

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

In the Matter of)
)
Petition of Puerto Rico Telephone) WC Docket No. 10-52
Company, Inc. and Puerto Rico Telephone)
Larga Distancia, Inc. for Waiver of Section)
64.1903 of the Commission’s Rules)

MEMORANDUM OPINION AND ORDER

Adopted: December 23, 2010

Released: December 23, 2010

By the Chief, Wireline Competition Bureau:

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I. INTRODUCTION

1. In this Order, we grant a waiver requested by Puerto Rico Telephone Company, Inc. (PRTC) and its affiliate, Puerto Rico Telephone Larga Distancia, Inc. (PRTL) or, collectively, PRT) to allow them to provide long distance services without requiring PRT to do so through a separate corporate affiliate. This is consistent with the framework that the Commission adopted for the Bell Operating Companies (BOCs) and their independent incumbent local exchange carrier (LEC) affiliates in the Section 272 Sunset Order. We also defer temporarily, consistent with other Commission precedent,

1 For convenience, this Order uses the terms “long distance services” and “interexchange telecommunications services” interchangeably.

2 Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission’s Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket Nos. 02-112, 06-120, CC Docket No. 00-175, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440 (2007) (Section 272 Sunset Order). Independent incumbent (continued....)

application of dominant carrier regulation to PRT's long distance services, which will permit PRT ninety days to file an interstate tariff for them and otherwise come into compliance with dominant carrier regulation or demonstrate that nondominant carrier regulation of those services is appropriate. Both actions are conditioned upon PRT's compliance with certain targeted safeguards.

II. BACKGROUND

A. Historical Regulation of Independent Incumbent LEC Long Distance Services

2. An independent incumbent LEC, such as PRTC, is subject to the structural separation requirements in section 64.1903 of the Commission's rules if it wishes to provide in-region, interstate or international, long distance services.⁴ That rule requires that the independent incumbent LEC provide those services only through a separate affiliate that: (1) maintains books of account separate from those the independent incumbent LEC maintains; (2) does not jointly own transmission or switching facilities with its independent incumbent LEC; and (3) purchases tariffed services from the independent incumbent LEC only pursuant to the incumbent LEC's tariffs, except that the separate affiliate also may acquire unbundled network elements (UNEs) and exchange services pursuant to an approved interconnection agreement.⁵

3. An independent incumbent LEC affiliate that operates in accordance with section 64.1903 is generally classified as nondominant in its provision of in-region, interstate or international, long distance services.⁶ The Commission's rules generally preclude a carrier classified as nondominant from filing tariffs for those services.⁷ Instead, the nondominant carrier provides those services pursuant to generally

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LECs are incumbent LECs that are not BOCs. See 47 C.F.R. § 64.1902. Prior to the enactment of the Telecommunications Act of 1996, Pub. L. No. 104-104, title VII, Sec. 706, 110 Stat. 56, 153 (1996) (1996 Act), the Commission used the term "independent LECs" to describe these carriers. This order uses the term "independent incumbent LECs" even when the reference is to events occurring prior to the enactment of the 1996 Act.

³ See, e.g., *Hawaiian Telephone Co.*, 16 FCC 2d 308 11 (1969) (*Hawaiian Telephone*), stayed in part, 16 FCC 2d 677 (1969); *ITT World Communications Inc. v. Consortium Communications International, Inc.*, File Nos. TS 9-78 et al., Memorandum Opinion and Order, 76 FCC 2d 15 (1980) (*ITT v. CCI*).

⁴ 47 C.F.R. § 64.1903; see *Section 272 Sunset Order*, 22 FCC Rcd at 16445-46, para. 9.

⁵ See 47 C.F.R. § 64.1903. An independent incumbent LEC reseller (i.e., an independent incumbent LEC that provides in-region, interstate or international, interexchange services without using its own interexchange switching or transmission facilities or capability) may be a separate corporate division of the incumbent independent LEC, rather than a separate affiliate. 47 C.F.R. § 64.1903(b)(1).

⁶ *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, para. 7 (1997) (*LEC Classification Order*), recon. denied, Second Order on Reconsideration and Memorandum Opinion and Order, 14 FCC Rcd 10771 (1999) (*LEC Classification Reconsideration Order*). A rule 64.1903 separate affiliate that is affiliated with a foreign carrier that has the ability to discriminate against other carriers through its control of bottleneck services or facilities in a foreign destination market, however, is presumed dominant to the extent it provides in-region, international, long distance services to that foreign destination market. See 47 C.F.R. § 63.10; *Section 272 Sunset Order*, 22 FCC Rcd at 16477, para. 74. That presumption subjects the rule 64.1903 separate affiliate to a set of requirements that differs from those described in paragraph 3, above. See 47 C.F.R. § 63.10(c)-(e).

⁷ 47 C.F.R. § 61.19 (mandatorily detariffing all nondominant carrier interstate and international, long distance services, other than dial-around 1+ services, certain LEC-initiated services during the first forty-five days of service, international inbound collect calls, and certain on-demand mobile satellite services).

available offerings posted on its website and under contract to large enterprise customers.⁸ In contrast, a carrier classified as dominant in the provision of in-region, interstate or international, long distance services would have to file tariffs setting forth the prices, terms, and conditions under which it offers such services.⁹ According to the Commission's tariffing rules, these tariff filings would have to contain detailed information including twelve-month cost projections, and working papers and statistical support for any new services offered.¹⁰ The tariffs, cost projections, and supporting documentation would have to be filed at least seven or fifteen days before the independent incumbent LEC would be permitted to initiate new services or revise existing services.¹¹ The independent incumbent LEC also would have to perform and file calculations to change its maximum rates.¹²

4. Both section 64.1903 and the Commission's policy of generally classifying rule 64.1903 separate affiliates as nondominant in the provision of in-region, interstate and international, long distance services are rooted in the *Competitive Carrier* proceeding,¹³ which began in 1979. In a series of orders in that proceeding, the Commission distinguished two kinds of carriers—those with individual market power (dominant carriers) and those without market power (nondominant carriers).¹⁴ The Commission found it appropriate to continue to subject dominant carriers to full regulation under Title II of the Communications Act.¹⁵ The Commission further found, however, that because nondominant carriers lacked market power, it was appropriate to reduce their regulatory obligations.¹⁶

5. In the *Competitive Carrier First Report and Order*, the Commission classified independent incumbent LECs as dominant with respect to both interstate access services and interstate long distance

⁸ See 47 C.F.R. § 61.55.

⁹ 47 C.F.R. § 61.58.

¹⁰ 47 C.F.R. § 61.38(i)-(ii).

¹¹ See 47 C.F.R. § 61.58.

¹² See 47 C.F.R. §§ 61.41-61.49. Other dominant carrier requirements include certain price cap, rate of return, discontinuance, transfer of control, contract filings, and reporting requirements. See *Section 272 Sunset Order*, 22 FCC Rcd at 16446 n.31 & 16477-78, paras. 75-78.

¹³ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980) (*Competitive Carrier First Report and Order*); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17308 (1982); Second Report and Order, 91 FCC 2d 59 (1982) (*Competitive Carrier Second Report and Order*); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28292 (1983); Third Report and Order, 48 Fed. Reg. 46791 (CCB 1983) (*Competitive Carrier Third Report and Order*); Fourth Report and Order, 95 FCC 2d 554 (1983) (*Competitive Carrier Fourth Report and Order*), vacated, *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, *MCI Telecommunications Corp. v. AT&T*, 509 U.S. 913 (1993); Fifth Report and Order, 98 FCC 2d 1191 (1984) (*Competitive Carrier Fifth Report and Order*); Sixth Report and Order, 99 FCC 2d 1020 (1985) (*Competitive Carrier Sixth Report and Order*), vacated, *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (*Competitive Carrier Sixth Report and Order*), aff'd, *MCI Telecommunications Corp. v. AT&T*, 512 U.S. 218 (1994) (*MCI v. AT&T*) (collectively, the *Competitive Carrier* proceeding); see 47 C.F.R. § 61.3(q), (y).

¹⁴ See, e.g., *Competitive Carrier First Report and Order*, 85 FCC 2d at 6, paras. 25-26.

