

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 10-90
Connect America Fund)	

**PETITION OF PUERTO RICO TELEPHONE COMPANY, INC.
FOR THE CREATION OF AN EMERGENCY UNIVERSAL SERVICE FUND**

Puerto Rico Telephone Company, Inc. (“PRTC”) respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) create an emergency Universal Service Fund to help restore telecommunications services in Puerto Rico, which is struggling to recover from the extensive damage caused by Hurricanes Irma and Maria in September 2017. As a result of the devastation and destruction caused by Hurricanes Irma and Maria, the majority of citizens in Puerto Rico lack access to continuous and reliable telecommunications services. Although the FCC has taken considerable actions to accommodate universal service in rural areas of the country, no similar attention has been paid to insular areas. Accordingly, PRTC requests that the Commission create a \$200 million emergency Universal Service Fund designated to facilitate restoration of service in insular areas by eligible telecommunications carriers (“ETCs”) in Puerto Rico.

I. INTRODUCTION AND SUMMARY

It has been nearly four months since the last devastating storm hit Puerto Rico, and conditions throughout the territory remain dire. Stuck in the “midst of the largest blackout in

American history,”¹ Puerto Rico lacks substantial access to power, and full restoration is not expected for months. As of January 17, 2018, 9.2% of the territory’s cell sites remain out of service, and 14 of Puerto Rico’s municipalities have 20% or more of their cell sites down.² To date, the majority of restored communications in Puerto Rico are using gasoline-powered generators, some of which have caught fire while others simply expire through overuse, eliminating restored communications.

In the over twenty-year history of the Universal Service Fund, there has never been a more urgent need for funding to restore communications services in the face of a humanitarian crisis of epic proportion. Accordingly, PRTC requests that the Commission specifically implement the 1996 Telecommunications Act’s mandate to ensure that consumers across the nation, including those in “insular areas,” have comparable access to telecommunications and information services.³ Because none of the Commission’s existing Universal Service Fund mechanisms were designed to address the problems inherent to insular areas, the Commission should establish a \$200 million emergency Universal Service Fund for restoration of service in insular areas. This funding should be expedited to carriers in the disaster areas to facilitate the efforts of telecommunications operators in Puerto Rico to rebuild network plant and restore service throughout the affected territory.

¹ James Conca, “Are We Finally Going to Help Puerto Rico Power Up?,” *Forbes* (Dec. 13, 2017), <https://www.forbes.com/sites/jamesconca/2017/12/13/are-we-finally-going-to-help-puerto-rico-power-up/#55065ac5556e>.

² FCC, Communications Status Report for Areas Impacted by Hurricane Maria (Jan. 17, 2018), available at https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0117/DOC-348749A1.pdf.

³ 47 U.S.C. § 254(b)(3).

II. BACKGROUND

A. Impact of Hurricanes Irma and Maria

In September 2017, Hurricanes Irma and Maria caused a veritable “one-two punch” of devastation throughout Puerto Rico. Hurricane Irma left more than one million people without power and tens of thousands of people without water.⁴ On September 20, 2017 – just two weeks after Hurricane Irma – Hurricane Maria struck Puerto Rico as a Category 4 storm. As the Commission observed in early October, Hurricane Maria “pounded Puerto Rico for hours as the third-strongest storm ever to hit a US territory” and “the strongest storm to hit the island in almost a century.”⁵ Hurricane Maria ripped through the island with 155-mph winds, with gusts of over 200mph, and torrential rainfalls of up to three feet in some areas.⁶ The storm left 3.4 million people without power, nearly destroyed the territory’s electrical grid, and placed more than 95% of the territory’s cell sites out of service.⁷ Current losses and damages are estimated in the hundreds of billions of dollars, though the full extent of destruction is unknown.⁸

⁴ See Alex Johnson *et al.*, “Hurricane Irma Skirts Puerto Rico, Leaves 1 Million Without Power,” NBC News (Sept. 7, 2017), <https://www.nbcnews.com/storyline/hurricane-irma/hurricane-irma-skirts-puerto-rico-lashing-it-powerful-winds-flooding-n799086>.

⁵ *In the Matter of Connect America Fund*, Order, WC Docket No. 10-90, FCC 17-129, 2017 WL 4479977, ¶¶ 1, 7 (rel. Oct. 4, 2017) (“*Puerto Rico Order*”).

