BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of THE CENTURYLINK COMPANIES – QWEST CORPORATION; CENTURYTEL OF WASHINGTON; CENTURYTEL OF INTERISLAND; CENTURYTEL OF COWICHE; AND UNITED TELEPHONE COMPANY OF THE NORTHWEST To be Regulated Under an Alternative Form of Regulation Pursuant to RCW 80.36.135.	**Docket No. UT-130477** **RESPONSE OF SPRINT CORPORATION TO MOTION TO DISMISS**

1

I. INTRODUCTION

Rather than provide full responses to the data requests of Sprint Corporation[1] ("Sprint"), Petitioners, The CenturyLink Companies ("CenturyLink"), have filed a baseless preemptive motion to dismiss Sprint to avoid discovery obligations. Contrary to CenturyLink's claims, Sprint's intervention has raised an issue that is central to the development of effective competition in Washington State; namely CenturyLink's obligation to negotiate in good faith requests for Internet interconnection ("IP interconnection"). This proceeding, by its very nature and purpose, should examine issues of great relevance to Washington's competitive telecommunications market, such as raised by Sprint. This proceeding involves a request from Washington's largest incumbent local exchange carrier ("ILEC"), for extensive regulatory relief for many years, ostensibly due

[1] Since the time of Sprint's intervention, it has changed its name from Sprint Nextel Corporation to Sprint Corporation.

to relentless competition from many sources. Before that relief is granted, the Commission should hear voices from competitors such as Sprint, to ensure that CenturyLink's conduct under an AFOR does not impair the provision of effective competition. Presuming there is adequate competition to support CenturyLink's AFOR petition (Sprint is not suggesting there is) that competition must be sustainable. A fundamental prerequisite to sustainable competition requires efficient and modern carrier-to-carrier interconnection. IP interconnection provides the assurance that the very competitors CenturyLink identifies as justification for its request for reduced regulation will have the ability to compete for the foreseeable future. The Telecom Act's[2] requirement that incumbent LECs ("ILECs") interconnect with requesting carriers is a prerequisite to meaningful competition. This fundamental truth must not be eroded by CenturyLink's insistence that its competitors interconnect the old-fashioned way, through TDM.

2 This Commission in Order 06 in Docket UT-121994, *In the Matter of the Petition of Frontier Communications, Inc.,* ("Frontier") viewed that proceeding as affording the Commission "the opportunity to acknowledge the realities of the 21st Century marketplace by reduction of unnecessary regulation and bolstering the ability of Frontier and its competitors to provide effective competitive telecommunications services to the ultimate benefit of this state's consumers." (¶3).

3 This docket provides a parallel opportunity for the Commission to enhance the provision of effective competitive telecommunications services in Washington, which should be a key underlying goal before it reduces regulation on the state's largest ILEC.

4 **II. ARGUMENT**

[2] The Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

A. **Sprint is Entitled to be a Party in this Case.** Sprint did not hide its interest in its petition to intervene, quoted by CenturyLink on page 2 of its Motion to Dismiss:

> b. Sprint Nextel desires to participate in this proceeding to protect its rights to obtain interconnection and related services from Petitioners under appropriate rates and conditions, which it relies upon to provide telecommunications services to Sprint Nextel's customers. Sprint Nextel is also concerned that Petitioners may not provide access services at appropriate rates, terms and conditions if its petition is approved. (emphasis supplied)

CenturyLink did not object to Sprint's intervention and has waived its right to do so now because it was advised that Sprint's interest in this proceeding included the protection of its interconnection rights.

5 The rule on intervention, WAC 480-07-355(3), allows intervention if the petition discloses a substantial interest in the subject matter of the hearing or if the petitioner's participation is in the public interest. Sprint's petition for intervention satisfies both criteria.

6
8 CenturyLink claims that Sprint is pursuing "a private agenda for its own gain" (Motion to Dismiss, p. 2) rather than a substantial interest. That claim, if anything, demonstrates that Sprint has a substantial interest because its claims in this docket flow from CenturyLink's refusal to negotiate in good faith to provide IP interconnection, which has serious economic consequences for Sprint and its customers. This is no more the pursuit of a "private agenda for its own gain" than CenturyLink's AFOR petition, which was filed for its own commercial gain, so CenturyLink's claim provides no basis to dismiss Sprint as a party.

9 Both Sprint and CenturyLink have substantial interests in this proceeding, but so do

Washington consumers who will benefit from IP interconnection. No one can dispute that IP interconnection is more efficient and less costly than TDM interconnection. CenturyLink collects far more from its competitors for TDM interconnection than it would for IP interconnection. Thus, CenturyLink is motivated to delay IP interconnection to preserve the financial benefits from TDM interconnection revenues.

10 Conversely, Sprint is economically motivated to reduce its costs of interconnection which, in turn results in lower rates to consumers. Pursuing this result by advocating for IP interconnection in this docket demonstrates Sprint's substantial interest, and the public interest, in allowing Sprint to intervene. Consumers can only benefit from actions taken by this Commission to ensure that all providers operate the most efficient networks that avail themselves of current technology. Thus, Sprint has satisfied the "substantial interest" criteria.