¹⁵ *Id.* at 10-11, para. 26.

¹⁶ *Id.* at 11, para. 27.

services.¹⁷ As competition emerged in the long distance market, the Commission began to reexamine whether it should apply dominant carrier regulation to the interstate long distance services provided by independent LECs. In the *Competitive Carrier Fourth Report and Order*, the Commission concluded that it should not do so as long as the independent LECs provided those services through separate affiliates.¹⁸ In the *Competitive Carrier Fifth Report and Order*, the Commission adopted requirements for these separate affiliates that, with minor modifications, are now codified in section 64.1903.¹⁹ In that order, however, the Commission did not require that every independent incumbent LEC provide interstate long distance services through a separate affiliate; but if it did not provide service through an affiliate, the independent incumbent LEC would be subject to dominant carrier regulation in its provision of domestic, interstate, interexchange services.²⁰

6. In the *LEC Classification Order*, the Commission reexamined its regulation of interstate and international, long distance services in light of increasing competition and the passage of the 1996 Act.²¹ The Commission found that dominant carrier regulation was generally designed to address classical, rather than exclusionary, market power.²² The Commission also found that independent incumbent LECs were unlikely to be able unilaterally to raise the prices of in-region, interstate, long distance services by restricting their own output, either because of their position in the long distance market or because of their control over bottleneck local access facilities.²³ The Commission therefore concluded that dominant carrier regulation of the independent incumbent LECs' in-region, interstate, long distance services would be inappropriate.²⁴ The Commission also found that independent incumbent LECs were unlikely to be able unilaterally to raise the prices of in-region, international, long distance services except with regard to international routes where the LECs have market power as a result of affiliations with foreign carriers having bottleneck control in the foreign destination market.²⁵ The Commission therefore classified independent incumbent LECs as nondominant in the provision of in-region, international, long distance services except with regard to those international routes.²⁶

¹⁷ *Id.* at 15, para. 65; see also *Section 272 Sunset Order*, 22 FCC Rcd at 16484, para. 90 (retaining dominant carrier classification for BOC interstate access service).

¹⁸ *Competitive Carrier Fourth Report and Order*, 95 FCC 2d at 575, paras. 31-32.

¹⁹ *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198, para. 9.

²⁰ *Id.*

²¹ See *LEC Classification Order*, 12 FCC Rcd at 15758-65, paras. 2-10.

²² *Id.* at 15847, para. 156. Classical (or "Stiglerian") market power refers to "the ability of a firm profitably to raise and sustain its price above the competitive level by restricting its own output." Exclusionary (or "Bainian") market power refers to "the ability of a firm profitably to raise and sustain its price significantly above the competitive level by raising its rivals' costs and thereby causing the rivals to restrain their output." *Id.* at 15803 n.214.

²³ *Id.* at 15847-48, paras. 156-58. (in-region, interstate, interexchange services); *id.* at 15862-63, para. 188 (in-region, international, interexchange services).

²⁴ *Id.* at 15848, para. 158.

²⁵ *Id.* at 15862-63, paras. 188-89.

²⁶ *Id.* at 15863, para. 189. The Commission also classified the independent incumbent LECs as nondominant in the provision of out-of-region, interstate, interexchange services. *Id.* at 15873-77, paras. 206-11. We note that an independent incumbent LEC that is classified as dominant on an international route because of an affiliation with a foreign carrier is not subject to the tariffing and many of the other requirements that otherwise apply to dominant interstate and international, long distance carriers. That independent incumbent LEC, however, must comply with a (continued....)

7. In the *LEC Classification Order*, the Commission further found that, although the independent incumbent LECs' control of bottleneck local access facilities did not warrant the imposition of dominant carrier regulation of the LECs' in-region, interstate and international, long distance services, the LECs would have the incentive and ability to use that control to distort interexchange competition.²⁷ This harm, the Commission reasoned, could arise in any of three ways. First, the Commission suggested that an independent incumbent LEC could allocate the costs of its in-region, interstate and international, long distance services to monopoly local exchange and exchange access services, an action that the Commission believed could, under certain circumstances, give the LEC an unfair advantage over its long distance competitors.²⁸ Second, the Commission indicated that the independent incumbent LEC could gain an unfair advantage over those competitors by discriminating against them in the provisioning of exchange and exchange access services.²⁹ Finally, the Commission found that the independent incumbent LEC could potentially initiate a price squeeze to increase its long distance market share.³⁰

8. The Commission determined that the section 64.1903 requirements "would aid in the detection and prevention of such anticompetitive conduct" and would be more effective than dominant carrier regulation in providing those benefits.³¹ Although the Commission recognized that those requirements would impose some burdens on independent incumbent LECs, it found that these burdens would not be unreasonable in light of the resulting protections against cost misallocation, unlawful discrimination, and price squeezes.³² Given these overall benefits, the Commission mandated that facilities-based, independent incumbent LECs provide in-region, interstate and international, long distance services only through rule 64.1903 separate affiliates.³³ In view of this mandate, the Commission did not revisit its prior decision to subject to dominant carrier regulation any interstate or international long distance services an independent incumbent LEC provided outside the separate affiliate structure set forth in the *Competitive Carrier Fifth Report and Order*, or otherwise address specifically the classification of in-region, interstate and international services that independent incumbent LECs might provide through entities other than rule 64.1903 separate affiliates.³⁴

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different set of requirements, those set forth in section 63.10(c) through (e) of the Commission's rules, 47 C.F.R. § 63.10(c)-(e).

²⁷ *Id.* at 15848, para. 159.

²⁸ *Id.*

²⁹ *Id.* at 15849, para. 160.

³⁰ *Id.* at 15849, para. 161, & 15854, para. 171.

³¹ *Id.* at 15850, paras. 163.

³² *Id.* at 15852, para. 167.

³³ *Id.* at 15856, para. 173. Because it found that structural separation requirements were not necessary to prevent the independent incumbent LECs from engaging in anticompetitive conduct in relation to out-of-region, interstate, interexchange services, the Commission did not require those LECs to comply with section 64.1903 in providing those services. *Id.* at 15878, para. 213. On reconsideration, the Commission amended section 64.1903 to allow independent LECs that provide in-region, long distance services solely on a resale basis (i.e., using no interexchange switching or transmission facilities or capability of the LEC's own) to provide such services through a separate corporate division, rather than a separate corporate affiliate. These resellers are subject to the other requirements in section 64.1903. *LEC Classification Reconsideration Order*, 14 FCC Rcd at 10778, para. 9; see 47 C.F.R. § 64.1903(b)(1).

³⁴ Compare *LEC Classification Order*, 12 FCC Rcd at 1198, para. 9 with *id.* at 15840-66, paras. 143-96.

B. Pending Rulemakings

9. Between September 2001 and May 2003, the Commission issued three Notices of Proposed Rulemaking (NPRMs) that collectively raised the question of what safeguards, if any, independent incumbent LECs and BOCs should be subject to in their provision of in-region, interstate and international, interexchange services.³⁵ The Commission has not yet resolved the issue with respect to independent incumbent LECs. In the *Section 272 Sunset Order*, however, the Commission allowed the BOCs and their independent incumbent LEC affiliates to provide in-region, interstate and international, long distance services free of structural safeguards and dominant carrier regulation as long as they complied with certain targeted safeguards as well as with other continuing statutory and regulatory obligations.³⁶ The targeted safeguards include: (1) special access performance metrics to protect against non-price discrimination in the provision of special access services;³⁷ (2) imputation requirements to help prevent the BOCs and the BOC independent incumbent LEC affiliates from using their pricing of access services to impede long distance competition;³⁸ and (3) other measures addressing particular consumer needs.³⁹

C. PRT's Operations and Petition

10. PRTC is an independent incumbent LEC serving the Commonwealth of Puerto Rico. PRTC presently provides in-region, interstate and international, long distance services through PRTLTD, its rule 64.1903 separate affiliate. PRTLTD provides those services subject to nondominant carrier regulation, except with respect to international services provided on the U.S.-Mexico, U.S.-Brazil, U.S.-Guatemala, U.S.-Nicaragua, U.S.-El Salvador, and U.S.-Dominican Republic routes (collectively, dominant international routes), which PRTLTD provides as a dominant carrier because of its foreign carrier affiliations.⁴⁰ During 2008, PRTC converted its interstate access services from rate of return regulation to price cap regulation.⁴¹

³⁵ *Section 272(f) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003) (*Section 272 Sunset and Independent LEC Further NPRM*) (asking whether the Commission should classify the independent incumbent LECs and BOCs as dominant in the provision of in-region, interstate and international, interexchange services in the event those carriers were allowed to provide those services outside of separate affiliates); *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, Notice of Proposed Rulemaking, 17 FCC Rcd 9916 (2002) (*Section 272 Sunset NPRM*) (asking whether structural safeguards should apply to BOC provision of in-region, interLATA telecommunications services); *2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, Notice of Proposed Rulemaking, 16 FCC Rcd 17270 (2001) (*Incumbent LEC Separate Affiliate NPRM*) (asking whether structural safeguards should apply to independent incumbent LEC provision of in-region, interstate and international, interexchange telecommunications services).