⁶ *Id.* ¶ 7; “Hurricane Maria Updates: In Puerto Rico, the Storm ‘Destroyed Us’,” N.Y. Times (Sept. 21, 2017), <https://www.nytimes.com/2017/09/21/us/hurricane-maria-puerto-rico.html>.

⁷ Rachel Becker, “After Hurricane Maria, What Will It Take to Turn Puerto Rico’s Power Back On?,” Verge (Sept. 25, 2017), <https://www.theverge.com/2017/9/25/16362410/hurricane-maria-puerto-rico-power-outages-electrical-grid-destroyed>; “U.S. FCC Says over 95 pct of Puerto Rico Cell Sites out of Service,” Reuters (Sept. 21, 2017), <https://www.reuters.com/article/us-storm-maria-telecoms/u-s-fcc-says-over-95-pct-of-puerto-rico-cell-sites-out-of-service-idUSKCN1BW2R1>.

⁸ See, e.g., *Schools and Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, FCC 17-139, ¶ 2 (rel. Oct. 30, 2017) (“*Schools and Libraries Emergency Order*”); Jill Disis, “Hurricane Maria Could Be a \$95 Billion Storm for Puerto Rico,” CNN (Sept. 28, 2017),

As the largest telecommunications carrier in Puerto Rico, PRTC has experienced catastrophic damage to its telecommunications infrastructure. As of December 31, 2017, a considerable amount of PRTC's cell sites remain down due to structural or network damage from Hurricane Maria. More than a dozen of PRTC's cell sites are unable to operate due to disabled transport backbone services. Of PRTC's nearly 800 cell sites that are currently operational, more than 60% of them rely exclusively on backup power to sustain operations. PRTC's wireline network has suffered extensive damage as well. The U.S. Army Corps of Engineers has estimated that Hurricane Maria damaged approximately 48,000 utility poles, and the limited supply of utility poles available for shipment to Puerto Rico from the U.S. mainland is drastically insufficient to meet the high demand on the island.⁹ Delays resulting from low supply and challenging shipping logistics have severely hindered PRTC's efforts to restore its fixed wireline services.

Although PRTC continues to work tirelessly to restore telecommunications services, it has encountered several challenges that impede progress towards full restoration. First, PRTC's ability to restore and maintain network operations is severely hindered by the lack of electric power on the island. As of late December 2017, restoration of electricity generation in Puerto Rico had reached only 55% of the territory's customers.¹⁰ This has forced PRTC to rely on power generators to provide service. Second, there is limited access to remote areas of the island. The climatological

<http://money.cnn.com/2017/09/28/news/economy/puerto-rico-hurricane-maria-damage-estimate/index.html>.

⁹ José A. Delgado, "Los postes del tenido eléctrico llegan a cuentagotas," El Nuevo Día (Dec. 3, 2017), <https://www.elnuevodia.com/noticias/locales/nota/lospostesdeltenidoelectricolleganacuentagotas-2379189/>.

¹⁰ Ralph Ellis and Leyla Santiago, "Puerto Rico: Power Restored to 55% of Customers, Governor's Office Says," CNN (Dec. 29, 2017), <http://www.cnn.com/2017/12/29/us/puerto-rico-power-update/index.html>.

effects and damage associated with the hurricanes have made it difficult for PRTC to access and repair telecommunications structures located in remote parts of the island. Third, PRTC's ability to maintain operations has been limited by the recurring cutting of displaced fiber facilities and theft of copper wires.

Finally – and most critically – PRTC lacks financial resources to rebuild its telecommunications infrastructure. Facilities built with CAF Funds, which totaled about \$31.5 million in 2013, to provide broadband services to unserved areas have been almost completely destroyed. Additionally, PRTC is required to issue consumer service disruption credits to all customers affected by the network outages caused by the storms. These disruption credits have cost PRTC tens of millions of dollars to date and must be provided until service is fully restored. As a result, PRTC's limited financial resources will be further strained, preventing a complete rebuild of its telecommunications infrastructure without additional assistance from the Commission.

B. FCC Response and Puerto Rico's Need for Additional Funding

Considering the devastation caused by Hurricanes Irma and Maria, Chairman Pai acknowledged that “getting Puerto Rico's communications networks up and running will be a challenging process.”¹¹ The Commission reiterated these sentiments in early October when it noted that “[t]he challenges Puerto Rico and the U.S. Virgin Islands face in rebuilding will be enormous and the recovery process long.”¹² Chairman Pai reassured that “the FCC stands ready to

¹¹ FCC, Chairman Pai Statement on Hurricane Maria (Sept. 21, 2017), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0921/DOC-346833A1.pdf (“Chairman Pai Statement”).

