

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

In the Matter of
Section 63.71 Application of Puerto Rico
Telephone Company, Inc. d/b/a Claro for Authority
to Discontinue Interconnected VoIP Services
WC Docket No. 13-298
Comp. Pol. File No. 1128

ORDER

Adopted: January 15, 2015

Released: January 15, 2015

By the Acting Chief, Competition Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the amended application of Puerto Rico Telephone Company, Inc. d/b/a Claro (PRTC or Applicant), filed pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act), and section 63.71 of the Federal Communications Commission's (Commission) rules. As explained in further detail below, this Order provides PRTC with authority to discontinue PhoneMax service, an interconnected Voice over Internet Protocol (VoIP) service, as of the date of this Order in all of its service areas in Puerto Rico (Service Areas).

II. BACKGROUND

2. The Application. On November 7, 2013, PRTC filed an application with the Commission requesting authority, under section 214 of the Act and section 63.71 of the Commission's rules, to discontinue the PhoneMax service that it offers in the Service Areas (Affected Service). PRTC describes its PhoneMax service as a VoIP fixed service that "allows its DMAX DSL customers to make telephone calls using an Internet connection." PRTC asserts that in the course of rationalizing its product portfolio and minimizing duplicative offerings, it has decided to discontinue its provision of PhoneMax service in

1 47 U.S.C. § 214(a).

2 47 C.F.R. § 63.71.

3 See Letter from Edgar Class, Counsel to PRTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-298, Attach. (filed Nov. 7, 2013) (Original Application). With an amendment filed on December 19, 2013, PRTC clarified certain details regarding the proposed discontinuance date and notice to affected customers. See Letter from Edgar Class, Counsel to PRTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-298, Attach. (filed Dec. 19, 2013) (Amendment). Accordingly, the Original Application was deemed complete as of December 19, 2013.

4 Original Application, Attach. at 2.

the Service Areas.⁵ PRTC maintains that it is considered to be a non-dominant provider with respect to the Affected Service.⁶

3. On December 31, 2013, the Wireline Competition Bureau (Bureau) announced that, pursuant to section 63.71(c) and absent further Commission action, PRTC would be authorized to discontinue the Affected Service in the Service Areas on or after January 31, 2014.⁷

4. *Oppositions in the Record.* Ten parties filed comments in opposition to PRTC's proposed discontinuance, including one comment from the Telecommunications Regulatory Board of Puerto Rico (Puerto Rico Board or Board).⁸ Customer commenters objected to the proposed discontinuance and primarily asserted that they enjoyed the convenience and low cost of the PhoneMax service, and expressed concerns about the reasonableness of alternative services and their ability to maintain their telephone number.⁹ In addition, the Puerto Rico Board requested that the Commission delay action on PRTC's application for 90 days until April 15, 2014 so that the Puerto Rico Board could study the effect that PRTC's proposed discontinuance would have on service and competition in Puerto Rico.¹⁰ Specifically, the Board stated that it requires additional time to determine 1) whether PRTC's VoIP service is the service of last resort for any customers; 2) whether alternative forms of service are available at a feasible cost; and 3) whether PRTC's exit from the VoIP services market will have an adverse effect on competition, customer choice, and quality of service in Puerto Rico.¹¹ On January 17, 2014 and January 23, 2014, PRTC filed responses to the comments filed by its customers and by the Puerto Rico Board, respectively.¹² PRTC also updated the record regarding the transition status of some of these

⁵ *Id.*, Attach. at 1-2.

⁶ *Id.*, Attach. at 2.

⁷ *See Comments Invited on Application of Puerto Rico Telephone Company, Inc. d/b/a Claro to Discontinue Interconnected VoIP Services*, WC Docket No. 13-298, Public Notice, 29 FCC Rcd 35 (Wireline Comp. Bur. 2013).

⁸ *See* Letter from Cynthia Fleming Crawford, Counsel for Telecommunications Regulatory Board of Puerto Rico, LeClairRyan, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-298 (filed Jan. 15, 2014) (Puerto Rico Board Comments). *See also* Osvaldo Aponte Comments, WC Docket No. 13-298 (filed Nov. 7, 2013) (Aponte Comments); Candida Casiano Comments, WC Docket No. 13-298 (filed Oct. 21, 2013) (Casiano Comments); Brunilda Echevarria Comments, WC Docket No. 13-298 (filed Jan. 10, 2014) (Echevarria Comments); Mildred E. Garcia Comments, WC Docket No. 13-298 (filed Oct. 28, 2013) (Garcia Comments); Angel Reyes Lucca Comments, WC Docket No. 13-298 (filed Oct. 30, 2013) (Lucca Comments); Marisa Diaz Mendez Comments, WC Docket No. 13-298 (filed Nov. 7, 2013) (Mendez Comments); Alexis O. Tirado Rivera, Ph.D Comments, WC Docket No. 13-298 (filed Oct. 28, 2013) (Rivera Comments); Gilbert Santiago Comments, WC Docket No. 13-298 (filed Oct. 28, 2013) (Santiago Comments); and Victor Vega Comments, WC Docket No. 13-298 (filed Nov. 8, 2013) (Vega Comments).

⁹ Aponte Comments at 1-2; Casiano Comments at 1; Echevarria Comments at 1; Garcia Comments at 1; Lucca Comments at 1; Mendez Comments at 1; Rivera Comments at 1-2; Santiago Comments at 1; Vega Comments at 1.

¹⁰ Puerto Rico Board Comments at 1-2.

¹¹ Puerto Rico Board Comments at 2.