³⁶ *Section 272 Sunset Order*, 22 FCC Rcd at 16442, para. 2.

³⁷ *Id.* at 16487-89, paras. 96-98.

³⁸ *Id.* at 16489-92, paras. 99-105.

³⁹ *Id.* at 16492-94, paras. 106-08.

⁴⁰ See *Verizon Communications, Inc., Transferor, and América Móvil, S.A. de C.V., Transferee*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6215, para. 45 (2007) (*Verizon-América Móvil Order*); see also *supra* text accompanying notes 25-26.

⁴¹ See *Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global* (continued....)

11. On January 10, 2010, PRT filed a petition for waiver of section 64.1903.⁴² PRT claims that the structural separation requirements in section 64.1903 are not necessary because it faces extensive local and long distance competition.⁴³ PRT also claims that compliance with those requirements imposes unnecessary costs that compound the challenges PRT faces as a result of the unique geographic and demographic conditions in Puerto Rico.⁴⁴ In the event that the Commission grants its waiver request, PRT seeks to continue to provide in-region, interstate and international, long distance services subject to nondominant carrier regulation (except with respect to its dominant international routes), subject to safeguards similar to those the Commission imposed on the BOCs and their independent incumbent LEC affiliates in the *Section 272 Sunset Order*.⁴⁵

III. DISCUSSION

A. Overview

12. Under the framework that the Commission adopted in the *LEC Classification Order*, independent incumbent LECs provide in-region, interstate and international, long distance services through rule 64.1903 separate affiliates and subject to nondominant carrier regulation. In adopting this framework, the Commission recognized that section 64.1903 would impose some regulatory burdens,⁴⁶ and that special circumstances might warrant waiver of that rule in some cases.⁴⁷ We find that the circumstances PRT faces in providing those services warrant the replacement of the section 64.1903 structural safeguards with other, less costly safeguards that still protect consumers and competition. We therefore waive section 64.1903 for PRT, as long as it complies with those alternative safeguards as well as with other continuing statutory and regulatory obligations.⁴⁸

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Valley Networks, Inc., to Price Cap Regulation, WC Docket Nos. 07-292, 07-291, 08-18, Order, 23 FCC Rcd 7353 (WCB 2008) (*PRTC Price Cap Order*).

⁴² 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 (filed Jan. 26, 2010) (PRT Petition).

⁴³ *Id.* at 6-7; Letter from Bennett L. Ross, Counsel for PRT, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-52, at 2-5 (filed July 28, 2010) (PRT July 28, 2010 Letter).

⁴⁴ PRT Petition at 2-3, 7-11. Although the Wireline Competition Bureau issued a public notice inviting comment on PRT's petition, see *Comment Sought on Puerto Rico Telephone Company's Petition for Waiver of Structural Separation Requirements*, WC Docket No. 10-52, Public Notice, 25 FCC Rcd 2307 (WCB 2010), no party filed comments.

⁴⁵ PRT July 28, 2010 Letter at 2, 5-7.

⁴⁶ *LEC Classification Order*, 12 FCC Rcd at 15852, para. 167.

⁴⁷ *Id.* at 15856, para. 173. The Commission may waive any provision of its rules when good cause is demonstrated. 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U.S. 1027 (1972). The Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. See *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166. Waiver of a Commission rule is therefore appropriate if special circumstances warrant a deviation from the general rule, and such deviation would serve the public interest better than would strict adherence to that rule. *Northeast Cellular*, 897 F.2d at 1166; *accord NetworkIP, LLC and Network Enhanced Telecom, LLP v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

⁴⁸ Cf. *Section 272 Sunset Order*, 22 FCC Rcd at 16483, para. 88 (waiving section 64.1903 for the BOCs' independent incumbent LEC affiliates subject to their compliance with certain alternative safeguards and continuing (continued....))

13. Our decision permits PRT to provide in-region, interstate and international, long distance services without using a separate affiliate. We also defer application of dominant carrier regulation for an interim period to give PRT an opportunity to either (i) demonstrate that it should not be subjected to dominant carrier regulation or (ii) prepare and file an interstate tariff and otherwise comply with dominant carrier regulation.⁴⁹ This deferral is conditioned on PRT's compliance with certain targeted safeguards and continuing statutory and regulatory obligations.

B. Structural Safeguards

14. PRT requests that we waive section 64.1903 so that PRT may provide in-region, interstate and international, long distance services without using a separate corporate affiliate. That rule requires PRT to provide its in-region, interstate and international, long distance services through a separate affiliate that maintains separate books of account, does not jointly own transmission or switching facilities with PRTC, and purchases tariffed services and UNEs from PRTC pursuant to tariff or an approved interconnection agreement. We find that these requirements impose significant administrative costs on PRT and reduce efficiency by eliminating opportunities to take advantage of the economies of scope and scale associated with integrated operation.⁵⁰ Compliance with section 64.1903 also may delay or prevent PRT's efforts to respond to technological and marketplace developments, deploy innovative transmission and switching equipment, and bring new services to market.⁵¹ Indeed, PRT has shown that, among other savings, our waiving section 64.1903 would allow it to retire a redundant switch (a one-time benefit of \$2.5 million and annual savings of \$250,000), streamline its financial paperwork (annual savings of about \$100,000), and reduce its local taxes (a one-time \$14 million benefit).⁵²

15. We view the costs that section 64.1903 imposes in the context of ongoing efforts to increase telephone subscribership in Puerto Rico. As the Commission has recognized, households in Puerto Rico endure an "exceptionally high rate of poverty" in comparison to virtually every other part of the nation.⁵³ This high poverty rate within Puerto Rico creates many challenges and contributes to Puerto Rico's lag in

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statutory and regulatory obligation); *Petition of BellSouth Corporation 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 International Inc. for Special Temporary Authority and Waiver To Support Disaster Planning and Response*, Order, WC Docket No. 06-63, 21 FCC Rcd 6518, 6523, para. 13 (WCB 2006) (*BOC Disaster Relief Planning Order*) (waiving section 64.1903 for one year so that Verizon's independent incumbent LEC affiliates could engage in integrated disaster relief planning with other Verizon affiliates).

⁴⁹ See *Hawaiian Telephone*, 16 FCC 2d at 311, para. 15 (setting deadline for filing tariff pursuant to section 214); *ITT v. CCI*, 76 FCC 2d 15; *BOC Disaster Relief Planning Order*, 21 FCC Rcd at 6524, para. 15; see also *MCI v. AT&T*, 512 U.S. at 234. Part III.D, below, sets forth the effects of this deferral.

⁵⁰ PRT Petition at 3-4; see *Section 272 Sunset Order*, 22 FCC Rcd at 16479-80, para. 82.

⁵¹ PRT Petition at 3-4; see *Section 272 Sunset Order*, 22 FCC Rcd at 16480-18, para. 83.

⁵² PRT Petition at 3-4; Declaration of Adauk Ortiz Santiago, at 3-4 (PRT Jan. 26, 2010 Santiago Decl.), attached to PRT Petition.

