

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

In the Matter of
Puerto Rico Telephone Company
Petition for Waiver of
Section 61.41 or Section 54.303(a)
of the Commission's Rules
CCB/CPD No. 99-36

ORDER

Adopted: June 11, 2001

Released: June 12, 2001

By the Chief, Common Carrier Bureau:

1. In this Order, we grant the petition for waiver filed by Puerto Rico Telephone Company, Inc. (PRTC) and extend to July 1, 2002, the deadline by which PRTC is required under the Commission's rules to convert to price cap regulation.

2. PRTC is the incumbent local exchange carrier serving Puerto Rico. It serves more than 1.3 million access lines and provides local exchange, exchange access, intra-island services, and Internet access. PRTC is regulated in the interstate jurisdiction as a rate-of-return carrier. On February 12, 1999, the Commission approved an application to transfer control of PRTC to GTE Holdings (Puerto Rico) LLC, a wholly-owned subsidiary of GTE International Telecommunications Incorporated that is affiliated with price cap carriers GTE Telephone Operating Companies (GTOC) and GTE System Telephone Companies (GSTC)(collectively "GTE"). The transfer was consummated on March 2, 1999. As a result of its transfer of control to GTE, PRTC is required under section 61.41(c)(2) of our rules, to convert to price cap regulation. Upon conversion to price cap regulation, PRTC would also be required to withdraw

1 Supplement to Petition for Waiver on Behalf of Puerto Rico Telephone Company, Inc. (filed Feb. 12, 2001)(PRTC Supplemental Petition).

2 See 47 C.F.R. § 61.38; see also Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd at 6819 (1990)(Second Report and Order).

3 See Puerto Rico Telephone Authority, Transferor, and GTE Holdings (Puerto Rico) LLC, Transferee, For Consent to Transfer Control of Licenses and Authorization Held by Puerto Rico Telephone Company and Celulares Telefónica, Inc., Memorandum Opinion and Order, 14 FCC Rcd 3122 (1999)(PRTC Merger Order).

4 On June 30, 2000, Bell Atlantic Corporation completed its merger with GTE Corporation, creating Verizon Communications.

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from the NECA Common Line Pool, and would lose any Long Term Support (LTS)<sup>6</sup> it receives under section 54.303 of our rules.<sup>7</sup> PRTC currently receives approximately \$91 million annually in LTS.<sup>8</sup>

3. On December 10, 1999, PRTC filed a petition for waiver of section 61.41 of the Commission's rules, as well as any other provisions that would prevent PRTC from remaining subject to rate-of-return regulation and in the National Exchange Carrier Association (NECA) Common Line Pool.<sup>9</sup> In its petition, PRTC alternatively requested a limited waiver of section 54.303(a) of the Commission's rules in order to allow PRTC to continue to receive LTS for a transitional period, in the event that it is required to convert to price cap regulation. In response, the Commission postponed PRTC's initial price cap filing to July 1, 2001, but did not rule on the merits of PRTC's petition.<sup>10</sup>

4. On February 12, 2001, PRTC filed a supplement to its petition for waiver, citing recent and proposed regulatory changes governing universal service, price cap carriers and rate-of-return carriers in support of its waiver request.<sup>11</sup> Alternatively, PRTC requested a further extension of time to allow Commission review of a pending plan to reform access charges and regulation of rate-of-return carriers.

5. PRTC's Supplemental Petition updates the waiver request it made in its earlier petition. PRTC argues that a waiver would serve the public interest by promoting competition and universal service,<sup>12</sup> and maintains that recent regulatory developments further support its waiver request or an additional extension. Specifically, it contends that replacing its LTS subsidy with universal service support from the interstate access support mechanism adopted in the *CALLS Order*<sup>13</sup> for price cap carriers is not realistic or practical because interstate access

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<sup>5</sup> See 47 C.F.R. § 61.41(c)(2); see also *PRTC Merger Order*, 14 FCC Rcd at 3132 ("PRTC will be required within 12 months of our approval of this transfer of control to file interstate access tariffs for Puerto Rico using the price cap methodology.")

<sup>6</sup> LTS is a universal service support mechanism that reduces the amount of loop cost that high cost local exchange companies (LECs) must recover from interexchange carriers (IXCs) through Carrier Common Line (CCL) charges. See *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776, 9164-9165 (1997).