¹² *Puerto Rico Order* ¶ 7.

do whatever [it] can to help with this task.”¹³ The FCC further confirmed that “immediate action on [its] part is necessary to enable carriers serving Puerto Rico and the U.S. Virgin Islands to plan and execute repair efforts as rapidly and widely as possible, so as to restore service as quickly as possible.”¹⁴

In a commendable first step towards this goal, the FCC released an order on October 4, 2017, making up to \$76.9 million immediately available for the restoration of communications networks in Puerto Rico and the U.S. Virgin Islands.¹⁵ On its own motion, the FCC found that high-cost universal service support could be used to repair and maintain telecommunications infrastructure damaged by Hurricane Maria.¹⁶ ETCs may elect a single advance payment of up to seven months of high-cost support to assist with repair expenses for restoring communications networks.¹⁷

While PRTC is grateful for the Commission’s decision to advance up to seven months of current Universal Service funding, financial assistance targeted specifically at restoration of service efforts is desperately needed. As an insular region, Puerto Rico faces significant and unique challenges in offering affordable and modernized telecommunications services to its residents. Equipment and supplies must be shipped to the island, which imposes significant shipping and storage expenses on carriers, including PRTC. Additionally, Puerto Rico’s tropical location increases the costs of construction for infrastructure and the provision of service in

¹³ Chairman Pai Statement.

¹⁴ *Puerto Rico Order* ¶ 8.

¹⁵ *Id.* ¶ 3.

¹⁶ *Id.* ¶¶ 3, 8, 10.

¹⁷ *Id.* ¶¶ 3, 14.

general. For instance, rough terrain and heavy vegetation impede telecommunications development, and equipment that is damaged by corrosive salt air and severe weather must be repaired and replaced. The Commission itself has recognized that carriers serving insular areas like Puerto Rico “face operating conditions and challenges that differ from those faced by carriers in the contiguous 48 states.”¹⁸

Moreover, economic conditions in Puerto Rico were extremely desperate even before the catastrophic damage caused by the hurricanes. In May 2017, Puerto Rico filed for bankruptcy-like relief in federal court, with approximately \$123 billion in debt and pension obligations.¹⁹ The bankruptcy filing followed almost ten years of painful recession. Fewer than one million people are employed in Puerto Rico, and the island’s unemployment rate topped more than 12% in October 2016 (more than double that of the U.S. mainland).²⁰ Thus, Puerto Rico faces the double burden of logistical barriers and economic decline, which hinder its ability to provide telecommunications services that are reasonably comparable to those offered in non-insular areas.

The logistical and economic barriers plaguing Puerto Rico have negatively impacted the development and modernization of its telecommunications infrastructure. While PRTC appreciates Commissioner O’Rielly’s recent suggestion that the Commission work with Congress to determine whether support provided through Universal Service programs may be reimbursed

¹⁸ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17737-38 ¶ 193 (2011), *aff’d sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); *see also Puerto Rico Order* ¶ 5.

¹⁹ Mary Williams Walsh, “Puerto Rico Declares a Form of Bankruptcy,” N.Y. Times (May 3, 2017), <https://www.nytimes.com/2017/05/03/business/dealbook/puerto-rico-debt.html>.

²⁰ Jackie Wattles, “5 Facts about Puerto Rico’s Utter Economic Misery,” CNN (May 8, 2017), <http://money.cnn.com/2017/05/08/news/economy/puerto-rico-bankruptcy-takeaways/index.html>.

through federal funds appropriated for hurricane relief,²¹ there are practical barriers to such an approach. For example, the Stafford Act,²² which provides the statutory authority for most federal disaster response activities through the Federal Emergency Management Agency (“FEMA”), generally allows for the provision of emergency assistance only to state and local governments and private nonprofit facilities.²³ Current Universal Service funding is therefore crucial to helping Puerto Rico fulfill section 254(b)’s Universal Service objectives. Reallocating existing funds to cover disaster reconstruction will hinder Puerto Rico from achieving Universal Service goals in the future.