⁵³ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 4136, 4165, para. 49 (*Universal Service High-Cost Insular and Support Order and Notice*) (observing that approximately 41% of Puerto Rican families reported income below the poverty threshold between 2006 and 2008 as compared to a 10% reported poverty rate for U.S. families nationwide during the same time period); see also PRT Petition at 2; PRT Nov. 17, 2010 Santiago Decl. at 2-3 (stating that the unemployment rate in Puerto Rico is about 16% and that a substantial percentage of Puerto Rican residents live in poverty).

telephone subscribership relative to the nation as a whole.⁵⁴ We believe that PRT's ability to contribute towards narrowing this gap hinges in large part on PRT's ability to operate efficiently.⁵⁵ We also believe, for the reasons discussed above,⁵⁶ that the compliance with section 64.1903 reduces PRT's operational efficiency and thus its ability to maintain and expand telephone subscribership throughout Puerto Rico.

16. We conclude that, given the adverse effect that PRT's continued compliance with section 64.1903 may have on efforts to maintain and increase telephone subscribership in Puerto Rico, the benefits from such compliance exceed the costs. In the *LEC Classification Order*, the Commission imposed the section 64.1903 separate affiliate requirements in order to protect against possible cost misallocation, unlawful discrimination, and price squeezes.⁵⁷ We find that other existing safeguards, in combination with the safeguards we adopt in this Order,⁵⁸ provide sufficient protection against these concerns and impose fewer costs on PRT.⁵⁹ The increased efficiency that results from integrated operations together with the availability of less costly, alternative safeguards convince us that it is consistent with the public interest to deviate from the general obligations imposed by section 64.1903. We therefore waive section 64.1903 as applied to PRT, conditioned upon PRT's complying with these safeguards and meeting other continuing obligations.⁶⁰

C. Dominant Carrier Regulation

17. In the *LEC Classification Order*, the Commission classified rule 64.1903 separate affiliates as nondominant in the provision of in-region, interstate and international, long distance services.⁶¹ PRT requests that we retain this nondominant classification in the event that it is permitted to provide those

⁵⁴ See Universal Service Monitoring Report, CC Docket No. 98-202, Table 6.4 (2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295442A1.pdf (2009 Universal Service Monitoring Report) (showing that the subscribership rate in Puerto Rico was 91.9% in 2008, compared to the nationwide rate of 98.2%).

⁵⁵ See generally *id.* at 4160-61, para. 40 (noting that the amount of high-cost support PRTC receives reflects an estimate of "the costs that would be incurred by an *efficient* provider of service") (emphasis in original).

⁵⁶ See *supra* para. 14.

⁵⁷ *LEC Classification Order*, 12 FCC Rcd at 15763, para. 7; see *supra* para. 7. These concerns arose from the independent incumbent LECs' control of bottleneck access facilities. *LEC Classification Order*, 12 FCC Rcd at 15847-49, paras. 158-61. Consistent with the Commission's approach in the *Section 272 Sunset Order*, we assume without deciding that PRT controls bottleneck access facilities within Puerto Rico and therefore possesses exclusionary market power within that commonwealth. See *Section 272 Sunset Order*, 22 FCC Rcd at 16472-73, para. 64; cf. *Universal Service Insular Support Order and Notice*, 25 FCC Rcd at 4144, para. 18 (recognizing that PRTC continues to be the only incumbent LEC serving Puerto Rico); *Verizon-América Móvil Order*, 22 FCC Rcd at 6197, para. 3 (describing PRT as the monopoly provider of wireline telecommunications within Puerto Rico prior to 1999).

⁵⁸ See *infra* part III.D.

⁵⁹ See *Section 272 Sunset Order*, 22 FCC Rcd at 16481, para. 84; *Computer III Phase I Order*, 104 FCC 2d at 964, para. 3 (abolishing structural separation requirement upon a finding that targeted nonstructural requirements were sufficient to address discrimination and cross-subsidization concerns); *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1197-98, para. 8 (determining that "[w]hile structural separation decreases opportunities for cost-shifting and anticompetitive conduct, it can also decrease efficiency and affect the interexchange carrier's ability to compete").

⁶⁰ Cf. *LEC Classification Order*, 12 FCC Rcd at 15854, para. 170 (stating that none of the independent incumbent LECs had provided specific evidence to support their claim that separate affiliate requirements would increase their costs, or otherwise demonstrated that these additional costs would outweigh the benefits of those requirements).

⁶¹ *LEC Classification Order*, 12 FCC Rcd at 15840, para. 143, & 15863, para. 189.

services through an entity other than a rule 64.1903 separate affiliate.⁶² The record before us, however, provides insufficient information regarding the marketplace for those services to enable us to determine whether PRT should be classified as a nondominant carrier. In particular, we cannot conclude on the basis of that record that PRT does not possess classical market power in regard to in-region, interstate and international, long distance services, which is the type of market power that dominant carrier regulation is designed to address.

18. This deficiency in the record creates an anomalous situation. A straightforward application of precedent dictates that PRT should be classified as dominant in the provision of in-region, interstate and international, long distance services in the event it provides them through an entity other than a rule 64.1903 separate affiliate.⁶³ But PRT contends that it lacks market power and requests that we waive application of dominant carrier regulation on an interim basis so we may address on a more developed factual record whether PRT should be classified as nondominant in the provision of in-region, interstate and international, long distance services.⁶⁴ PRT has put some evidence in the record,⁶⁵ which we will evaluate together with its future filings.

19. The Commission has set forth a standard for when carriers should be deemed to lack market power.⁶⁶ PRT appears to recognize that it will need to provide additional information regarding the marketplace circumstances in which it provides in-region, interstate and international, long distance services before the Commission can conclude that PRT lacks market power.⁶⁷ PRT asks that we allow it to provide in-region, interstate and international, long distance services through an entity that is not a rule 64.1903 separate affiliate and on a nondominant carrier basis pending Commission evaluation of a more complete record on that issue.⁶⁸

20. We find it appropriate to defer temporarily the application of dominant carrier regulation. While we are not prejudging PRT's ability to demonstrate that it lacks market power and should be classified as nondominant, we find that it is in the public interest to give PRT a further opportunity to make such a showing. Regulations associated with dominant carriers impose costs and administrative burdens on carriers and the Commission.⁶⁹ Given the impact that a decrease in PRT's operational

⁶² PRT July 28, 2010 Letter at 2.

⁶³ See *LEC Classification Order*, 12 FCC Rcd at 15840, para. 143 (in-region, interstate, interexchange services); *id.* at 15863, para. 189 (in-region, international, long distance services); *Competitive Carrier Fifth Report and Order*, 98 FCC 2d at 1198, para. 9.

⁶⁴ See Letter from Bennett L. Ross, Counsel for PRT, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-52, at 5 (filed Dec. 9, 2010) (PRT Dec. 9, 2010 Letter); PRT July 28, 2010 Letter at 2.

⁶⁵ See, e.g., *id.* at 2-5.

⁶⁶ See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622, 8632-71, paras. 21-92 (2010 *Qwest Phoenix Forbearance Order*), *pet. for review pending sub nom. Qwest Corp. v. FCC*, No. 10-9543 (10th Cir.); *Section 272 Sunset Order*, 22 FCC Rcd at 16450-72, paras. 19-63 (employing a traditional market power analysis in determining whether AT&T and Verizon possessed classical market power over in-region, interstate and international, long distance services).

⁶⁷ See PRT Dec. 9, 2010 Letter at 5.

⁶⁸ *Id.*

⁶⁹ See, e.g., *Section 272 Sunset Order*, 22 FCC Rcd at 16452, para. 71; *LEC Classification Order*, 12 FCC Rcd at 15806-08, paras. 88-90; see also *supra* para. 3 (describing dominant carrier regulation). The Commission does not currently receive tariffs for most interstate or international long distance services. See *supra* n.7 and accompanying text.

efficiency may have on efforts to maintain and increase telephone subscribership in Puerto Rico,⁷⁰ it does not serve the public interest to impose these costs and burdens if we may soon conclude that they ultimately will not be applicable. This deferral of dominant carrier regulation is conditioned upon PRT's not increasing its rates for any of PRT's existing in-region, interstate or international, long distance services above their current levels during the deferral period.⁷¹ It also is conditioned on PRT's compliance with the safeguards we adopt in part III.E.2.c, of this Order to protect PRT residential customers who make relatively few interstate long distance calls.

