

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

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

ORDER

Adopted: February 7, 2013

Released: February 7, 2013

By the Chief, Wireline Competition Bureau:

1. In this order, the Wireline Competition Bureau (Bureau) extends its conditional waiver of section 64.1903,1 and temporarily defers application of dominant carrier regulation to Puerto Rico Telephone Company, Inc. (PRT) for any in-region, interstate and international, long distance services PRT provides, other than through a section 64.1903 separate affiliate, until May 17, 2013. The Bureau extends this conditional waiver and deferral to allow the Commission to evaluate PRT's circumstances in parallel with a Petition for Forbearance filed by the United States Telecom Association (USTelecom) on February 16, 2012.2

2. On January 26, 2010, PRT, an independent incumbent local exchange carrier (independent incumbent LEC), filed a petition for waiver asserting that: (1) application of the structural separation requirements in section 64.1903 is not necessary because PRT faces extensive local and long distance competition; and (2) compliance with those requirements imposes unnecessary costs.3 PRT sought permission to provide – without using a separate corporate affiliate – in-region, interstate and international, long distance services subject to nondominant carrier regulation (except with respect to its dominant international routes), conditioned upon safeguards similar to those the Commission imposed on

1 47 C.F.R. § 64.1903.

2 See Petition for Forbearance of the United States Telecom Association for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, WC Docket No. 12-61 (filed Feb. 16, 2012) (USTelecom Petition). The USTelecom Petition, among other things, seeks forbearance from “applying to all independent ILECs the structural separation requirements of section 64.1903 and from applying dominant carrier regulation for long distance services offered by an independent ILEC on an integrated basis.” USTelecom Petition at 64. See also Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission's Rules, WC Docket No. 10-52, Order, 27 FCC Rcd 2495, 2496, para. 4 (WCB 2012) (Puerto Rico Telephone First Extension Order) (finding good cause to extend PRT's conditional waiver and deferral of dominant carrier regulation, from March 23, 2012 to February 16, 2013, based on the USTelecom Petition “rais[ing] similar issues and require[ing] analysis similar to those at issue for PRT”).

3 See Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission's Rules, WC Docket No. 10-52 (filed Jan. 26, 2010) (PRT Petition).

the Bell Operating Companies and their independent incumbent LEC affiliates in the *Section 272 Sunset Order*.<sup>4</sup>

3. On December 23, 2010, the Bureau granted PRT's request for waiver from the separate affiliate requirement contained in 47 C.F.R. § 64.1903, conditioned on PRT complying with certain targeted structural safeguards and other continuing statutory and regulatory obligations.<sup>5</sup> In that order, the Bureau also deferred, temporarily, the application of dominant carrier regulation to PRT's in-region, interstate and international, long distance services, conditioned on PRT's filing, within 90 days of the order's effective date (*i.e.*, by March 23, 2011), evidence intended to show that PRT lacks market power in relation to those services.<sup>6</sup> The *Puerto Rico Telephone Waiver Order* also stated: "[a]ssuming 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."<sup>7</sup> The one-year period therefore was originally set to expire on March 23, 2012.<sup>8</sup> On March 12, 2012, the Bureau extended its conditional waiver and deferral applicable to PRT to allow the Commission to evaluate its circumstances in parallel with the USTelecom Petition. PRT's conditional waiver and deferral of dominant carrier regulation therefore corresponded with the statutory deadline for action on the USTelecom Petition, February 16, 2013.<sup>9</sup>

4. Simultaneously with the release of this order, the Bureau is releasing a 90 day extension of the statutory deadline applying to the USTelecom Petition under section 10(a) of the Act.<sup>10</sup> Specifically, the Commission extends by 90 days the date by which the USTelecom Petition shall be "deemed granted" in the absence of a Commission decision that the petition fails to meet the standards for forbearance under section 10(a) of the Act.<sup>11</sup> The 90 extension applying to the USTelecom Petition is now set to expire on May 17, 2013.<sup>12</sup>

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<sup>4</sup> See 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); *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*).

<sup>5</sup> See *Petition of Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission's Rules*, WC Docket No. 10-52, Memorandum Opinion and Order, 25 FCC Rcd 17704, 17712, para. 16 (WCB 2010) (*Puerto Rico Telephone Waiver Order*).

<sup>6</sup> *Puerto Rico Telephone Waiver Order*, 25 FCC Rcd at 17714, para. 21. PRT made its supplementary filing on March 23, 2011. See *Comment Sought on Puerto Rico Telephone Company's Supplemental Filing in Connection with Petition for Wavier of Structural Separation Requirements*, WC Docket No. 10-52, Public Notice, 26 FCC Rcd 5208 (Apr. 8, 2011).

<sup>7</sup> *Puerto Rico Telephone Waiver Order*, 25 FCC Rcd at 17714, para. 21.

<sup>8</sup> The *Puerto Rico Telephone Waiver Order* also stated, "[i]f the Commission does not address PRT's supplemental submission by [March 23, 2012], 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." *Puerto Rico Telephone Waiver Order*, 25 FCC Rcd at 17714, para. 21.

<sup>9</sup> *Puerto Rico Telephone First Extension Order*, 27 FCC Rcd at 2496, para. 4.

<sup>10</sup> 47 U.S.C. § 160(a)(c).

<sup>11</sup> See *Petition of US Telecom For Forbearance Under 47 U.S.C. § 160(c) From Enforcement Of Certain Legacy Telecommunications Regulations*, WC Docket No. 12-61, Order, DA 13-172 (rel. Feb. 7, 2013) (*USTelecom Extension Order*) (Section 10(c) of the Act states that a petition for forbearance shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under section 10(a)

5. The USTelecom Petition, among other things, requests that the Commission forbear from applying section 64.1903 to all independent incumbent LECs, including PRT. The USTelecom Petition raises issues and requires analysis similar to those at issue for PRT, and therefore we continue to wish to evaluate these two proceedings in a coordinated manner. The Bureau therefore finds good cause to extend PRT's deadline for compliance with section 64.1903 or dominant carrier regulation for these services, so the Commission can consider the related issues raised in the USTelecom Petition. Since the statutory deadline for the Commission to act on the USTelecom Petition is extended to May 17, 2013, the Bureau extends PRT's conditional waiver of compliance with section 64.1903 and deferral of dominant carrier regulation to that same date.<sup>13</sup> This extension is subject to the same conditions imposed in the *Puerto Rico Telephone Waiver Order*.<sup>14</sup>

6. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the current deadline applicable to Puerto Rico Telephone Company, Inc. for compliance with section 64.1903 or dominant carrier regulation for these services IS EXTENDED to May 17, 2013.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Chief, Wireline Competition Bureau

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within one year after the Commission receives it, unless the Commission extends the one-year period. 47 U.S.C. § 160(c). The Commission may extend the initial one-year period by an additional 90 days if the Commission finds that an extension is necessary to meet the requirements of section 10(a).) *See, e.g., Petition of Ameritech Corporation for Forbearance from Enforcement of Section 275(a) of the Communications Act of 1934, as Amended*, CC Docket No. 98-65, Order, 14 FCC Rcd 6415 (Com. Car. Bur. 1999).

<sup>12</sup> *USTelecom Extension Order* at para. 4.

<sup>13</sup> 47 U.S.C. § 160(c) ("Any such petition shall be deemed granted if the Commission does not deny the petition for failure to meet the requirements for forbearance under subsection (a) of this section within one year after the Commission receives it, unless the one-year period is extended by the Commission").

<sup>14</sup> *Puerto Rico Telephone Waiver Order*, 25 FCC Rcd at 17713-14, para. 20 ("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. 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.") (citations omitted).