testimony	Joint
07/20/2012		Second Amended Scheduling Order	Board
07/24/2012		Revised Issues Matrix	Liberty
07/25/2012		Liberty’s Pre-filed Reply Testimony	Liberty
07/30/2012		Urgent Motion to Dismiss	PRTC
08/06/2012		PRTC’s Pre-hearing Brief	PRTC
08/06/2012		PRTC’s Motion in Limine	PRTC
08/06/2012		Liberty’s Pre-hearing Brief	Liberty
08/09/2012		Opposition to Urgent Motion to Dismiss	Liberty
08/13-14/2012	Liberty No. 1	Direct Testimony Naji Khoury	Liberty
08/13-	Liberty	Reply Testimony Naji Khoury	Liberty



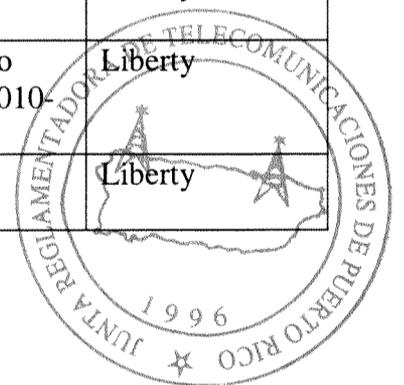
APPENDIX A

Date	Exh. No.	Description	Party/ies
14/2012	No. 2		
08/13-14/2012	Liberty No. 3	Transcript of Deposition of Naji Khoury	Liberty
08/13-14/2012	Liberty No. 4	Liberty's Responses to PRTC's Data Requests/Interrogatories (June 20, 2012)	Liberty
08/13-14/2012	Liberty No. 5	Liberty's Responses to PRTC's Second Data Requests/Interrogatories (July 11, 2012)	Liberty
08/13-14/2012	Liberty No. 6	Liberty's Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 19, 2012)	Liberty
08/13-14/2012	Liberty No. 7	Liberty's Second Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 20, 2012)	Liberty
08/13-14/2012	Liberty No. 8	Liberty's Third Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 20, 2012)	Liberty
08/13-14/2012	Liberty No. 9	Liberty's Fourth Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 23, 2012)	Liberty
08/13-14/2012	Liberty No. 10	Pricing Attachment, Page 1	Liberty
08/13-14/2012	Liberty No. 11	Disputed Contract Language	Liberty
08/13-14/2012	Liberty No. 12	Intervals Attachment	Liberty
08/13-14/2012	Liberty No. 13	Direct Testimony of Alejandro Guisasola	Liberty
08/13-14/2012	Liberty No. 14	Transcript of Deposition of Alejandro Guisasola	Liberty
08/13-14/2012	Liberty No. 15	Liberty's Responses to PRTC's Data Requests/Interrogatories (June 20, 2012)	Liberty
08/13-14/2012	Liberty No. 16	Liberty's Responses to PRTC's Second Data Requests/Interrogatories (July 11, 2012)	Liberty
08/13-14/2012	Liberty No. 17	Liberty's Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 19, 2012)	Liberty
08/13-14/2012	Liberty No. 18	Liberty's Second Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 20, 2012)	Liberty
08/13-14/2012	Liberty No. 19	Liberty's Third Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 20, 2012)	Liberty
08/13-14/2012	Liberty No. 20	Liberty's Fourth Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 23, 2012)	Liberty
08/13-14/2012	Liberty No. 21	Disputed Contract Language	Liberty
08/13-14/2012	Liberty No. 22	Intervals Attachment	Liberty
08/13-14/2012	Liberty No. 23	Direct Testimony of Juan Soto	Liberty
08/13-	Liberty	Liberty's Responses to PRTC's Data	Liberty