21. Subject to these conditions and to the exception discussed below,⁷² we temporarily defer application of dominant carrier status to any in-region, interstate and international, long distance services that PRT provides through an entity other than a rule 64.1903 separate affiliate. This deferral is further conditioned upon PRT's filing, within ninety days of the effective date of this order, evidence intended to show that PRT lacks classical market power in relation to its in-region, interstate and international, long distance services and on PRT's compliance with the safeguards set forth in part III.E.2 of this Order.⁷³ Assuming that PRT meets this filing deadline, the deferral will continue for one additional year or until the Commission addresses PRT's supplemental submission, whichever occurs earlier. If the Commission does not address PRT's supplemental submission by the end of the one-year period, PRT will have thirty days either to comply with dominant carrier regulation in its provision of in-region, interstate and international, long distance services or cease providing those services through an entity other than a rule 64.1903 separate affiliate.

22. We take this action pursuant to our authority under sections 203(a) and 203((b)(2) of the Communications Act of 1934, as amended (Communications Act or Act) as well as our waiver authority under section 1.3 of the Commission's rules.⁷⁴ With regard to tariffing, section 203((b)(2) authorizes the Commission, "in its discretion and for good cause shown" to "modify any requirement made by or under the authority of [section 203]."⁷⁵ Given the costs that dominant carrier regulation would impose on PRT as well as the safeguards under which it will provide those services in the event it elects to provide them through an entity other than a rule 64.1903 separate affiliate, we find it appropriate to exercise our discretion under this provision and modify the requirement in section 203(c) of the Act that "no carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in [interstate or foreign wire or radio communication] unless schedules have been filed and published in accordance with the provisions of the Act and with the regulations made thereunder."⁷⁶ For the same reasons, we also

⁷⁰ See *supra* part III.B.

⁷¹ This rate cap will not apply to any new services or service packages that PRT introduces after the effective date of this Order, or to any of PRT's existing service packages to the extent a rate increase for the package reflects an increase in the stand-alone price of a component of the package other than in-region, interstate or international, long distance services.

⁷² See *infra* para. 24.

⁷³ Cf. *Section 272 Sunset Order*, 22 FCC Rcd at 16450-72, paras. 19-63 (analyzing in detail whether AT&T and Verizon would be able to exercise classical market power in regard to in-region, interstate and international, long distance services).

⁷⁴ 47 U.S.C. §§ 203(a), 203((b)(2).

⁷⁵ 47 U.S.C. § 203((b)(2).

⁷⁶ 47 U.S.C. § 203(c); see *MCI v. AT&T*, 512 U.S. at 234 ("We do not mean to suggest that the tariff-filing requirement is so inviolate that the Commission's existing modification authority does not reach it at all. *Certainly the Commission* can modify the form, contents, and location of required filings, and *can defer filing* or perhaps even waive it altogether *in limited circumstances*." (emphasis added)).

temporarily waive section 61.1(c) of the Commission's rules, which specifies that "(n)o carrier required to file tariffs may provide any interstate or foreign communication service until every tariff publication for such communication service is on file with the Commission and in effect."⁷⁷

23. Section 203(a), in turn, authorizes the Commission to "designate" the "reasonable time" within which PRT must "file with the Commission and keep open for public inspection schedules showing all charges" for its in-region, interstate and international, long distance services.⁷⁸ Consistent with precedent,⁷⁹ we conclude that this authority to set a deadline for filing a tariff allows us to defer temporarily the application of the tariff filing obligation associated with dominant carrier regulation. We also find it reasonable, for the reasons stated above, not to require PRT to tariff its in-region, interstate and international, long distance services pending the filing within ninety days, and Commission review within one additional year, of PRT's supplemental showing.

24. This temporary deferral does not change the regulatory status of those in-region, international, long distance services that PRTL D presently provides subject to dominant carrier regulation because of its foreign carrier affiliations. As stated above,⁸⁰ PRTL D is subject to dominant carrier regulation (but not to tariffing or many other requirements otherwise applicable to dominant interstate and international, long distance carriers) in its provision of in-region, international, long distance services on certain international routes. The application of dominant carrier regulation to these routes stems from sections 63.09 and 63.10 of the Commission's rules, which apply specifically to U.S. carriers that provide international telecommunications services.⁸¹ To the extent that PRT remains affiliated, or becomes affiliated, within the meaning of section 63.09, with a foreign carrier having bottleneck control in a foreign destination market, PRT will continue to be subject to dominant carrier regulation on international routes to that destination, regardless of the corporate structure under which it provides service on those routes.⁸²

D. Effects of Deferral

25. We set forth below the regulatory implications of our decision to temporarily defer application of dominant carrier regulation to PRT's in-region, interstate and international, long distance services. We emphasize that these regulatory implications are subject to PRT's compliance with the conditions set forth in this Order. During the deferral period, PRT will be subject to any rule that applies to carriers classified as nondominant in the provision of those services.⁸³

⁷⁷ 47 C.F.R. § 61.1(c); see *BOC Disaster Relief Planning Order*, 21 FCC Rcd at 6524, para. 15 (conditionally waiving, for 45 days after a BOC invokes its disaster recovery plan, part 61 tariff filing requirements "that would otherwise apply to interstate telecommunications services provided by the [BOCs] on an integrated basis" so that the BOCs could "install services to other carriers and customers during the emergency and determine following the 45-day period whether such services are covered by existing tariffs or require modified or new tariffs to be filed).

⁷⁸ 47 U.S.C. § 203(a).

⁷⁹ See *Hawaiian Telephone*, 16 FCC 2d at 311, para. 15; *BOC Disaster Relief Planning Order*, 21 FCC Rcd at 6524, para. 15 (relieving certain BOCs from tariff filing requirements for the forty-five days following their invoking their disaster relief plans).

⁸⁰ See *supra* para. 10.

⁸¹ 47 C.F.R. §§ 63.09, 63.10 (regulatory classification of U.S. international carriers); see *LEC Classification Order*, 12 FCC Rcd at 15838-39, para. 139 (preserving rules designed to address the incentives and ability of a foreign carrier to discriminate against the rivals of its U.S. affiliate).

⁸² See 47 C.F.R. § 63.10; *Section 272 Sunset Order*, 22 FCC Rcd at 16477, para. 74.

⁸³ *Section 272 Sunset Order*, 22 FCC Rcd at 16477, para. 75.

26. *Price Cap, Rate of Return, and Tariffing.* During the deferral period, PRT is not subject to the requirements in section 203 of the Act and certain of the Commission's price cap, rate of return, and tariffing rules with respect to in-region, interstate and international, long distance services provided through an entity that is not a rule 64.1903 separate affiliate. Specifically: (1) PRT is not required to, and is in fact barred from, filing tariffs for those services pursuant to section 203 and sections 61.31 through 61.38 and 61.43 of the Commission's rules;⁸⁴ (2) PRT is not required to establish an "interexchange basket" pursuant to section 61.42(d)(4) of the Commission's rules,⁸⁵ to the extent that rule would require the establishment of an interexchange basket for the services covered by this Order when those services are provided through an entity other than a rule 64.1903 separate affiliate; and (3) PRT need not comply with section 61.28 of the Commission's rules for the provision of in-region, international telecommunications services to the extent, and only to the extent, that PRTC or a PRTC affiliate would be treated as a dominant carrier under that rule specifically because of PRTC's provision of in-region, international telecommunications services through an entity other than a rule 64.1903 separate affiliate.⁸⁶ To the extent that PRTC or its affiliates otherwise would be treated as a dominant carrier under section 61.28 because of an affiliation with a foreign carrier, this Order has no effect on that treatment.⁸⁷