¹² *See* Letter from Edgar Class, Counsel to Puerto Rico Telephone Company, Inc. d/b/a Claro, Wiley Rein, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-298 (filed Jan. 17, 2014) (indicating that several unspecified customers from the record have been contacted and have requested to be enrolled in an alternative plan) (PRTC Jan. 17, 2014 *Ex Parte*); Letter from Edgar Class, Counsel to Puerto Rico Telephone Company, Inc. d/b/a Claro, Wiley Rein, LLP, to Marlene H. Dortch, Secretary, Federal Communications (continued....)

customers on January 29, 2014.¹³ On January 30, 2014, the Bureau announced that PRTC's application would not be automatically granted.¹⁴

5. *The Puerto Rico Board's Order.* On June 24, 2014, the Puerto Rico Board held a hearing regarding PRTC's discontinuance application. The Board subsequently approved an order in which it closed its investigation after concluding that it had no objection to the discontinuance of PhoneMax service.¹⁵ Specifically, the Board concluded that there are other products on the market, such as Skype and Tango, that could easily replace PhoneMax service and, therefore, that it has no objection to PRTC's discontinuance of PhoneMax service.¹⁶

III. DISCUSSION

6. Section 214(a) of the Communications Act, as amended, requires carriers to obtain authorization from the Commission before discontinuing, reducing, or impairing service to a community or part of a community.¹⁷ The Commission has considerable discretion in determining whether to grant a carrier authority to discontinue, impair, or reduce service pursuant to section 214.¹⁸ After considering the application and the additional information provided in the comments and other filings including the Puerto Rico Board's Order, we find that the record supports granting PRTC's request to discontinue the Affected Service. We acknowledge the concerns initially raised by commenters regarding the proposed discontinuance of PhoneMax service in all of PRTC's service areas in Puerto Rico. We find, however, that those concerns have been sufficiently addressed through PRTC's efforts to assist in the successful transition to alternative services of almost all of the customers that originally opposed the proposed

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Commission, WC Docket No. 13-298 (filed Jan. 23, 2014) (asserting that the Puerto Rico Board's request for more time to review the proposed discontinuance should be denied) (PRTC Jan. 23, 2014 *Ex Parte*).

¹³ See Letter from Edgar Class, Counsel to Puerto Rico Telephone Company, Inc. d/b/a Claro, Wiley Rein, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-298 (filed Jan. 29, 2014) (updating the record regarding continued efforts to contact and transition some of the customers in the record) (PRTC Jan. 29, 2014 *Ex Parte*).

¹⁴ See *Application of Puerto Rico Telephone Company, Inc. d/b/a Claro to Discontinue Interconnected VoIP Services Not Automatically Granted*, WC Docket No. 13-298, Public Notice, 29 FCC Rcd 749 (Wireline Comp. Bur. 2014). Accordingly, PRTC was not allowed to discontinue its Affected Service on or about January 31, 2014.

¹⁵ See Puerto Rico Telecommunications Regulatory Board, WC Docket No. 13-298, Order (filed Sept. 25, 2014) (Puerto Rico Board Order).

¹⁶ Puerto Rico Board Order at 2-3. The Board also noted that PRTC has not marketed PhoneMax service in Puerto Rico for the past two years. Puerto Rico Board Order at 2.

¹⁷ 47 U.S.C. § 214(a).

¹⁸ *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 90-91 (1953); see also *Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237, Order, 18 FCC Rcd 22737 (2003) (*Verizon Expanded Interconnection Discontinuance Order*). Balancing the interests of the carrier and the affected user community, the Commission typically considers a number of factors including: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations. *Application for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, File Nos. W-P-C-6670 and W-P-D-364, 8 FCC Rcd 2589, 2600, para. 54 (1993), remanded on other grounds, *Southwestern Bell v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994).

discontinuance. In addition, we find that the investigation and findings of the Puerto Rico Board support a grant of PRTC's discontinuance request.¹⁹

7. We agree with the Puerto Rico Board that discontinuing PhoneMax service in Puerto Rico will not be harmful to the public interest. We acknowledge the Puerto Rico Board's finding that PRTC's PhoneMax subscribers have other alternatives available, from PRTC and other suppliers, at similar prices to those they received with PhoneMax service. We also note that all but two of the customers who filed complaints opposing PRTC's proposed discontinuance are confirmed to have transitioned to alternative services.²⁰ We find that the existence of competitive alternatives, and customer transitions to those services, address any concerns regarding the potential for increased charges for alternative services and obviate any specific need for PRTC to continue to provide PhoneMax service.

8. We find, based on the evidence in the record and after evaluating the relevant factors,²¹ that the public convenience and necessity is not adversely affected by a grant of PRTC's amended application. We therefore grant PRTC's amended application and authorize Applicant to discontinue the Affected Service consistent with its filed representations on or after the date this Order is released.

IV. ORDERING CLAUSE

9. Accordingly, pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, IT IS ORDERED that the amended application of PRTC to discontinue interconnected VoIP services IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Randy Clarke
Acting Chief
Competition Policy Division
Wireline Competition Bureau

¹⁹ We note that only nine out of approximately 3000 PhoneMax customers filed comments with the Commission in opposition to the proposed discontinuance, and that PRTC was able to assist customers and confirm the transfer to alternative services for all but two customer commenters who could never be reached. *See* PRTC Jan. 17, 2014 *Ex Parte* at 2-3; Puerto Rico Board Order at 2.

²⁰ Puerto Rico Board Order at 2.

²¹ *See supra* note 18.