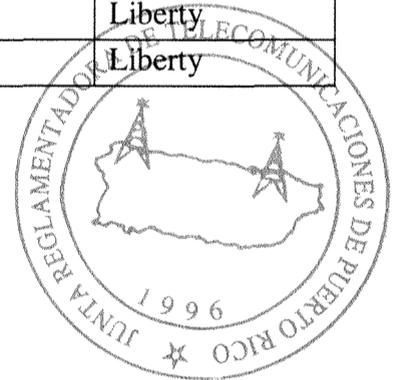
APPENDIX A

Date	Exh. No.	Description	Party/ies
14/2012	No. 24	Requests/Interrogatories (June 20, 2012)	
08/13-14/2012	Liberty No. 25	Liberty's Responses to PRTC's Second Data Requests/Interrogatories (July 11, 2012)	Liberty
08/13-14/2012	Liberty No. 26	Liberty's Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 19, 2012)	Liberty
08/13-14/2012	Liberty No. 27	Liberty's Second Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 20, 2012)	Liberty
08/13-14/2012	Liberty No. 28	Liberty's Third Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 20, 2012)	Liberty
08/13-14/2012	Liberty No. 29	Liberty's Fourth Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 23, 2012)	Liberty
08/13-14/2012	Liberty No. 30	Disputed Contract Language	Liberty
08/13-14/2012	Liberty No. 31	Liberty Petition for Arbitration	Liberty
08/13-14/2012	Liberty No. 32	Additional Services Attachment	Liberty
08/13-14/2012	Liberty No. 33	Intervals Attachment	Liberty
08/13-14/2012	Liberty No. 34	Direct Testimony of Timothy Gates	Liberty
08/13-14/2012	Liberty No. 35	Reply Testimony of Timothy Gates	Liberty
08/13-14/2012	Liberty No. 36	Transcript of Deposition of Timothy Gates	Liberty
08/13-14/2012	Liberty No. 37	Liberty's Responses to PRTC's Data Requests/Interrogatories (June 20, 2012)	Liberty
08/13-14/2012	Liberty No. 38	Liberty's Responses to PRTC's Second Data Requests/Interrogatories (July 11, 2012)	Liberty
08/13-14/2012	Liberty No. 39	Liberty's Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 19, 2012)	Liberty
08/13-14/2012	Liberty No. 40	Liberty's Second Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 20, 2012)	Liberty
08/13-14/2012	Liberty No. 41	Liberty's Third Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 20, 2012)	Liberty
08/13-14/2012	Liberty No. 42	Liberty's Fourth Supplemental Responses to PRTC's Second Data Requests/Interrogatories (July 23, 2012)	Liberty
08/13-14/2012	Liberty No. 43	Disputed Contract Language	Liberty
08/13-14/2012	Liberty No. 44	Liberty Motion for Reconsideration and Request to Vacate the Administrative Order, Case No. JRT-2010-SU-0003 (June 23, 2010)	Liberty
08/13-14/2012	Liberty No. 45	Intervals Attachment	Liberty



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Date	Exh. No.	Description	Party/ies
08/13-14/2012	Liberty No. 46	E-mail from Omar Martinez to Mark Dever (August 10, 2012)	Liberty
08/13-14/2012	PRTC No. 1	Direct Testimony of David C. Blessing	PRTC
08/13-14/2012	PRTC No. 2	Direct Testimony of Luis A. Rodriguez	PRTC
08/13-14/2012	PRTC No. 3	Direct Testimony of Carlos Escobar	PRTC
08/13-14/2012	PRTC No. 4	Reply Testimony of David C. Blessing	PRTC
08/13-14/2012	PRTC No. 5	Reply Testimony Luis A. Rodriguez	PRTC
08/13-14/2012	PRTC No. 6	Reply Testimony of Carlos Escobar	PRTC
08/13-14/2012	PRTC No. 7	Deposition of David C. Blessing	PRTC
08/13-14/2012	PRTC No. 8	Deposition of Luis A. Rodriguez Martinez	PRTC
08/13-14/2012	PRTC No. 9	Exhibit 1 to Direct Testimony of Luis A. Rodriguez	PRTC
08/13-14/2012	PRTC No. 10	Deposition of Carlos E. Escobar Bravo	PRTC
08/13-14/2012	PRTC No. 11	Exhibit 1 to Direct Testimony of Carlo Escobar	PRTC
08/13-14/2012	PRTC No. 12	PRTC Response to Liberty's Data Requests	PRTC
08/13-14/2012	PRTC No. 13	PRTC Response to Liberty's Second Data Requests	PRTC
08/16/2012		Reply to Opposition to Motion to Dismiss	PRTC
08/17/2012		ORDER - Granting Joint Urgent Motion for Extension to Procedural Schedule	Board
08/29/2012		ORDER - Denying Motion to Dismiss Petition for Arbitration	Board
09/01/2012		Post-Hearing Brief	PRTC
09/01/2012		Post-Hearing Brief	Liberty
09/06/2012		Post-Hearing Reply Brief	PRTC
09/06/2012		Post-Hearing Reply Brief	Liberty
09/09/2012		Post-Hearing Reply Brief with Corrections	Liberty