27. *Discontinuance and Streamlined Transfer of Control.* During the deferral period, PRT is not subject to certain of the Commission's discontinuance and streamlined transfer of control rules in connection with its in-region, interstate and international, long distance services. Specifically, PRT is not subject to sections 63.03, 63.19, 63.21, 63.23, and 63.60 through 63.90 of the Commission's rules in its provision of in-region, interstate and international, long distance services to the extent, and only to the extent, that PRTC or a PRTC affiliate would be treated as a dominant carrier under these rules specifically because of PRTC's provision of those services through an entity other than a rule 64.1903 separate affiliate.⁸⁸ To the extent that PRT or its affiliates otherwise would be treated as a dominant carrier under these rules, that treatment shall continue.⁸⁹

28. *Contract Filing and Reporting.* During the deferral period, PRT is not subject to section 43.51 of the Commission's rules with respect to its provision of in-region, interstate or international, long distance services through an entity other than a rule 64.1903 separate affiliate.⁹⁰ Specifically, PRTC and its affiliates are not subject to section 43.51 of the Commission's rules to the extent, and only to the extent, that PRTC or a PRT affiliate would be treated as a dominant carrier under section 43.51 specifically because of PRTC's provision of in-region, interstate or international, long distance services

⁸⁴ See 47 U.S.C. § 203; 47 C.F.R. §§ 61.31-61.38 (tariffing requirements for dominant carriers); see also 47 C.F.R. § 61.43 (requiring annual price cap filings).

⁸⁵ 47 C.F.R. § 61.42(d)(4) (interexchange basket for services that are not classified as access services).

⁸⁶ 47 C.F.R. § 61.28 (tariffing requirements for dominant international carriers).

⁸⁷ See *supra* para. 24 (addressing in-region, international telecommunications services).

⁸⁸ See 47 C.F.R. § 63.03 (procedures for domestic transfer of control applications); 47 C.F.R. § 63.19 (procedures for discontinuing international services); 47 C.F.R. § 63.21 (conditions that apply to international section 214 authorizations); 47 C.F.R. § 63.23 (conditions that apply to resale-based international common carriers); 47 C.F.R. §§ 63.60-90 (definitions, rules, and procedures that apply to the discontinuance, reduction, outage, and impairment of services).

⁸⁹ Our finding with respect to section 63.03 extends only to those circumstances in which PRT seeks to assign or transfer control of assets used solely for the purpose of providing in-region, interstate or international, long distance services or to transfer control of an affiliate that does not jointly own any assets with another entity that uses such assets to provide services that are subject to dominant carrier regulation.

⁹⁰ 47 C.F.R. § 43.51 (filing of carrier contracts and concessions).

without complying with 64.1903. To the extent that PRTC or its affiliates otherwise would be treated as dominant carriers under section 43.51, that treatment shall continue.

E. Safeguards

29. As a condition of the above relief, we conclude that an interim regulatory framework for PRT's in-region, interstate and international, long distance services is appropriate. This framework is based in part on the substantial legal obligations that continue to apply to PRT in addition to the targeted safeguards that we adopt below. We find that this regulatory framework adequately and comprehensively addresses any competitive concerns, but imposes fewer costs and burdens than section 64.1903.

1. Continuing Requirements

30. PRT remains subject to a number of legal obligations that will help prevent PRT from taking unfair advantage of any market power it might have. In particular, PRT is still subject to: dominant carrier regulation of its interstate exchange access services, including price cap regulation of most of those services;⁹¹ the Commission's accounting and cost allocation rules and related reporting requirements;⁹² equal access obligations under longstanding Commission precedent and section 251(g) of the Act;⁹³ section 251 obligations;⁹⁴ and the continuing general obligation to provide service on just, reasonable, and not unreasonably discriminatory rates, terms, and conditions pursuant to sections 201 and 202 of the Act.⁹⁵

31. These continuing legal obligations help address any competitive concerns associated with PRT's provision of in-region, interstate and international, long distance services in a variety of ways. For example, under section 202(a), PRT remains obligated to provide any of its special access services that its competitors rely on as inputs for the competitors' own interstate and international telecommunications service offerings on rates, terms, and conditions that are not unreasonably discriminatory.⁹⁶ PRT also remains subject to unbundling obligations pursuant to section 251(c)(3), which, as the Commission has found, provide "a check on special access pricing."⁹⁷ PRT also remains obligated, under section 251(a), to interconnect with other carriers, and, pursuant to section 251(c), to interconnect on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory," which is an important tool for facilitating intermodal competition.⁹⁸ In addition, PRT's continuing equal access obligations under longstanding

⁹¹ PRT is not subject to price cap regulation for certain of its services that are provided pursuant to rate of return regulation. *See generally* 47 U.S.C. §§ 203(b), 204(a)(3); 47 C.F.R. §§ 61.38, 61.41, 61.58.

⁹² *See infra* part III.E.2.b.

⁹³ 47 U.S.C. § 251(g); *Section 272 Sunset Order*, 22 FCC Rcd at 15855-56, para. 172; *see MTS and WATS Market Structure, Phase III*, Docket No. 78-72, Report and Order, 100 FCC 2d 860 (1985); *Investigation into the Quality of Equal Access Services*, Memorandum Opinion and Order, 60 Rad. Reg. 2d (P&F) 417, 419, 1986 WL 291752 (1986).

⁹⁴ 47 U.S.C. § 251.

⁹⁵ 47 U.S.C. §§ 201, 202.

⁹⁶ 47 U.S.C. § 202(a).

⁹⁷ *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, 2574-75, para. 65 (2004) (*Triennial Review Remand Order*) (subsequent history omitted).

⁹⁸ *See* 47 U.S.C. § 251(c)(2); *cf. Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, Memorandum Opinion and Order, 22 FCC Rcd 3308 (WCB 2007) (clarifying that wholesale telecommunications (continued....))

Commission precedent and section 251(g) of the Act should protect against anticompetitive discrimination in connection with such things as dialing parity, network control signaling, and automatic calling number identification.⁹⁹

32. Like other independent incumbent LECs, PRT is required to treat its in-region, interstate and international, long distance services as nonregulated for accounting purposes.¹⁰⁰ We find that the continued treatment of the costs of, and revenues from, the direct provision of these services as nonregulated for accounting purposes will provide an important protection against improper cost shifting by PRT. This accounting treatment also will lessen the chance that costs associated with such services are inadvertently assigned to a local exchange or exchange access category.¹⁰¹ We require PRT to disclose in its ARMIS Annual Summary Report any access charges that it imputes to its in-region, interstate and international, long distance operation.¹⁰² This public disclosure requirement will provide interested parties with information they can use to evaluate whether PRT properly imputes the costs of the access it provides that operation. We note that, unlike many independent incumbent LECs, PRT has elected price cap regulation of its interstate access services.¹⁰³ This status reduces PRT's incentives to improperly shift costs to local exchange and exchange access services because it precludes PRT from seeking rate increases for these services absent low earning levels.¹⁰⁴

2. Additional Requirements

33. Consistent with the *Section 272 Sunset Order*, we adopt additional, targeted safeguards that will apply to PRT to the extent that it chooses to provide in-region, interstate or international, long distance services through an entity that is not a rule 64.1903 separate affiliate. The targeted safeguards include: (1) special access performance metrics to prevent non-price discrimination in the provision of special access services; (2) imputation requirements to help monitor PRT's provisioning of these services for possible price discrimination; (3) the offering of calling plans to protect residential customers who make few interstate, long distance calls; and (4) the provision of monthly usage information to certain long distance subscribers to enable them to make cost-effective decisions concerning alternative long distance plans.¹⁰⁵ We will monitor PRT's compliance with these safeguards and will take appropriate

(Continued from previous page)

carriers are entitled to the same rights as retail telecommunications carriers under sections 251(a) and 251(b), ensuring that new entrants have the ability to interconnect with incumbent LECs).

⁹⁹ 47 U.S.C. § 251(g); *MTS and WATS Market Structure, Phase III*, Docket No. 78-72, Report and Order, 100 FCC 2d 860 (1985); *Investigation into the Quality of Equal Access Services*, Memorandum Opinion and Order, 60 Rad. Reg. 2d (P&F) 417, 419, 1986 WL 291752 (1986).