<sup>7</sup> See 47 C.F.R. § 54.303(a); see also 47 C.F.R. § 61.41(a)(3); *Second Report and Order*, 5 FCC Rcd at 6819.

<sup>8</sup> See PRTC Supplemental Petition at 3.

<sup>9</sup> Petition for Waiver on Behalf of Puerto Rico Telephone Company, Inc. (filed Dec. 10, 1999).

<sup>10</sup> See *Puerto Rico Telephone Company Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission's Rules*, CCB/CPD No. 99-36, *Order*, 15 FCC Rcd 9680 (2000).

<sup>11</sup> See PRTC Supplemental Petition at ii.

<sup>12</sup> See *id.* at 3, 7, 8, 9-10 (stating, in part, that if it leaves the NECA pool as a rate-of-return carrier and converts to price cap regulation, the resulting loss of \$91 million in LTS would force PRTC to dramatically raise its CCL rates with negative effects on competition and consumers); see also *id.* at 15 ("Given the CALLS-imposed constraint on interstate access universal service support, PRTC's initial price cap rates would...threaten competition and universal service for Puerto Rico consumers.")

<sup>13</sup> See *Access Charge Reform Price Cap Performance Review for Local Exchange Carriers, Sixth Report and Order*, 15 FCC Rcd 12962 (2000), *pets. for review pending, sub.nom.* Texas Office of Public Util. Counsel et al. v. FCC, Nos. 00-060434 (and consolidated cases) (5<sup>th</sup> Cir. 2000)(*CALLS Order*). In the *CALLS Order*, the Commission

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universal service support is capped, PRTC's needs and participation were not anticipated,<sup>14</sup> and the support has already been allocated to other carriers.<sup>15</sup> Furthermore, PRTC states that it would require more support than any current recipient<sup>16</sup> and that revising this support mechanism would raise "complex public interest issues" that would need to be resolved before PRTC becomes a price cap carrier.<sup>17</sup> PRTC asserts that the loss of LTS would negatively impact competition and universal service in Puerto Rico by forcing PRTC to establish an initial CCL charge that is three times its current NECA pool rate, which is nationally averaged. Also, PRTC states that current ongoing reductions in universal service high-cost support would make it even harder for PRTC to adjust to the potential loss of LTS.<sup>18</sup> In addition, PRTC contends that the Commission should conclude its review of the pending Multi-Association Group (MAG) plan before deciding the merits of its petition because MAG deals with overlapping issues that could affect PRTC's future status as a rate-of-return carrier.<sup>19</sup> Finally, PRTC argues there have been no cost shifting or gaming abuses and that cost savings are leading to decreasing access rates.<sup>20</sup>

6. AT&T Corp. (AT&T), Sprint Communications Company LP (Sprint) and WorldCom, Inc. (WorldCom) submitted responses to PRTC's Supplemental Petition expressing their opposition to PRTC's waiver request or to delaying PRTC's conversion to price cap regulation. Generally, these commenters state that a delay is not in the public interest because price cap regulation would benefit PRTC customers by lowering access charges, increasing long

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adopted interstate access charge and universal service reforms for price cap carriers based on a proposal submitted by the Coalition for Affordable Local and Long Distance Service (CALLS), consisting of AT&T, Verizon, BellSouth, SBC and Sprint.

<sup>14</sup> See PRTC Supplemental Petition at 6; PRTC Reply at 2-3; Verizon Reply at 1-3.

<sup>15</sup> See PRTC Reply at 5.

<sup>16</sup> See PRTC Supplemental Petition at i ("PRTC's conversion to price cap status will introduce a demand on the existing fund greater than any current participating carrier...") and 7 ("...to establish PRTC's composite access rate at the target rate, over \$151 million, or 23.3 percent of the interstate access universal service support fund would have to be earmarked for PRTC.")

<sup>17</sup> See *id.* at i, 8; PRTC Reply at 1.

<sup>18</sup> See PRTC Supplemental Petition at 9, 15 (stating that as a result of the Commission's phase-down of high-cost loop support effective Jan. 1, 2001, Puerto Rico loses \$15.1 million in support this year, \$31.9 million cumulative in the second year, and \$34.1 million cumulative in the third year); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Thirteenth Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 24422 (2000).