APPENDIX B

Issue No. 2.1

GTC INTRO ¶ 1; Add'l Svcs Attach. § 2.2.4

Building Facilities for Resale

Short Description: PRTC must build facilities in response to a resale request, on the same terms on which it would build for a retail customer

Liberty Briefs: Major Issue #2 includes the purely legal question of whether PRTC's obligation to offer its services for resale under 47 U.S.C. §§ 251(c)(4) and 251(b)(1) includes the obligation to construct new facilities for Liberty, in its role as a resale carrier, under the same terms and conditions under which PRTC would construct new facilities for a retail customer. The Act prohibits ILECs from imposing "unreasonable or discriminatory conditions or limitations on" the resale of its services. 47 U.S.C. § 251(c)(4). FCC's rules place the burden on PRTC of showing the reasonableness of any restriction PRTC seeks to impose on resale of its retail services. 47 C.F.R. § 51.613(b). PRTC's offer of services to its retail customers includes an offer to build facilities where needed (assuming PRTC and the retail customer can agree on price).

PRTC Briefs: An incumbent LEC must "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers" 47 U.S.C. § 251(c)(4). Construction is not a telecommunications service to be resold by Liberty, or anyone else, under § 251(c)(4).

Resolution: The crux of PRTC's objection to Liberty's request for construction of facilities for resale is PRTC's contention that it is not required to construct facilities to be used as UNEs, and because any facilities it constructs for resale may someday become UNEs, it cannot be required to perform that construction.

PRTC's objection is overstated. First, PRTC relies on *Iowa Utilities Board v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), for the contention that § 251(c)(3) "requires unbundled access only to an incumbent



APPENDIX B

LEC's existing network – not to a yet unbuilt superior one.” *PRTC Post Hearing Reply Br.* at 45. While it is undisputed that PRTC cannot be required to construct facilities for unbundling, that does not mean that PRTC's network is frozen in time. Such a reading of *Iowa Utilities* would preclude PRTC from ever constructing any new facilities – even for its own benefit – because those facilities could someday be requested as UNEs. Clearly *Iowa Utilities* does not stand for a prohibition against construction of new network facilities.

Second, PRTC contends that it will not be fully compensated for the cost and inconvenience of construction if, the month following construction, the facility is converted to a UNE. But, Liberty's proposal contemplates the imposition on Liberty of the same terms and conditions that are imposed on other retail customers, in accordance with PRTC's tariff. Further, Liberty has proposed to pay the full retail cost of construction without any wholesale discount. So, under Liberty's proposal, there should be no difference to PRTC between constructing a resale facility for Liberty versus constructing a similar facility for its own customer.

Finally, Liberty has made clear that its business model is primarily to use its own facilities and its own network to provide services. *Petition* at 17. It plans to expand its network over time. In the interim, however, and to a lesser extent indefinitely, it requires the use of some PRTC facilities to offer services in the areas in which it does not yet have its own facilities. Thus, Liberty's proposal regarding construction of facilities is consistent with its intention to expand the number of potential customers it can reach.

Under Law 213, it is the Board's duty is to promote competition in Puerto Rico. Thus, unless there is a legal impediment, the Board must view requests, such as Liberty's request for construction of resale facilities, through the lens of whether the request would increase competition. PRTC has provided no legal authority that prohibits the construction of facilities for resale to Liberty, under the same terms and conditions imposed by PRTC upon its own retail customers. Expansion of Liberty's ability to reach a greater number of potential customers and, thus, to increase competition in Puerto Rico, is in the public interest. The Board believes that requiring PRTC to build facilities for resale, under the same terms and conditions it provides those facilities to its own customers, will increase competition. Therefore, Liberty's proposal is accepted.



APPENDIX B

Issue No. 2.2

GTC INTRO 7.2

Working Sundays/Holidays

- Short Description:** Conform PRTC's obligation to work Sundays/Holidays to rapid repair intervals for DS1 transport, loops, and EEL's.
- Liberty Brief:** Liberty does not appear to have briefed this issue.
- PRTC Brief:** This issue has been settled.
- Resolution:** This issue appears to have been resolved; therefore, no resolution is needed.