III. REQUESTED RELIEF

A. Proposed Funding Mechanism

Given the pressing need to rebuild telecommunications systems in Puerto Rico, PRTC requests that the Commission establish a temporary Universal Service Fund for insular areas. A separate disaster recovery fund will enable providers to rebuild telecommunications infrastructure in Puerto Rico while allowing ETCs to continue providing reasonably comparable telecommunications services now and in the future. This separate fund will also serve the public interest by enabling ETCs to build facilities designed to withstand future hurricanes and tropical storms.

Although the mechanics of funding could take a variety of forms, PRTC recommends establishing a temporary Universal Service Fund capped at \$200 million for Puerto Rico. The funds could be distributed based on a percentage of the consumer service disruption credits

²¹ See *Schools and Libraries Emergency Order*, Statement of Commissioner Michael O’Rielly.

²² 42 U.S.C. §§ 5121-5207.

²³ See, e.g., 42 U.S.C. § 5170b.

provided by facilities-based ETCs to end user customers in Puerto Rico. Alternatively, funding could be distributed in proportion to the total number of lines each facilities-based ETC restores during the next twelve months. PRTC recommends that funding for this account be made available monthly on a declining basis of \$80 million, \$60 million, \$40 million, and \$20 million over the next four months.

B. Commission's Legal Authority

Establishment of an emergency fund is critical to recovery efforts in Puerto Rico, and the Commission has authority to create this fund either through its adjudicatory authority or through the adoption of temporary rules on an emergency basis. It is well-established that informal adjudication may be used when agencies are not statutorily required to engage in notice and comment procedures.²⁴ The D.C. Circuit has repeatedly recognized that the Commission “has very broad discretion to decide whether to proceed by adjudication or rulemaking.”²⁵ The Commission itself has acknowledged the breadth of its adjudicatory authority in prior proceedings.²⁶ Indeed, the Commission acted on its own adjudicatory authority in 2006, when it established a rural health funding mechanism.²⁷ Thus, the Commission may create this fund through informal adjudication.

²⁴ See, e.g., *Neustar, Inc. v. FCC*, 857 F.3d 886, 893 (D.C. Cir. 2017); *Safe Extensions, Inc. v. FAA*, 509 F.3d 593, 604 (D.C. Cir. 2007).

²⁵ *Neustar, Inc.*, 857 F.3d at 893; see also *Conference Grp., LLC v. FCC*, 720 F.3d 957, 965 (D.C. Cir. 2013) (“In interpreting and administering its statutory obligations under the Act, the Commission has very broad discretion to decide whether to proceed by adjudication or rulemaking.”); *Consumer Fed’n of Am. v. FCC*, 348 F.3d 1009, 1013 (D.C. Cir. 2003) (“The Commission’s decision not to address them in this particular case is consistent with its broad discretion to choose between rulemaking and adjudication.”).

²⁶ See, e.g., *Emission Mask Requirements for Digital Techs. on 800 MHZ NPSPAC Channels*, Notice of Proposed Rulemaking, 28 FCC Rcd 13403, 13406 ¶ 8 n.27 (2013) (“The Commission possesses broad discretion to determine whether it will proceed by rulemaking or adjudication.”).

²⁷ See *Rural Health Care Support Mechanism*, Order, 21 FCC Rcd 11111 (2006).

Alternatively, the Administrative Procedure Act allows agencies to implement rules without public notice and comment “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”²⁸ The Commission recently adopted temporary rules to provide relief for schools and libraries affected by Hurricanes Harvey, Irma, and Maria on this basis, recognizing that “the Hurricanes have caused extensive damage in areas of Texas, Florida, and Georgia, and throughout Puerto Rico and the [U.S. Virgin Islands], creating an urgent and immediate need for the relief provided by this Order” and concluding that “the need for prompt attention to the victims and quick restoration of services presents good cause to forgo notice and comment on these limited, temporary rules.”²⁹

Therefore, the Commission possesses legal authority to create an emergency fund for Puerto Rico. Creation of the fund will provide much needed support for the reconstruction of telecommunications systems in Puerto Rico and will greatly aid restoration of service without compromising section 254(b)’s long-term objectives.

IV. CONCLUSION

For the foregoing reasons, PRTC respectfully requests that the Commission establish an emergency, temporary Universal Service Fund to facilitate restoration of service in insular areas affected by Hurricanes Irma and Maria.

²⁸ 5 U.S.C. § 553(b)(3)(B).

²⁹ *Schools and Libraries Emergency Order* ¶ 28.

Respectfully submitted,

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