¹⁰⁰ *See Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539, 17655, para. 257 (1996) (*Accounting Safeguards Order*) (concluding "interLATA telecommunications services should be treated like nonregulated activities for federal accounting purposes whenever these services are provided by any incumbent local exchange carrier through an affiliate"); Order on Reconsideration, 14 FCC Rcd 11396 (1996); Second Order on Reconsideration, 15 FCC Rcd 1161 (2000).

¹⁰¹ *See Section 272 Sunset Order*, 22 FCC Rcd at 16486-87, para. 94.

¹⁰² *See infra* para. 40.

¹⁰³ *See supra* para. 10.

¹⁰⁴ *Cf. Section 272 Sunset Order*, 22 FCC Rcd at 16487, para. 94 (observing that an inability to seek low-end adjustments further reduces a price cap carrier's incentive to improperly shift costs).

¹⁰⁵ We also require that PRT refrain from increasing its rates for any of its existing in-region, interstate or international, long distance services above their current levels during the deferral period. *See supra* para. 20.

remedial action if necessary. We also retain the authority to adjust these safeguards in the future as appropriate to reflect any competitive changes that might occur in the markets for in-region, interstate and international, long distance services.

a. Special Access Performance Metrics

34. As a condition of the relief it granted in the *Section 272 Sunset Order*, the Commission required the BOCs and their independent incumbent LEC affiliates to implement special access performance metrics addressing the order taking, provisioning, and maintenance and repair of those carriers' DS0, DS1, DS3, and OCn services.¹⁰⁶ The Commission also required the BOCs and their independent incumbent LEC affiliates to provide the Commission with its performance measurement results on a quarterly basis.¹⁰⁷ The Commission reasoned that these metrics and the associated filing requirement were necessary to monitor whether the BOCs and their independent incumbent LEC affiliates engaged in non-price discrimination in the provision of special access services to unaffiliated entities.¹⁰⁸

35. PRT has committed to implement the same special access metrics in the event we grant its petition.¹⁰⁹ Consistent with the Commission's reasoning in the *Section 272 Sunset Order*, we find that implementation of these metrics is needed to monitor whether PRT engages in non-price discrimination in the provision of special access services to unaffiliated entities. We therefore require, as conditions of the relief granted in this Order, that PRT implement these metrics and file its performance results with the Commission. The information that PRT records and reports to the Commission under these metrics will provide the Commission and other interested parties with reasonable tools to monitor PRT's performance in providing these special access services to itself and its competitors.¹¹⁰

36. These obligations shall apply beginning the first full quarter following PRT's provision of any in-region, interstate or international, long distance services through an entity that is not a rule 64.1903 separate affiliate. PRT must continue to implement these special access performance metrics until there is an affirmative Commission determination that such metrics no longer are necessary. PRT shall implement these metrics to the extent it provides one or more of the covered special access services to itself, to any affiliate, or to third parties. PRT shall provide the Commission with its performance measurement results on a quarterly basis.¹¹¹ We conclude that the metrics and the associated reporting

¹⁰⁶ *Section 272 Sunset Order*, 22 FCC Rcd at 16488-89, paras. 97-98.

¹⁰⁷ *Id.* at 16488, para. 98.

¹⁰⁸ *Id.* at 16488-89, para. 98.

¹⁰⁹ PRT July 28, 2010 Letter at 5-6.

¹¹⁰ For example, the "Firm Order Confirmation Timeliness" metric should provide data measuring whether PRTC confirms orders for the covered special access services within nondiscriminatory time frames. Similarly, the "Percent Installation Services Met" and "New Installation Trouble Report Rate" metrics should measure whether PRTC provisions these special access services to itself and its competitors in nondiscriminatory time frames and with nondiscriminatory levels of quality. In addition, the "Failure Rate/Trouble Rate" metric should measure whether PRTC provides its competitors with the same level of special access quality as that provided to its own operations. Finally, the "Average Repair Interval/Mean Time to Restore" metric should measure whether PRTC repairs covered special access services in a nondiscriminatory manner.

¹¹¹ Such reports shall be filed in WC Docket No. 10-52, with a copy to the Wireline Competition Bureau's Competition Policy Division. Each report shall be provided in an Excel spreadsheet format and shall be designed to demonstrate PRT's monthly performance in delivering the covered interstate special access services within its service area. These data shall be reported on an aggregated basis for interstate special access services. PRT shall provide performance measurement results (broken down on a monthly basis) for each quarter to the Commission by the 45th day after the end of the quarter.

requirements that we impose in this Order adequately address any concern regarding PRT's incentives and ability to engage in non-price discrimination in its provisioning of special access services in order to impede competition in the market for in-region, interstate, long distance services.¹¹²

b. Imputation

37. We also provide guidance to PRT regarding its treatment of charges for any access services that it provides to its in-region, interstate and international, long distance operation. We provide this guidance pursuant to our authority under sections 201, 202(a), and 220(a) of the Act.¹¹³

38. To help protect against possible cost misallocation, we direct PRTC to impute to itself its highest tariffed rate for access, including access provided over joint-use facilities, with regard to its provision of access for any in-region, interstate and international, long distance services that it provides directly.¹¹⁴ We also require PRTC to charge any non-rule 64.1903 separate affiliate through which it provides in-region, interstate or international, long distance services the same amount for access that it would have charged itself.¹¹⁵ These safeguards will assure that the degree of protection against improper cost shifting does not vary with PRT's choice of corporate structure for the provision of in-region, interstate and international, long distance services.¹¹⁶

¹¹² The targeted safeguards adopted in this Order specifically address any control that PRT may have over bottleneck access facilities. Accordingly, we find that the safeguards adopted in this Order, together with other existing safeguards, provide a cost-effective means of limiting PRT's ability to use any market power it has in the local exchange and exchange access markets to impede competition in the long distance enterprise market. *See Section 272 Sunset Order*, 22 FCC Rcd at 164889 n.286.

¹¹³ 47 U.S.C. § 201(b) (requiring that all charges for interstate or foreign telecommunications services shall be "just and reasonable"); 47 U.S.C. § 202(a) (requiring that common carriers refrain from "unjust or unreasonable discrimination in . . . practices . . . or services for or in connection with like communication service" and making it "unlawful for any common carrier . . . to make or give any undue or unreasonable preference or advantage to any particular person [or] class of persons, . . . or to subject any particular person [or] class of persons to any undue or unreasonable prejudice or disadvantage"); 47 U.S.C. § 220(a) (authorizing the Commission to "prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to [the Communications Act]").

¹¹⁴ *See Section 272 Sunset Order*, 22 FCC Rcd at 16490, para. 100 (imposing an identical requirement on the BOCs' independent incumbent LEC affiliates). Imputation is an accounting and regulatory device that is used in recognizing intra-company transactions. In the context of access services, this Commission and state commissions have long recognized the potential for incumbent LECs to use their control over their local networks to impede competition in services for which local network access is a needed input. Imputation requirements address this concern by requiring the incumbent LEC to recognize for accounting and other regulatory purposes charges for local network access equal to the amounts that an unaffiliated third party would pay for comparable access. *See, e.g., Section 272 Sunset Order*, 22 FCC Rcd at 16489-90, para. 287; *Application of Access Charges to the Origination and Termination of Interstate, IntraLATA Services and Corridor Services*, Memorandum Opinion and Order, FCC 85-172, 1985 FCC Lexis 3510, para. 9 & n.22 (Apr. 12, 1985) (*Corridor Services Order*) (requiring that LECs impute access charges to themselves in calculating their interstate, intraLATA toll rates); *see also 1998 Biennial Regulatory Review – Part 61 of the Commission's Rules and Related Tariffing Requirements*, CC Docket No. 98-131, Report and Order and First Order on Reconsideration, 14 FCC Rcd 12293, 12312, para. 53 (1999) (requiring that price cap LECs offering interexchange services impute to themselves the same access charges that they impose on interexchange carriers).

¹¹⁵ *See Section 272 Sunset Order*, 22 FCC Rcd at 16490, para. 100.