APPENDIX B

Issue No. 2.3

GTC INTRO Page 2

2:00 pm Cut-off for Day Count

Short Description: Clarify how time is counted for purposes of performance metrics

Liberty Brief: PRTC has an internal policy under which processing of orders received before 2 pm, is to begin on the day of receipt.

PRTC Brief: PRTC has proposed the identical system of intervals and performance assurance credits that is found in the Landline Operations Interconnection, Unbundling, and Resale Agreement currently in effect between PRTC AT&T Mobility Puerto Rico, Inc. (“AT&T”).

PRTC witness Escobar’s testimony should not be taken to mean that just because PRTC begins processing an order, that it is appropriate to count the entire day toward the performance interval.

Resolution: Any resolution to this issue is necessarily somewhat arbitrary, because there is no basis for deciding that the cut-off for counting a day should be 2:00 pm, 2:01 pm, 2:05 pm, etc. Thus, resolution of this issue must be made on the basis of reasonableness. The extreme ends of the day, *i.e.* not counting the day of receipt even if the order is received at 9:01 am, or, counting the day if the order is received at 4:59 pm, are unreasonable on their face. Liberty has proposed a 2 pm cut-off because PRTC has an internal policy that processing of orders received before 2 pm, is to begin on the day of receipt. But, as PRTC points out, that internal process does not mean that the entire day should be counted, especially for performance intervals that are short. The Board agrees that PRTC’s internal process is not a sufficient basis to determine that a 2 pm cut-off is reasonable. It does, however, indicate that it is reasonable to expect PRTC not only to begin processing an order, but to have made some additional process, if the order is received at some point in the day earlier than 2 pm. Furthermore, the Board has adopted PRTC’s performance intervals, *see* Issue No. 2.5, so PRTC’s expressed concern about the shortness of



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Liberty's proposed performance intervals is diminished. Thus, the Board has determined that if an order is received before **12:01 pm, Atlantic Standard Time**, the day of receipt should be counted toward the performance interval. A noon cut-off gives PRTC an additional two hours beyond its internal policy that processing will begin for orders received prior to 2 pm, but is late enough in the day for Liberty to submit orders without losing an entire day.



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Issue No. 2.5

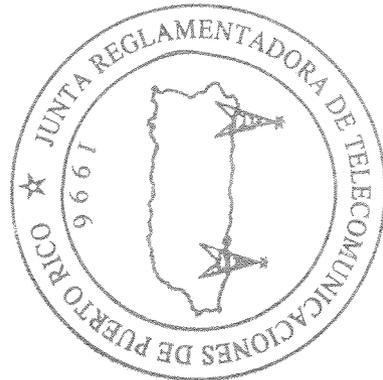
§§ 2.e & 2.g

Installation Time for DS1 and EELs

Short Description: Shorten installation intervals for DS1 circuits and EELs to more commercially reasonable time frames.

Liberty Brief: The intervals PRTC proposes are unreasonably long. PRTC's witness agreed that PRTC could meet Liberty's proposal if enough resources were applied to the process. Liberty's proposed intervals are less aggressive than those in the WorldNet ICA. Liberty's proposals are consistent with the time intervals that Centennial is able to achieve, as well as over a dozen other ILECs all over the United States.

PRTC Brief: PRTC witness Escobar demonstrated that there are many variables that affect how quickly PRTC can install DS1 loops and EELs using PRTC-Provided Electronics. For PRTC to install a DS1 loop or EEL, it must be true that PRTC not only owns the facilities, equipment, electronic and any cards required for the installation, but also that it has them available in its inventory. See Escobar Direct at 6-7. The design process, weather factors, the availability of access to the customer premises, and other variables affect the time in which such facilities are installed. See id. at 7-8. [OCCO material omitted]. Responding to Mr. Escobar, Liberty witness Gates addressed the concern that PRTC must have "available in its inventory everything it needs, including the electronics and all other equipment that will comprise the functioning circuit . . ." See Gates Reply at 90. According to Mr. Gates, "Mr. Escobar is suggesting a situation that the parties have already agreed will never occur" because the "parties have agreed that these installation intervals only apply in situations 'for which facilities are available.'" Id. (footnote omitted). It appears that it is Liberty's position is that "facilities availability" includes the availability in PRTC's inventory of electronics and all other equipment that will comprise the functioning circuit (e.g., line cards). The Board should monitor Liberty's advocacy to see if it alters that position.