11 Moreover, this Commission has allowed intervention from parties, over the objections of incumbents, when an intervener would provide information that addresses "the Commission's needs to make a full and fair determination consistent with the public interest." See *WUTC v. Pacificorp*, 2002 WL 31299655 (Wash. U.T.C). That is the case here. Sprint will provide evidence on an issue that impacts the public interest; namely, the promotion of IP interconnection, which will lead to the advancement of IP technology andlower consumer rates.[3] The Commission, in Order No. 06 in *Frontier*, acknowledged the importance of advancing IP technology:

> These developments reflect a convergence toward an all-Internet protocol (IP) world in which voice service is increasingly viewed as yet another application that rides atop any broadband connection regardless of the

[3] The FCC noted at ¶ 1009 of the CAF Order: "Historically, interconnection among voice networks has enabled competition and the assorted benefits that brings through innovation and reduced prices."

> underlying technology. The IP transition has become the underlying foundation for the availability of 21st Century digital service and applications for Washington's residents and businesses. In short, we are in the midst of dramatic changes in the technologies employed by the communications industry, and the rapid evolution of data-driven services has transformed society in profound ways.

Id. ¶42.

12 In the same Order, the Commission recognized that the public interest is impacted by how ILEC's handle their wholesale obligations:

> The public interest, including maintenance and further development of effective competition in telecommunications markets in Washington, require that Frontier as an incumbent local exchange company continue to provide access and wholesale services pursuant to reasonable rates, terms and conditions consistent with federal and state regulatory requirements.

Id. ¶66.

13 CenturyLink has refused to abide by the FCC's requirement that it engage in good faith negotiations for IP interconnection pursuant to 47 U.S.C. §251(c)(1). CenturyLink claims that it has no such obligation and that the FCC has not resolved the issue of whether it must engage in good faith negotiations for IP interconnection. CenturyLink is wrong. The CAF Order unquestionably states that the FCC has found that carriers must negotiate in good faith in response to requests for IP interconnection. Paragraph 1010 makes it clear that, even though it opened a Further Notice of Proposed Rulemaking ("FNPRM") for comments "requesting specific elements of the policy framework for IP-to-IP interconnection," the FCC had decided the question that carriers have an obligation to negotiate in good faith on IP interconnection. In the CAF Order,[4] the FCC found that

[4] *In the Matter of Connect Am. Fund,* 26 FCC Rcd. 17663, Report & Order & Further Notice of Proposed Rulemaking (2011).

§251(c)(1) requires good faith negotiations for IP interconnection:

> In particular, even while our FNPRM is pending, we expect all carriers to negotiate in good faith in response to request for IP-to-IP interconnection for the exchange of voice traffic.
>
> The duty to negotiate in good faith has between a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP or otherwise.

¶ 1011.

The FNPRM confirmed the underlying decided bedrock finding:

> "We also seek comment on proposals to require IP to IP interconnection in particular circumstances under different policy frameworks. In this regard, we observe that section 251 of the Act is one of the key provisions specifying interconnection requirements, and that its interconnection requirements are technology neutral – they do not vary based on whether one or both of the interconnecting providers is using TDM, IP, or another technology in their underlying networks." (Emphasis added.)

14 ¶ 1342

15

The FNPRM does not refute the fact that the CAF Order, in the paragraphs 1010 - 1011, **requires ILECs to negotiate IP interconnections in good faith and enter into agreements for IP interconnection.** The FNPRM examines additional issues that relate to, and that flow from, the FCC's finding that carriers have an obligation to negotiate in good faith IP interconnection.

16 The FNPRM should not be interpreted or viewed in a manner that ignores or sidesteps the fact that the FCC recognized that interconnection is technology neutral, that IP interconnection is available to requesting carriers and that ILECs have a duty to

negotiate in good faith IP interconnection. In sum, because Sprint raises an issue that will have a profound impact on the competitive marketplace in Washington it should be allowed to inform the Commission on this matter of great public interest in this proceeding that must consider that entire market.

CenturyLink tried to forestall Commission examination of its wholesale practices by filing for an AFOR that allegedly does not affect its existing wholesale tariffs. This tactic does not mean, however, that the Commission should ignore CenturyLink's wholesale practices that impact the state of competition in Washington that is the central premise for CenturyLink's petition. This examination must take place because in considering CenturyLink's AFOR petition, the Commission must consider the criteria of RCW 80.36.135(2) and the public policy goals of RCW 80.36.300 to:

> (a) Facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved access or underserved customer classes.
>
> . . .
>
> (c) Preserve or enhance the development of effective competition and protect against the exercise of market power during its development.

RCW 80.36.135(2).

and

> (5) Promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state.

RCW 80.36.300.

Just as the Commission considered wholesale obligations and CLEC concerns in the *Frontier* docket, it should do so here because only a holistic view of the current state of telecommunications competition will inform the Commission to reach a decision in the

public interest. Sprint will raise perhaps an inconvenient, but necessary, truth in this case by discussing CenturyLink's roadblock to effective competition by its refusal to negotiate in good faith for IP interconnection.

There is no question that promotion of IP interconnection will advance the policy goals of RCW 80.36.300(5) and 80.36.135(2). Thus Sprint's participation as an advocate for IP interconnection is proper in this docket.