<sup>19</sup> The MAG plan is a comprehensive proposal for interstate access charge and universal service reform for rate-of-return carriers, which would permit rate-of-return carriers to convert to incentive regulation on a study area basis and would eliminate the requirement of Section 61.41 that rate-of-return carriers convert to price cap regulation if acquired by a price cap company. See *Petition for Rulemaking of the LEC Multi-Association Group*, RM 10011, at 16 (filed Oct. 20, 2000); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, *Notice of Proposed Rulemaking*, FCC 00-448, at para. 11 (rel. Jan. 5, 2001).

<sup>20</sup> See also National Exchange Carrier Association Reply Comments at 3.

distance competition and improving PRTC's operating efficiencies.<sup>21</sup> These parties also oppose a delay to allow time for the Commission to complete its consideration of the MAG plan. These commenters believe that PRTC's participation in the reforms adopted in the *CALLS Order* was anticipated.<sup>22</sup> They assert that PRTC, if it is required to convert to price cap regulation, should seek replacement of LTS with interstate access universal service support under the *CALLS Order*.<sup>23</sup> Verizon, which was created when Bell Atlantic and GTE merged after GTE had acquired control of PRTC, argues that interstate access universal service support was based on the number and size of price cap carriers at the time of the *CALLS Order*, and that since PRTC was not a price cap carrier then, the support mechanism was not sized to cover universal service support for it.<sup>24</sup> Some commenters also assert it is premature for PRTC to state that there are no cost shifting concerns without an audit or further examination by the Commission.<sup>25</sup>

7. PRTC's renewed waiver requests raise serious and complex issues regarding the changes in universal service support facing PRTC if it is required to convert to price cap regulation and regarding impacts on other price cap carriers. The *CALLS Order* did not explicitly address how entry of new carriers into price caps affects distribution of interstate access universal service support. The question is particularly significant here because PRTC could be a large recipient of the support. The Commission must carefully weigh PRTC's possible receipt of universal service support under the *CALLS Order*. We also note that the MAG proposal presently before the Commission may have a bearing on PRTC's waiver request. The Commission should have the opportunity to give appropriate consideration to the potential impact the MAG proceeding may have on PRTC's regulatory status as a rate-of-return carrier before requiring PRTC's conversion to price cap regulation. In light of these various considerations, we find that it is appropriate to extend the deadline for PRTC's conversion to price cap regulation to July 1, 2002, without ruling on the merits of PRTC's petition. This will allow the Commission to further review the merits of PRTC's petition in light of all of the information filed in this proceeding, and in light of other related proceedings.

8. Accordingly, IT IS ORDERED, pursuant to sections 4(i)-(j), and 201 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), and 201, and sections 0.291 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.291 and 1.3, that section 61.41(c)(2) of the Commission's rules, 47 C.F.R. §§ 61.41(c)(2), SHALL BE WAIVED to the extent necessary to

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<sup>21</sup> See AT&T Comments at 6; Sprint Comments at 6; WorldCom Comments at 4-6, 8.

<sup>22</sup> See AT&T Comments at 7; Sprint Comments at 4; WorldCom Comments at 2.

<sup>23</sup> See AT&T Comments at 5-8 (estimating that PRTC could obtain \$63-\$68 million in universal service support); WorldCom Comments at 3 ("The fact that other ILECs' support levels could decrease [under CALLS] if PRTC converts to price cap regulation...does not run afoul of Section 254(e)'s instruction that support should be specific and predictable."); *but see* PRTC Reply at 2-6 (stating that AT&T, Sprint and WorldCom do not address how PRTC's unique universal service needs can be reconciled under CALLS and that AT&T probably overstates how much CALLS support would be available to PRTC and significantly understates PRTC's estimated \$151 million in required universal service support under CALLS).

<sup>24</sup> See Verizon Reply at 1-3.

<sup>25</sup> See AT&T Comments at 9, Sprint Comments at 7; WorldCom Comments at 6-9.

permit Puerto Rico Telephone Company, Inc. to delay filing its initial price cap tariff until the filing of tariffs with an effective date of July 1, 2002.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood  
Chief, Common Carrier Bureau