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Resolution:

General Resolution of Performance Credits Calculation

The following resolution applies to issues: 2.5, 2.7, 2.8, and 2.10

The issues listed above all relate to one matter: how performance credits will be calculated for failure to meet installation and repair targets for DS1 circuits and EELs. These issues are intertwined, calling for a collective resolution. For example, the calculation of performance credits is dependent on both the time intervals proposed in Issue 2.5 and the accumulating performance credits proposed in Issue 2.10. Together these issues provide a comprehensive incentive scheme to promote continued diligence in completing orders for which the first performance target has already been missed, while providing PRTC adequate time to complete the work.

Liberty's proposal, which PRTC does not dispute, requires performance intervals at 85% and 100% achievement levels, the notion being that PRTC should be able to achieve the first target 85% of the time and the second target 100% of the time. Neither Party has presented evidence regarding how an 85% target is preferable to a fixed target that is applied on an order-by-order basis, or why a target should be set that PRTC can miss 15% of the time. In addition, the methodology for calculating the performance intervals has been a recurring source of confusion, both in the briefing and during the arbitration hearing. After making multiple attempts to present a coherent and logical explanation regarding how the proposed credits are to be calculated, Liberty has not succeeded in presenting a workable calculation.

As a result of this ongoing lack of clarity, it is inconceivable that the Parties will be able to implement Liberty's proposed resolution without recurring conflict, regarding whether the calculation was performed correctly. Thus, the Board rejects the methodology proposed by Liberty and substitutes the simpler and more straightforward methodology outlined below.



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In addition, Liberty has also proposed, in Issue No. 2.10, that the performance credit associated with a failure to meet the 100% interval should recur at fixed intervals, to eliminate the incentive to abandon work on an order once PRTC has missed the 100% threshold. The Board agrees with Liberty that the performance credits should be structured to encourage PRTC to minimize variation in its performance so that an order that is not completed on schedule does not become a chronic outlier.

The Board also agrees with Liberty that the performance credits must be calculated on a monthly basis to provide regular feedback, promote performance, and retain the simplicity of the calculation.

Thus, performance credits shall be calculated on a monthly basis. For each order that is open at any point during the month, it will be determined whether the order was completed timely or has bypassed any of the performance targets. For each performance interval missed during the month, a performance credit will apply according to the following methodology:

1. If the First Target was missed during the month, the First Target Performance Credit shall be applied. *See* Example Order Numbers: 7, 8, 9.
2. If the First Target Performance Credit was already applied in a previous month, it shall not be applied again. *See* Example Order Number: 4.
3. If the Recurring Target was missed during the month, the recurring target performance credit shall be applied for each time the target interval was breached minus the number of recurring target performance credits applied in previous months. *See* Example Order Numbers: 4, 8, and 9.

Notes to Example:

- The term “First Target” takes the place of the 85% standard, and the term “Recurring Target” takes the place of the 100% standard (the Parties are free to use different terminology if they prefer).
- The performance credits of \$500 are solely for the purpose of showing the calculation. The dollar amounts for actual performance credits are resolved in Issue No. 2.9.



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- 2(g) First Target: 24 days
Recurring Target: 19 additional days past preceding target date

The Board has resolved to adopt PRTC's proposed time frames for two reasons:

- (1) The methodology set forth above applies to all orders, rather than allowing PRTC to miss the first target date on 15% of orders before performance credits would be applied. This change is designed to create greater predictability in service times for Liberty, but also creates a greater risk that PRTC will incur performance credits because there is no allowance for failure.
- (2) The methodology set forth above provides for multiple performance credits per order, if the time to fulfill an order exceeds more than one target. This change is designed to incentivize PRTC to maintain focus on resolving orders that are behind schedule and to reduce variability in its processes. However, it also places PRTC at greater risk of incurring multiple performance credits for each order.

PRTC has acknowledged that it can achieve its proposed time intervals most of the time. Thus, in light of the added rigor imposed by the two factors stated above, the Board believes that simultaneously reducing the time intervals to those proposed by Liberty would be excessive.