17 **B. Sprint is Not Foreclosed from Raising IP Interconnection as an Issue Because this is an AFOR Proceeding.**

CenturyLink claims that Sprint is not entitled to raise the issue of IP interconnection because Sprint has not requested it formally as an amendment to its existing ICA. This, too, provides no basis for dismissal in this docket.

First, there is no requirement that the issue of IP interconnection must be raised only in §252 arbitration proceedings. Sprint had the option to intervene in this AFOR proceeding, which was allowed, to raise its competitive concerns. Sprint knows that if it did raise that issue in the context of an arbitration that Commission action would be delayed far longer than a resolution in this docket.[5]

18 Second, the issue of IP interconnection is not unique to Sprint but raises a serious matter regarding the state of competition in Washington that affects all carriers[6] and

[5]CenturyLink's position on IP interconnection is clear: it does not believe IP interconnection is subject to a Sec. 251 interconnection agreement. Therefore, if Sprint were to approach CenturyLink to add IP interconnection to its existing agreement CenturyLink would refuse. This refusal would have to be brought before this Commission or a third-party arbitrator and then back before this Commission for resolution. This approach would not be resolved for many, many months. Therefore, an issue so critical to competition as efficient interconnection must be raised in the AFOR proceeding because it is fundamental to the outcome and will likely be resolved sooner if this issue were raised that if raised within the context of an interconnection arbitration. CenturyLink's AFOR Petition made the issue of IP interconnection ripe for review by this Commission.

[6] According to CenturyLink's response to Sprint DR No. 19, it has received 16 requests for IP interconnection.

consumers.

19 Third, Sprint did not formally request an IP interconnection amendment to its ICA, because Sprint knows the CenturyLink response, which would be a denial, and that such a request would be futile. CenturyLink has vigorously opposed a §251(c) obligation for IP interconnection at the federal level in its comments filed in response to the FNPRM in the CAF docket.[7]

20 Fourth, even if, as CenturyLink claims without any evidence to support it that it offers IP interconnection on a "commercial basis" outside of §251, CenturyLink has stalled in providing IP interconnection even in that context. As explained in the Declaration of Rhonda Bergman filed herewith, Sprint has requested IP interconnection from CenturyLink at the national level. CenturyLink has not responded in any meaningful way to this request.[8] It is clear to Sprint that only regulatory action will produce IP interconnection.

21 CenturyLink then claims that such action falls outside this Commission's jurisdiction. This too, is incorrect. State Commissions play an integral role in the §§251 and 252 process.[9] The FCC has never barred or preempted state commissions from addressing the issue of IP Interconnection under §251. The role of the states is clear in the Act, and given the FCC's requirement that IP interconnection negotiations take place and

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[7]CenturyLink opposes IP interconnection obligations under 47 U.S.C. § 251(c). This policy position was set forth in its comments filed in response to the Further Notice of Proposed Rulemaking from the FCC's CAF Order. *In the Matter of Connect Am. Fund*, 26 FCC Rcd. 17663, Report & Order & Further Notice of Proposed Rulemaking (2011).

[8] CenturyLink provided alleged commercial ICA interconnection agreements in response to Sprint PR 22. These are not such agreements.

[9] In the CAF Order (¶ 15) the FCC acknowledged the state commission's roles in the hybrid state federal system created by the Telecom Act stating "it is critical to our reforms' success that states remain key partners as these programs evolve and traditional roles shift."

that there be agreements as a result of these good faith negotiations, it only stands to reason that state commissions continue fulfilling their responsibilities under §252, including the resolution of disputed issues regarding implementation of §251 obligations. As discussed above, the FCC has ordered carriers like CenturyLink to engage in good faith negotiations for IP interconnection.

22 Some state commissioners have addressed IP interconnection.

23 In 2012, the Puerto Rico Telecommunications Regulatory Board ("PRTRB") arbitrated a demand by a competitive carrier (Liberty Cablevision) to obtain IP Interconnection from an ILEC (Puerto Rico Telephone). *In the Matter of Liberty Cablevision of Puerto Rico, LLC Petition for Arbitration*, PRTRB Docket No. JRT-2012-AR-0001, Report & Order (Sept. 25, 2012) (Attachment A). Puerto Rico Telephone had argued, like CenturyLink here, that the PRTRB was without jurisdiction and authority to do so. The PRTRB rejected that argument and recognized the FCC's clear commitment to the promotion of IP-based services, and determined that "Liberty's request for a means to drive IP-to-IP interconnection negotiations to conclusion is consistent with the FCC's perspective." Attachment A, page 14. The PRTRB also found that "Liberty's request is reasonable, not prohibited by federal law, consistent with the FCC's guidance regarding promotion of IP broadband networks, and consistent with the Board's duty to promote competition, investment, and interconnection in Puerto Rico." Attachment A, page 15.

The Public Utilities Commission of Ohio reached a similar conclusion late last year. *In the Matter of the Commission's Review of Chapter 4901:1-7, of the Ohio Administrate Code, Local Exchange Carrier-to-Carrier Rules*, Ohio Commission Case No. 12-922-TP-ORD, Finding & Order (Oct. 31, 2012 (Attachment B). Rejecting arguments

made by AT&T, Cincinnati Bell, and other ILECs, the Commission adopted rules that will allow it to arbitrate demands for IP Interconnection. Attachment B, page 4. The Ohio Commission found that "federal law is technology neutral," and that no federal law prohibits the Commission from implementing the FCC's expectation that parties will negotiate in good faith for IP interconnection.