¹¹⁶ *See id.*

39. We require that PRT revise its cost allocation procedures to include its imputation methodologies.¹¹⁷ Consistent with the Commission's approach in the *Section 272 Sunset Order*,¹¹⁸ we require that PRT treat in-region, interstate and international, long distance services as nonregulated for accounting purposes. PRT also must continue to apply the affiliate transaction rules to any transactions it has with affiliates that provide long distance services.¹¹⁹ As PRT changes how it provides in-region, interstate and international, long distance services, PRT shall modify its cost allocation procedures as necessary to ensure that its imputation and access charge methodologies remain consistent with this Order.¹²⁰

40. Under the Commission's rules, amounts imputed to PRT's in-region, interstate or international, long distance services pursuant to this Order must be debited to account 32.5280, which is the account for nonregulated operating revenue.¹²¹ To facilitate transparency of PRT's imputation of in-region, interstate and international, long distance costs, we require PRT, as a condition of this Order, to include the imputation charges it debits to account 5280 in its ARMIS Annual Summary Report, accompanied by an explanatory footnote for each line item identifying the amount imputed.¹²² This requirement should pose at most a minimal additional burden on PRT because it already must maintain a subsidiary record within account 5280 for revenues derived from regulated services treated as nonregulated for federal accounting purposes,¹²³ and already must file this ARMIS report.¹²⁴

41. In view of PRTC's status as a price cap carrier, we conclude that the requirements set forth above adequately address concerns regarding the incentives and ability of PRT to use its pricing of access services, including special access services, to impede competition in the provision of in-region, interstate or international, long distance services. At the same time, these requirements should not hamper PRT's ability to compete. Instead, they should give PRT, its access services customers, and the Commission

¹¹⁷ See *Section 272 Sunset Order*, 22 FCC Rcd at 164591, para. 102; see also *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities; Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and their Affiliates*, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, 1300, para. 4 (1987) (*Joint Cost Order*) (requiring all incumbent LECs to allocate their costs and revenues between regulated and nonregulated activities in accordance with the Commission's joint cost rules), *aff'd Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990). 47 C.F.R. § 64.901 (setting forth an attributable cost methodology for allocating costs between regulated and nonregulated activities). We note that PRT need not file a cost allocation manual with the Commission. See generally 47 C.F.R. § 64.903(a).

¹¹⁸ See *Section 272 Sunset Order*, 22 FCC Rcd at 16491, para. 102.

¹¹⁹ *Id.*

¹²⁰ See *id.*

¹²¹ 47 C.F.R. § 32.5280; see also 47 C.F.R. § 64.901(b)(1) (specifying that tariffed services, such as exchange access services, provided to a nonregulated operation must be charged to nonregulated activities at the tariffed rates and credited to the regulated revenue account for that service).

¹²² These data values with explanatory footnotes are to be provided in PRT's FCC Report 43-01, ARMIS Annual Summary Report, table I, row 1045, columns (b) and (c).

¹²³ See 47 C.F.R. § 32.5280(c) (specifying that separate subsidiary record categories be maintained for nonregulated revenues).

¹²⁴ See, e.g., *Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules)*, CC Docket No. 86-182, Report and Order, 2 FCC Rcd 5770, 5773, para. 22 (1987) (ARMIS Order), modified on recon., 3 FCC Rcd 6375 (1988) (ARMIS Reconsideration Order); see also 47 C.F.R. § 43.21.

meaningful information for evaluating whether PRT's imputation and access charge practices and procedures are reasonable and not unreasonably discriminatory.¹²⁵

c. Low-Volume Usage Plans

42. We are concerned that PRT customers who make relatively few interstate long distance calls and who do not also subscribe to wireless or broadband Internet access service may have few competitive choices among interstate, long distance providers and may not be able to avoid the impact of a price increase by engaging in usage substitution.¹²⁶ To address this concern, PRT has committed to offer rate plans tailored to these customers' needs.¹²⁷ We note that in the *Section 272 Sunset* proceeding, the BOCs made similar commitments to the needs of their customers who make relatively few in-region, interstate, long distance calls.¹²⁸

43. We conclude that the availability of such rate plans is important,¹²⁹ and thus require that, as a condition of the temporary deferral from dominant carrier regulation that we grant in this Order, PRT adhere to this commitment during the deferral period.¹³⁰ We take this action pursuant to our authority under section 201. We find that this condition will help protect against the exercise of any classical market power that PRT may have in relation to customers that make relatively few interstate long distance calls. We also find that, in comparison to applying dominant carrier regulation to PRT's in-region, interstate long distance services, this condition provides a more effective and less costly means of protecting these customers during the deferral period.

¹²⁵ See *Section 272 Sunset Order*, 22 FCC Rcd at 16492, para. 105.

¹²⁶ See *id.* at 16492, para. 106; *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, 3313-14, paras. 81-82 (1995) (*AT&T Reclassification Order*); *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5243, para. 71 (2007) (*Qwest Section 272 Sunset Forbearance Order*). "Usage substitution" occurs when a customer who subscribes to the services offered by two or more communications networks (e.g., wireline telephone service and mobile wireless service) begins using one service more and another service less. See *Qwest Phoenix Forbearance Order*, 25 FCC Rcd at 8650 n.158. In contrast, "access substitution" occurs when the customer stops subscribing to the communications service provided by one network (e.g., wireline telephone service) in favor of the communications service provided by another network (e.g., mobile wireless service). See *id.*

¹²⁷ See PRT July 28, 2010 Letter at 6. For example, PRT commits to offering a long distance plan that allows customers to obtain 1+ long distance service throughout the United States for \$0.12 per minute during the day and \$0.10 per minute at night with a monthly usage commitment of \$0.99, but no additional monthly fee.

¹²⁸ See *Section 272 Sunset Order*, 22 FCC Rcd at 16491-92, para. 106; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5243-44, para. 71.

¹²⁹ *Id.* at 16492, para. 107.

¹³⁰ At a minimum, an interexchange carrier must make its rates available to the public upon reasonable request in an easy to understand format and timely manner. See 47 C.F.R. § 42.10(a). An interexchange carrier that maintains a website also must make available on that website its current rates, terms, and conditions for all of its interstate and international services in a timely and easily accessible manner. See 47 C.F.R. § 42.10(b). In addition to complying with these rules, we expect that PRT will take other steps, such as displaying the low volume plans prominently on its website, to ensure that consumers are informed of these plans. See *Section 272 Sunset Order*, 22 FCC Rcd at 16493 n.307.

d. Monthly Usage Information

44. We find that interstate long distance consumers need adequate information regarding their monthly usage in order to make informed choices among alternative long distance calling plans.¹³¹ In the *Section 272 Sunset Order*, the Commission addressed this concern by requiring, as a condition of the relief granted in that order, that the BOCs adhere to commitments they had made regarding the provision of monthly usage information to residential customers that subscribe to certain types of calling plans.¹³² Although there was some variation among the duration and terms of the BOCs' commitments, they all related to calling plans that established a single rate for an unlimited number of wireline interstate long distance minutes, a service than many consumers purchase bundled with other wireline telecommunications services and, in some instances, other communications services.¹³³

45. We require that, for the duration of the deferral period, PRT offer to provide interstate, long distance usage information to each of its wireline customers that subscribes to a calling plan that establishes a single monthly rate for an unlimited number of wireline interstate minutes. This requirement shall apply to all such calling plans that PRT offers, regardless of whether the wireline interstate minutes are bundled with other communications services, such as the offering of an unlimited number of wireline intrastate minutes.¹³⁴

IV. ORDERING CLAUSE

46. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201-203, 220, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-203, 220, and 251, and authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, that the Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico

¹³¹ See *Section 272 Sunset Order*, 22 FCC Rcd at 16493, para. 108; *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5244, para. 72.

¹³² *Section 272 Sunset Order*, 22 FCC Rcd at 16493-94, para. 108.

¹³³ See *id.*

¹³⁴ See *id.* We note that PRT presently provides this long distance usage information to those of its customers that subscribe to such calling plans. See Letter from Bennett L. Ross, Counsel for PRT, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-52, at 3 (filed Dec. 20, 2010) (PRT Dec. 20, 2010 Letter).

Telephone Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission's Rules, filed January 26, 2010, IS GRANTED to the extent and subject to the conditions stated in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau