

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

In the Matter of)	
)	
Telefonica Larga Distancia de Puerto Rico,)	
US Sprint Communications Company Limited)	
Partnership, AT&T, MCI International, Inc.)	
St. Thomas and San Juan Telephone)	SCL-92-002
Company, Inc., TRT/FTC Communications, Inc.)	
GTE Hawaiian Telephone Company Inc.,)	
World Communications, Inc.)	
)	
)	
Telefonica Larga Distancia de Puerto Rico,)	
AT&T, MCI International, Inc.)	
St. Thomas and San Juan Telephone)	SCL-95-008
Company, Inc., Sprint Communications)	SCL-95-012
Company, Inc., GTE Hawaiian Telephone)	
Company Inc., World Communications, Inc.,)	
Pacific Gateway Exchange, IDB Worldcom)	
Services, Telecomunicaciones Ultramarinas)	
de Puerto Rico)	

ORDER

Adopted: May 11, 1998

Released: May 19, 1998

By the Chief, Telecommunications Division:

I. INTRODUCTION

1. In this *Order*, we deny the petition of Lambda Communications, Inc. ("Lambda") to require Puerto Rico Telephone Company ("PRTC") to divest its interests in the corporation that operates the Isla Verde Cable Station. We remind PRTC and the operator of the cable landing station that we have the right to take action to ensure the most efficient use of the relevant cables, if necessary.

II. BACKGROUND

2. Lambda provides a full array of local and interstate telecommunications services in Puerto Rico and is building a fiber optic network in Puerto Rico.¹ In order to provide interstate transport and switching services to long distance or interexchange carriers, Lambda sought to locate equipment at the Isla Verde Cable Station, a landing point in Puerto Rico for the Taino Carib Cable

¹ Request for Modification of Cable Landing Licenses for the Taino Carib Cable and the Antillas I Cable and Other Relief, SCL-92-002, 95-008 and 95-012 (Sept. 20, 1996) (*Lambda Petition*).

and the Antillas I Cable.² Lambda's goal was to compete with PRTC, the incumbent local exchange carrier in Puerto Rico. The Isla Verde Cable Station is owned and operated by Telecomunicaciones Ultramarinas de Puerto Rico ("TUPR").³ TUPR is owned by the Puerto Rico Telephone Authority, which also owns PRTC.

3. On September 20, 1996, Lambda filed a petition with the Commission stating that PRTC is using its ownership and control of TUPR to discriminatorily and anticompetitively preclude Lambda from offering its service to long distance carriers and to deny these carriers a competitive alternative to PRTC.⁴ Lambda pointed to a long history commencing in January 1995 during which it sought to collocate its equipment at the Isla Verde Cable Station. Lambda requested the Commission to modify the cable landing licenses for the Taino Carib Cable and Antillas I Cable to require that the Isla Verde Cable Station not be owned or controlled by PRTC and to order PRTC to lease the requested space to Lambda.⁵ PRTC and TUPR filed comments on the petition, denying Lambda's allegations of deliberate delay and obstruction.⁶ Lambda filed a reply.⁷ On April 14, 1997, Lambda notified the Commission that TUPR, PRTC and Lambda had executed an agreement to lease space at the Isla Verde Cable Station to Lambda.⁸ Nonetheless, Lambda reiterated its request to the Commission to modify the cable landing licenses to include a condition that the cable station must not be owned or controlled by PRTC.⁹

² The Taino Carib Cable System is a fiber optic cable system between Puerto Rico and St. Thomas and the U.S. Virgin Islands. It interconnects with: 1) the TCS-1 system connecting West Palm Beach, Florida with San Juan, Puerto Rico and 2) the Private Trans Atlantic Cable System which connects Bermuda with both the U.S. mainland and Europe. Taino Carib Cable, *Order and Authorization*, 7 FCC Rcd 4266 (1992) (*Taino Carib 214 Authorization*); *Cable Landing License*, 7 FCC Rcd 4275 (1992) (*Taino Carib License*). Antillas I is a fiber optic cable system connecting Puerto Rico with the Dominican Republic. Antillas I Cable, *Cable Landing License*, 11 FCC Rcd 7690 (1996) (*Antillas I License*); Antillas I Cable, *Memorandum Opinion, Order and Authorization*, 11 FCC Rcd 7978 (1996) (*Antillas I 214 Authorization*).

³ *Lambda Petition* at 6.

⁴ *Id.* at 13.

⁵ *Id.* at 16.

⁶ Comments of Puerto Rico Telephone Company, SLC-92-002, 95-008 and 95-012 (Oct. 25, 1996); Erratum of PRTC (Oct. 29, 1996); Opposition of Telecomunicaciones Ultramarinas de Puerto Rico, Inc. SLC-92-002, 95-008 and 95-012 (Oct. 25, 1996).

⁷ *Lambda Reply to Comments and Opposition*, SCL-92-002, 95-008 and 95-012 (Nov. 12, 1996).

⁸ Letter from Richard Rubin, Counsel for Lambda Communications, Inc., to Peter Cowhey, Chief, International Bureau, Federal Communications Commission (Apr. 14, 1997).

⁹ *Id.* at 2.

III. DISCUSSION

4. Lambda has obtained facilities in the Isla Verde Cable Station and therefore we do not need to consider whether the Commission should order TUPR to lease the requested space to Lambda. We therefore turn to whether the Commission should prohibit PRTC from owning or controlling the Isla Verde cable landing station in order to promote competition in the interstate market. The Submarine Cable Landing Act ("SCLA") requires the Commission to grant licenses for the operation of submarine cables.¹⁰ The SCLA authorizes the Commission to grant licenses "upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed."¹¹ In licensing submarine cables, the Commission often imposes conditions on the cable owner and operator. In approving the Taino Carib Cable and the Antillas I Cable, the Commission prohibited the licensees or their affiliates from acquiring or exercising any right for the purpose of handling traffic to or from the United States that is denied to other carriers.¹²

5. This condition gives the Commission the right to take action to ensure non-discriminatory access to the cable and cable landing station, where necessary. However, we choose not to exercise this authority at this time to order PRTC to divest its interest in TUPR or for TUPR to divest its interest in the cable landing station. Lambda has reached an agreement to collocate its equipment at the cable landing station¹³ and there is no evidence in the record that Lambda has been prevented from using its equipment or providing service to the long distance carriers as it planned.

6. In addition, in a related *Order*, adopted today, the Bureau rejected Lambda's request that we deny a Section 214 application from an affiliate of PRTC on the grounds that PRTC acted anticompetitively with respect to Lambda's request for access to the Isla Verde Cable Station.¹⁴ In that *Order*, we noted PRTC's representation that TUPR is "pleased to provide service to Lambda and to any other party that so requests, but in complying with such requests, TUPR will not violate any of its other obligations to other parties."¹⁵ Given this representation and the complexities of collocating

¹⁰ 47 U.S.C. §§ 34-39. The SCLA actually authorizes the President to grant cable landing licenses. That authority has been delegated to the Commission pursuant to Executive Order 10530, *reprinted as amended* in 3 U.S.C. § 301 app. at 459-60 (1994).

¹¹ 47 U.S.C. § 35.

¹² *Antillas I License*, 11 FCC Rcd at 7695; *Taino Carib License*, 7 FCC Rcd at 4276.

¹³ See Letter of December 23, 1997, from Richard J. Arsenault, Attorney for TPRI, to Susan O'Connell, Telecommunications Division, Federal Communications Division (attaching Sublease Agreement, dated February 21, 1997, between TUPR and Lambda).

¹⁴ Telefonica de Puerto Rico, Inc., Application for Authority pursuant to Section 214 of the Communications Act, as amended, to Operate as an International Resale Carrier of Switched Services, *Order*, File Nos. ITC 96-214 and EID-735, DA 98-925.

¹⁵ Reply Comments of Telefonica de Puerto Rico, Inc. at 6 (Feb. 20, 1997), filed in Telefonica de Puerto Rico, Inc., Application for Authority pursuant to Section 214 of the Communications Act, as amended, to Operate as an International Resale Carrier of Switched Services, File Nos. ITC 96-214 and EID-735; see also *id.* at 4 (stating that it was necessary to obtain the consent of 32 parties located in nearly two

equipment in the cable landing station, we found that Lambda's arguments were not sufficient to deny the Section 214 license. We reiterate, though, that we retain jurisdiction over the operation of the cable landing station through the cable landing license and we are prepared to exercise that jurisdiction if necessary.

IV. CONCLUSION

7. For the reasons stated above, we deny Lambda's request to require Puerto Rico Telephone Company to divest its interests in the corporation that operates the Isla Verde Cable Station.

FEDERAL COMMUNICATIONS COMMISSION

Diane J. Cornell
Chief, Telecommunications Division

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