Even if, assuming for the sake of argument, that the FCC has not ruled on IP interconnection obligations, this Commission can still take action to promote IP interconnection. In *SNET v. Comcast* the Court explained why a state commission need not wait for definitive FCC action to decide an interconnection issue:

> Accordingly, Congress included a savings clause in the TCA (Telecommunications Act of 1996 to protect state experimentation with interconnection obligations. In that regard, "Congress expressly left with the states the power to enforce 'any regulation, order, or policy of a State commission that … establishes access and interconnection obligations of local exchange carriers; … is consistent with the requirements of this section; and … does not substantially prevent implementation of the requirements of this section and the purposes of this part.'" *Global Naps, Inc.*, 427 F.3d at 46 (quoting 47 U.S.C. § 251(d)(3)(A)-(C)). The TCA, then, permits state commissions to regulate interconnection obligations so long as they do "not violate federal law and until the FCC rules otherwise." *See Iowa Network Servs., Inc. v. Qwest Corp.* 466 F.3d 1091, 1097 (8th Cir. 2006).

SNET v. Comcast, 2013 WL 1810837, at *4. Accordingly, this Commission, with its history of progressive, pro-competitive policies can address IP interconnection.

24 An AFOR proceeding is a proper venue to do so because it provides this Commission with the opportunity to review how it will regulate CenturyLink for the next five to seven years for all of its operations. CenturyLink contends that the AFOR does not impact its wholesale obligations as CenturyLink construes them. That is precisely the point – CenturyLink does not view those obligations to include a duty to negotiate in good

faith requests for IP interconnection. This Commission is not constrained by CenturyLink's definition of what it wants as an alternative form of regulation. This Commission, acting in the public interest, consistent with its authority under RCW 80.01.040 and 80.36.135(2), can impose necessary conditions as a part of that alternative regulatory framework, as it did in Order 06 in *Frontier* to achieve pro-competitive goals. Sprint's position as an intervenor is proper because Sprint brings to the Commission's attention the need for such a condition in any new CenturyLink AFOR.

25 **C. Sprint's Intervention Does Not Involve a Declaratory Ruling.**

CenturyLink has moved to dismiss Sprint before it has had the opportunity to provide testimony to the Commission. Sprint should be heard because as discussed above, IP interconnection is an issue in this AFOR proceeding because it impacts profoundly the competitive landscape in Washington, as Sprint's witnesses will testify. They will also testify as to the harm Sprint does and will continue to suffer from CenturyLink's refusal to negotiate in good faith on the issue of IP interconnection. Sprint's proposed condition – that the Commission require CenturyLink to negotiate in good faith on the issue of IP interconnection – does not deal with a theoretical problem. It is very real, given CenturyLink's position.

Requesting this condition is no different than requests made by countless parties in countless cases before the Commission, which involve policy choices. It is not a request for declaratory relief. Sprint only asks this Commission to provide a regulatory backstop to ensure that CenturyLink will negotiate in good faith, as required by the CAF Order, if afforded looser regulation due to the current competitive marketplace. Imposing such a condition enhances that marketplace and will benefit Washington consumers.

26

III. CONCLUSION

Sprint was allowed to intervene in this proceeding, without objection. CenturyLink's motion fails to establish any reason for dismissing Sprint, particularly before it has had the opportunity to present testimony that will inform the Commission on an issue that is integral to the evolution of Washington's competitive telecommunication market.

The motion should be denied.

RESPECTFULLY SUBMITTED this 8th day of August, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of August, 2013, the **RESPONSE OF SPRINT CORPORATION TO MOTION TO DISMISS and DECLARATION OF RHONDA S. BORGMAN IN OPPOSITION TO CENTURYLINK'S MOTION TO DISMISS SPRINT AS AN INTERVENOR IN THIS DOCKET** were electronically filed and delivered via overnight mail to:

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I also certify that I served a true and correct copy of the above documents upon the parties of record, by electronic mail as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 8th day of August, 2013, at Seattle, Washington.

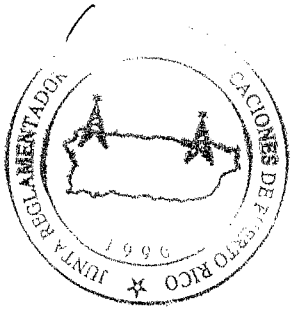
Dory Satt-Yun Tai
Assistant to Judith A. Endejan

APPENDIX A

COMMONWEALTH OF PUERTO RICO
PUERTO RICO TELECOMMUNICATIONS
REGULATORY BOARD

In the Matter of **LIBERTY CABLEVISION OF PUERTO RICO, LLC** **Petition for Arbitration pursuant to Section 47 U.S.C. §252(b) of the Federal Communications Act and Section 5(b), Chapter III, of the Puerto Rico Telecommunications Act, regarding interconnection rates, terms and conditions with** **PUERTO RICO TELEPHONE COMPANY, INC.**	Docket No. JRT-2012-AR-0001 Re: Petition for Arbitration

REPORT AND ORDER



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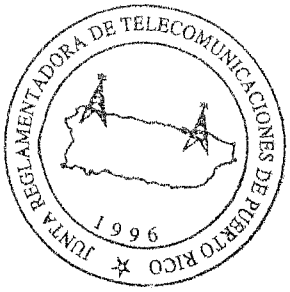


COMMONWEALTH OF PUERTO RICO
PUERTO RICO TELECOMMUNICATIONS
REGULATORY BOARD

In the Matter of **LIBERTY CABLEVISION OF PUERTO RICO, LLC** **Petition for Arbitration pursuant to Section 47 U.S.C. §252(b) of the Federal Communications Act and Section 5(b), Chapter III, of the Puerto Rico Telecommunications Act, regarding interconnection rates, terms and conditions with** **PUERTO RICO TELEPHONE COMPANY, INC.**	Docket No. JRT-2012-AR-0001 Re: Petition for Arbitration

REPORT AND ORDER

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

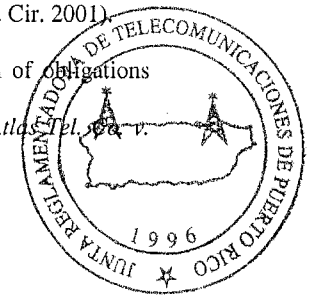
I. INTRODUCTION

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

II. STATUTORY BACKGROUND

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

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



Tier 1 Telecommunications carriers have a duty to interconnect, directly or indirectly, with the facilities and equipment of other telecommunications carriers.

Tier 2 All local carriers have the duty not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on, the resale of telecommunications services; and

Tier 3 "Incumbent" local exchange carriers ("ILECs") must lease to competitors unbundled elements of their existing networks.

Centennial, 634 F.3d at 21.

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

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

A CLEC enters a local market either by connecting its equipment to an ILEC's existing network or by purchasing or leasing existing "network elements" and services from the ILEC. *MCI*, 271 F.3d at 497.[1] ILECs are required to negotiate interconnection terms with CLECs in good faith and, if negotiations fail, either party "may petition a State commission to arbitrate any open issues." *Id.*; 47 U.S.C. § 252(b)(1). Thus, ILECs and CLECs, either through negotiation or arbitration, enter into ICA's that govern the relationship between the parties for a period of years, including the terms, rates and conditions under which they will operate. *Id.*

III. PROCEDURAL HISTORY

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

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

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

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

(1) Whether and to what extent Liberty has rights under § 251 as a "telecommunications carrier" (Issue 1);

(2) Performance levels and incentives (Issue 2);

(3) Whether PRTC has a duty to facilitate discussions for directly connecting Liberty to PRTC's wireless subsidiary, Claro (Issue 19); and

(4) IP-to-IP interconnection (Issue 21).

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

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

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

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

IV. LEGAL PRINCIPLES

A. General Federal Standards

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

(1) Ensure that the resolution of the arbitration, and any conditions imposed, meet the requirements of 47 U.S.C. § 251 and the Federal Communications Commission's ("FCC") requirements;

(2) Establish any rates for interconnection, services or network elements; and

(3) Provide a schedule for implementation of the terms and conditions by the parties to the agreement.

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

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

B. Local Principles

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

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

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

V. RESOLUTION OF ISSUES

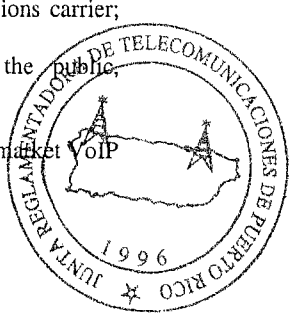
This case began with twenty seven (27) unresolved issues, two of which also included multiple sub-issues. As of the date of this *Report and Order*, there remain just four open issues. Set forth below is the resolution of each of the remaining open issues.

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

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

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

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



b. exchange access to long distance carriers, and

c. various local services using PRTC's UNEs (local loops and EELs) or by reselling PRTC's services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See Appendix B.

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

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

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

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

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

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

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

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

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

> 14. IP-to-IP Interconnection
>
> 14.1 Upon mutual agreement to do so in writing, the Parties shall establish IP-to-IP interconnection between their networks for the exchange of voice traffic.
>
> 14.2 To establish IP-to-IP interconnection at any existing or to-be-established POI, Liberty shall send a written request for such interconnection to PRTC.
>
> 14.3 Promptly following PRTC's receipt of such written request, the Parties shall negotiate in good faith in response to the request for IP-to-IP interconnection for the exchange of voice traffic.
>
> 14.4 If the Parties have not agreed on any aspect of the arrangements to be used for IP-to-IP interconnection, either Party by a date which is sixty (60) days from the date on which Liberty's written request was received by PRTC, then Liberty may pursue any remedy available to it under this Agreement, at law, in equity or otherwise, including, but not limited to, instituting an appropriate proceeding before the Board, the FCC or a court of competent jurisdiction or binding arbitration as provided in Section 29 of the General Terms and Conditions.

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

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

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

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

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

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

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

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

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

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

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

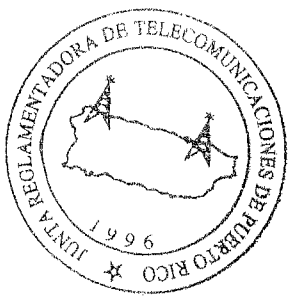
Liberty's request is reasonable, not prohibited by federal law, consistent with the FCC's guidance regarding promotion of IP broadband networks, and consistent with the Board's duty to promote competition, investment, and interconnection in Puerto Rico. Thus, Liberty's proposal to allow for resolution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

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

VI. CONCLUSION AND ORDER

IT IS HEREBY ORDERED THAT:

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



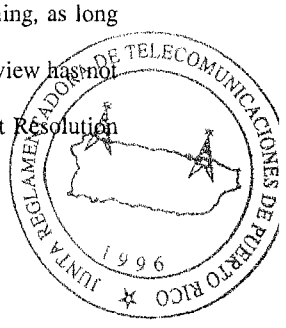
consistent with this Report and Order and Appendices hereto; and

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

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

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

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



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

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

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

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

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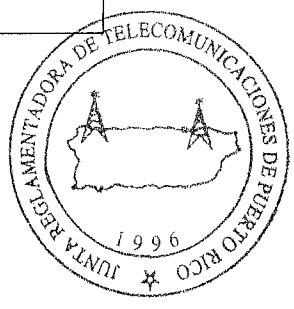


So the Board approved on September 25, 2012.

Sandra Torres López
President

Nixyvette Santini Hernández
Associate Member

Gloria I. Escudero Morales
Associate Member

CERTIFICATE OF SERVICE

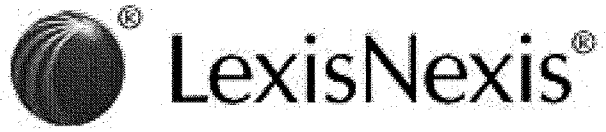
I hereby CERTIFY that the foregoing document is a true and exact copy of the Order approved by the Board on September 25, 2012. I further CERTIFY that today, September 25, 2012, I mailed a copy of the Order to the parties' attorneys of record, and I have proceeded to file the instant order.

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

ZAIDA E. CORDERO LÓPEZ
Secretary of the Board

JUNTA REGLAMENTADORA DE TELECOMUNICACIONES DE PUERTO RICO
1996

APPENDIX B



1 of 1 DOCUMENT

In the Matter of the Commission's Review of Chapter 4901:1-7, of the Ohio Administrative Code, Local Exchange Carrier-to-Carrier Rules

Case No. 12-922-TP-ORD

PUBLIC UTILITIES COMMISSION OF OHIO

2012 Ohio PUC LEXIS 826

October 31, 2012, Entered

PANEL: [*1] Todd A. Snitchler, Chairman; Steven D. Lesser; Andre T. Porter; Cheryl L. Roberto; Lynn Slaby

OPINION: FINDING AND ORDER

The Commission finds:

(1) Section 119.032, Revised Code, requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The Commission has established the rule review date for the local exchange carrier-to-carrier rules contained in Chapter 4901:1-7, Ohio Administrative Code (O.A.C.), as November 30, 2012.

(2) Section 119.032(C), Revised Code, requires that the Commission determine:

(a) Whether the rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;

(b) Whether the rules need amendment or rescission to give more flexibility at the local level;

(c) Whether the rules need amendment to eliminate unnecessary paperwork;

(d) Whether the rules duplicate, overlap with, or conflict with [*2] other rules; and

(e) Whether the rules have an adverse impact on businesses and whether any such adverse impact has been eliminated or reduced.

(3) In addition, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must

review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

(4) Additionally, in accordance with Section 121.82, Revised Code, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in Section 107.52, Revised Code [*3] , the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact.

(5) Following its review of the rules contained in Chapter 4901:1-7, O.A.C., the Commission's Staff (Staff) recommended amendments to several of the rules. Specifically, Staff recommended elimination of certain rules, modifications to various rules to be consistent with Federal Communication Commission actions, clarifying language modifications to fix typographical and grammatical errors, correct certain cross-references, and ensure consistency in common language repeated throughout the chapter.

(6) On March 21, 2012, the Commission issued Staff's proposed amendments to Chapter 4901:1-7, O.A.C., for comment. Initial comments were to be filed by April 13, 2012, and reply comments by April 27, 2012. Initial comments were filed by HyperCube Telecom, LLC (HyperCube), the Ohio Cable Telecommunications Association (OCTA), the AT&T Entities n1 (AT&T), Cincinnati Bell Telephone Company LLC (CBT), MCImetro Access Transmission Services LLC dba Verizon Access Transmission Services and [*4] MCI Communications Services, Inc. dba Verizon Business Services (collectively, Verizon), and the Ohio Telecom Association (OTA). Reply comments were filed by AT&T, HyperCube, and tw telecom of ohio llc (TWTC). OCTA docketed a letter stating that it did not intend to file reply comments in this matter.

n1 For purposes of this case, the AT&T Entities include: The Ohio Bell Telephone Company dba AT&T Ohio, AT&T Communications of Ohio, Inc., TCG Ohio, Inc., SBC Long Distance, LLC dba AT&T Long Distance, and New Cingular Wireless PCS LLC.

(7) Mindful of the requirements expressed in findings (2) and (3), the Commission has carefully reviewed the existing rules, the proposed Staff changes, and the comments filed by interested parties in reaching its decisions regarding the rules at issue. The Commission will address the more relevant comments below. Some minor, noncontroversial changes have been incorporated into the new proposed rules without Commission comment. Any recommended change that is not discussed below or incorporated [*5] into the proposed rules should be considered denied.

Comments on Rule 4901:1-7-01, O.A.C. - Definitions

(8) Staff proposed eliminating certain definitions, modifying certain definitions, and adding several new definitions to this rule. No commenter objected to Staff's proposals and, therefore, the Staff's proposed revisions will be adopted. OCTA recommended removing "basic local exchange services" from the definition of a "local exchange carrier" and replacing those words with "telephone exchange service or access to telephone exchange service." AT&T suggested removing the words "on a common carrier basis" from the same definition since similar language was removed from the definition of "telephone company" in Section 4905.03(A)(1), Revised Code, by Sub. S.B. 162 (S.B. 162). We concur with the

recommendations and proposed modifications to the definition of "local exchange carrier" proposed by OCTA and AT&T and those changes have been made accordingly.

In its reply comments, AT&T, for the first time, proposed removing the phrase "basic local exchange services" from the definition of a [*6] an incumbent local exchange carrier. AT&T's proposal would run counter to Section 4927.12, Revised Code, and will not, therefore, be adopted.

Comments on Rule 4901:1-7-02, O.A.C. - General applicability

(9) Staff proposed amending the waiver provision of Rule 4901:1-7-02(C), O.A.C., by adding language to clarify that any waiver must be consistent with state and federal law. AT&T and OTA comment that the Staff's proposal would be improved with an explicit recognition that some requirements mandated by statute may be waived by the very terms of the statute. The Commission agrees with these comments and has modified the language accordingly. Verizon comments that it is highly problematic and is contrary to Executive Order 2011-01K to incorporate by reference federal statutes and the code of federal regulation as of a date certain. Verizon's remedy is to simply delete paragraph (A) of Rule 4901:1-7-02, O.A.C., and re-letter the remaining subparagraphs accordingly. Verizon also recommends deleting language [*7] throughout the chapter that references deleted paragraph (A). The Commission agrees with Verizon's proposal and has modified the chapter accordingly.

Comments on Rule 4901:1-7-03 O.A.C. -- Toll presubscription

(10) Staff proposed only minor changes to this rule. CBT comments that paragraph (F) selectively exempts certain carriers and theorizes that this is because these carriers have received waivers from the federal Equal Access Scripting requirement. CBT claims that it is now time to eliminate this requirement for all LECs and points out that the United States Telecom Association has a petition pending before the Federal Communications Commission (FCC) to do so. In the alternative, CBT recommends amending the rule to exempt those Ohio carriers from the Equal Access Scripting requirement once that LEC receives a federal waiver. The Commission finds merit in CBT's recommendation and has amended paragraph (F) of the adopted rule.

Comments on Rule 4901:1-7-05 O.A.C. -- Rural carrier suspensions and modifications

(11) OCTA comments that the provisions in paragraph (D) of this [*8] rule are not consistent with 47 U.S.C. 251(f)(2) and recommends language changes accordingly. The Commission has modified the language in paragraph (D) to make this provision consistent with the federal standard.

Comments on Rule 4901:1-7-06, O.A.C. - Interconnection

(12) Staff primarily proposed modifications throughout this rule to make clear that the interconnection obligations apply regardless of the network technology underlying the interconnection. AT&T, CBT, and OTA recommend against adopting Staff's proposed language in subparagraphs (A)(1) and (A)(2) stating that the language goes beyond the underlying federal statutory authority. Additionally, CBT argues that the proposed subparagraphs, from a practical standpoint, are vague and unworkable as the proposal provides no detail specifying the respective responsibilities to provide the equipment necessary to interface between the different technologies. OCTA and Verizon propose modifying Staff's language by referencing the technology used to serve the end user and not reference the technology underlying the interconnection in subparagraphs [*9] (A)(1) through (A)(3). OCTA and Verizon justify this modification by claiming that the FCC has an open proceeding considering interconnection issues and the Staff-proposed language could be interpreted to suggest a result before the FCC renders a decision. On reply, TWTC argues that not only is Staff's proposed language logical but also required by both

federal and state law. Specifically, TWTC points to Section 4927.04, Revised Code, as requiring the Commission to act consistent with the federal interconnection requirements of 47 U.S.C. 251.

We agree with TWTC that federal law is technology neutral and therefore will adopt Staff's language as proposed in subparagraphs (A)(1) through (A)(3). The Commission finds nothing in federal law that prohibits the Staff-proposed language and the commenters have pointed to no specific language to support their position. Additionally, the FCC reiterated in *Connect America Fund, et al.,* Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18014 (2011) (commonly referred to as the *Transformation Order*), rel. November [*10] 18, 2011, at paragraphs 1011 and 1035, that "[T]he duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and *does not depend upon the network technology underlying the interconnection* whether TDM, IP, or otherwise. Moreover, we expect such good faith negotiations to result in interconnection arrangements between IP networks for the purpose of exchanging voice traffic (Emphasis added)." Regarding CBT's additional comment concerning the vagueness and unworkability of the Staff proposal, we disagree. First, we point out that the Telecommunications Act of 1996 (Act) limits interconnection obligations to those situations where the interconnection is technically feasible. Additionally, there are cost recovery mechanisms built into both federal law and regulations and our own state rules that address CBT's concerns. We note that adopting the rules as proposed provides us with more flexibility to accommodate specific IP interconnection standards issued by the FCC should we maintain such a role in the future. We also find that the rule, as proposed, will afford telephone companies greater flexibility to negotiate specific [*11] terms, conditions, and prices for such interconnection. Finally, we determine that striking the proposed language as CBT suggests could serve to create an artificial barrier to the most efficient means of network interconnection resulting in inflated costs and degradation of service quality. For these reasons, CBT's concerns are rejected.