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Issue No. 2.7

§ 5, subs. 3

Calculation on a Monthly Basis

- Short Description:** Clarify that all performance credits are calculated based on status of orders at the end of each month, not based on when particular orders are completed.
- Liberty Brief:** Performance credits are calculated based on status of orders at the end of each month, not based on when particular orders are completed.
- PRTC Brief:** Liberty's proposal to resolve Issue 2.7 would apparently permit Liberty to penalize PRTC over and over for long installed circuits as long as any other "orders for the services addressed in Sections 2b and 2e of this Attachment are pending with PRTC." That cannot be considered reasonable.
- Resolution:** *See Issue No. 2.5.* **Performance credits shall be calculated monthly for all orders open during the month.**



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Issue No. 2.8

§ 5, subs. 4

Calculation on a Monthly Basis

- Short Description:** Clarify calculation of performance credits.
- Liberty Brief:** Liberty provided tables with their brief demonstrating their proposed methodology, which would take place on a monthly basis.
- PRTC Brief:** “Liberty’s proposed increases, and the potential application of the recurring penalties on the same circuit, are oppressive and not reasonable.”
- Resolution:** *See Issue No. 2.5.* **Performance credits shall be calculated monthly for all orders open during the month.**



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Issue No. 2.9

§ 5, subs. 5

Size of Performance Credits

Short Description: Increase size of performance credits to provide more appropriate incentives to PRTC.

Liberty Brief: The most important element of Liberty's proposal are the magnitude of the performance credits, which are designed to create an incentive for PRTC to perform. Liberty has proposed performance credits that are conservative, but high enough to encourage performance by PRTC.

PRTC Brief: PRTC proposes the AT&T/Centennial performance credits. Liberty's proposals are unfair and only based on the experience of Mr. Khoury.

Resolution: There appears to be a mismatch between the testimony and briefing regarding size of performance credits and the definition of this issue. The definition of this issue is limited to the Intervals Attachment Section 5, Subsection 5 (subparts 5.1 through 5.4). Those sections provide performance credits related to the repair intervals set forth in Section 3 and do not relate to the installation intervals set forth in Section 2. Performance credits for installation intervals are set forth in Section 5, Subsection 4. However, the testimony and briefing by both Parties appears to relate primarily to the installation intervals, not the repair intervals. Because the Parties have consistently presented their cases as if this issue were a blend of the performance credits from both Subsection 4 and Subsection 5, and because both subsections are properly before the Board, this resolution relates to both Subsections 4 and 5. Liberty's proposed performance credits are adopted for both subsections. PRTC's proposals are so small as to be meaningless. Liberty's proposals, by contrast, are tied to the value of the service, and, per testimony provided by Liberty, are in line with similar incentive payments in other ICAs.



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Issue No. 2.10

§ 5, subs. 5.5

Performance Credits Repeat After 100% Miss

- Short Description:** Add performance metric that accumulates periodically if stated maximum period for performance has been exceeded.
- Liberty Brief:** See Issue No. 2.9
- PRTC Brief:** See Issue No. 2.9
- Resolution:** *See Issue No. 2.5.* Performance credits shall be applied for each breach of the Recurring Target as well as for a breach of the First Target.



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Issue No. 2.11

§ 5, subs. 5.5

Notice Regarding Performance Credits

- Short Description:** Require PRTC to notify Liberty when it concludes that it will pay performance credits, as well as the bill on which the credits will appear.
- Liberty Brief:** Liberty does not appear to have briefed this issue.
- PRTC Brief:** PRTC believes this issue to be settled.
- Resolution:** This issue appears to have been resolved; therefore, no resolution is needed.



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Issue No. 2.12

§ 5, subs. 5.5

Eliminated Examples of Performance Credit Calculation

Short Description: Eliminate examples of credit calculation.

Liberty Brief: Liberty does not appear to have briefed this issue.

PRTC Brief: Liberty has provided no support for its proposal to strike practical examples of the calculation of performance assurance credits, other than the claim by Liberty witness Gates that “[t]hose examples were necessary in part due to the complexity of PRTC’s proposals. Liberty believes that no examples are needed under its own proposals” Gates Direct at 36. Mr. Gates then changed his perspective, arguing that there is no dispute over the inclusion of credit calculation examples. See Gates Reply at 101. Liberty’s proposal does not appear to be a principled one.

Resolution: In light of the resolution of Issues 2.5, 2.7, 2.8, and 2.10, the Board believes it would be in the Parties’ interest, and in the interest of any of provider that may consider adoption of this ICA, to provide examples of calculations of performance credits. PRTC’s proposal is adopted, to be modified to comport with the resolutions set forth in this *Report and Order*.