Regarding the modification offered by OCTA and Verizon, we find that the language these two commenters propose would not capture changes in network technology utilized by interconnecting carriers which is the relevant purpose for Rule 4901:1-7-06, O.A.C. Thus, we will not adopt the proposed modification offered by OCTA and Verizon.

AT&T and OTA recommend adding the word "voice" in subparagraph (A)(3) before "telecommunications" to make this subparagraph consistent with FCC requirements. We agree and have made the modification in the adopted rule.

Lastly, concerning this rule, OCTA suggests a modification to paragraph (B) and the deletion of subparagraphs (1) through (6) under paragraph (B). In support, OCTA notes that, in the sixteen years since the Telecommunications Act of 1996 was first enacted, [*12] the manner of notification for negotiations of an interconnection agreement have evolved. The Commission will not adopt OCTA's proposal concerning paragraph (B). Our experience with interconnection negotiations has confirmed that the requirements outlined in paragraph (B) are critical to the negotiation process while the absence of these requirements causes delay. OCTA has not explained how the absence of such critical prerequisites will speed up the negotiation process.

Comments on Rule 4901:1-7-07 O.A.C. -- Establishment of interconnection agreements

(13) Staff proposed no changes to this rule. OCTA recommends inserting into paragraph (A) an obligation to respond to a request for interconnection within two weeks of receipt of the request. The Commission purposefully removed a similar requirement during the last rule review of this chapter recognizing that such artificial deadlines were difficult to meet in negotiating complex interconnection

agreements. Further, the Commission noted that by removing the deadlines we were affording the parties greater flexibility in the negotiation process. We are not aware of any problems arising [*13] in the negotiation process that makes it necessary to reinstate such time limits. Therefore, OCTA's proposal is denied.

OCTA also recommends a minor modification to fix a citation issue in subparagraphs (D)(1) and (D)(2). We agree with OCTA's modification and have corrected the adopted citations accordingly.

Comments on Rule 4901:1-7-08, O.A.C. -- Negotiation and mediation of 47 U.S.C. 252 interconnection agreements

(14) Noting that these are rules rather than guidelines, OCTA recommends replacing the word "guidelines" in the opening paragraph of this rule. We agree and have modified the adopted rule as proposed by OCTA.

Comments on Rule 4901:1-7-12, O.A.C. -- Compensation for the transport and termination of non-access telecommunications traffic

(15) Referencing the *Transformation Order,* Verizon and CBT question whether the Commission should retain any carrier-to-carrier compensation rules given that the FCC has now established an exclusive federal regime covering the subject. Both commenters suggest that while the FCC has given [*14] state commissions a role in implementing that new federal regime, the Commission need not maintain compensation rules that point to federal law and the Commission remains charged with enforcing federal law.

Federal law, through both the Communications Act of 1934 and the more recent Act, has long operated under the premise that the federal government, through the FCC, has authority over interstate communications while intrastate communications policy is left to the individual state commissions. The *Transformation Order* cited by Verizon represents the first instance of the FCC asserting authority over intrastate communications compensation. The FCC's *Transformation Order* decision is under appeal at the present time by no less than five state utility commission's including this Commission. Moreover, we note that, even under the *Transformation Order,* the Commission's jurisdiction over all intrastate access and telecommunications services compensation is not preempted until July 1, 2013, so long as our actions are not inconsistent with the FCC's *Transformation Order*. Therefore, given the above, we believe that continued guidance on intrastate access and compensation [*15] principles should remain in this chapter until the law in this area is more settled. Therefore, Verizon and CBT's comments on the overall need for this rule are not adopted.

(16) OCTA proposes modifying Staff-proposed language in subparagraphs (A)(1)(a) and (B)(2) similar to the modification OCTA offered in regards to proposed Rule 4901:1-7-06 above. CBT also recommends against adoption of the Staff-proposed language "regardless of the network technology underlying the networks' interconnection" in subparagraph (A)(1)(a) for the same reasons as CBT set forth regarding proposed Rule 4901:1-7-06. For the reasons OCTA's and CBT's proposals were not adopted above, namely that the proposed language does not reflect changes in network technology utilized by interconnecting carriers for the transport and termination of non-access reciprocal compensation traffic, the Commission will not adopt these commenters' language here.

Verizon also takes issue with Staff-proposed language in subparagraph (A)(1)(a). However, Verizon's concern is that inserting the phrase "regardless of the network technology underlying the networks' interconnection" could be interpreted as imposing IP interconnection [*16] obligations that the FCC has