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VIA ELECTRONIC FILING

October 12, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: *Ex Parte* Letter in WC Docket Nos. 18-143, 10-90 and 14-58
Puerto Rico Telephone Company, Inc.
REQUEST FOR CONFIDENTIAL TREATMENT**

Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. ("PRTC"), by its attorneys and pursuant to Sections 0.457, 0.459, and 1.1206 of the Commission's rules,¹ hereby requests confidential treatment of portions of the attached *Ex Parte* Letter, which contains commercially sensitive information. Pursuant to Sections 0.457 and 0.459 of the Commission's rules,² Puerto Rico Telephone Company, Inc. ("PRTC"), by its attorneys, respectfully requests that the Commission withhold from public inspection and accord confidential treatment to portions of the attached *Ex Parte* Letter in the above-referenced dockets. Accordingly, the enclosed *Ex Parte* Letter is stamped "Confidential – Not for Public Inspection." PRTC is filing a redacted version of the *Ex Parte* Letter via the Electronic Comment Filing System.

The *Ex Parte* Letter contains confidential and commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act ("FOIA").³ Exemption 4 permits parties to withhold from public information "trade secrets and commercial or financial information obtained from a person and privileged or confidential."⁴ Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will either (1) impair the government's ability to obtain necessary information in the future; or (2) cause

¹ 47 C.F.R. §§ 0.457, 0.459, and 1.1206.

² 47 C.F.R. §§ 0.457 & 0.459.

³ See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

⁴ 5 U.S.C. § 552(b)(4).

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substantial harm to the competitive position of the person from whom the information was obtained.⁵

Section 0.457(d)(2) allows persons submitting materials that they wish to be withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-disclosure, pursuant to Section 0.459. In accordance with the requirements contained in Section 0.459(b) for such requests, PRTC hereby submits the following:

(1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))*. PRTC seeks confidential treatment for the following information in the *Ex Parte* Letter: The estimated cost of the build-out plan that PRTC is currently implementing in Puerto Rico, and the number of locations to be served under the plan. This information is commercially sensitive information that falls within Exemption 4 of FOIA.

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2))*. On May 29, 2018, the Commission released an Order and Notice of Proposed Rulemaking creating the Uniendo a Puerto Rico Fund and making proposals regarding the size of the fund and how best to distribute the support going forward. PRTC, as the incumbent local exchange carrier in Puerto Rico, has a significant interest in the outcome of this proceeding, which is reflected in the *Ex Parte* Letter.

(3) *Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or is Privileged (Section 0.459(b)(3))*. The information for which PRTC seeks confidential treatment is plainly sensitive commercial information that companies would normally keep confidential and that PRTC, in fact, keeps confidential. See 5 U.S.C. § 552(b)(4). Disclosure of such information could have a significant impact on PRTC's commercial operations by enabling competitors to have a better understanding of PRTC's operational and financial constraints after the hurricanes and its business plans and strategies, enabling such competitors to better compete against PRTC.

The *Ex Parte* Letter contains information about PRTC that is clearly "commercial" in nature. See *Board of Trade v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980) (courts have given the term "commercial," as used in Section 552(b)(4), its ordinary meanings). Under well-settled case law, such material "is 'confidential' . . . if disclosure of the information is likely to have either of the following effects: (1) to impair the government's

⁵ See *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (footnote omitted); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879-80 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 984 (1993).

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ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 764, 770 (D.C. Cir. 1974) (footnote omitted); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993). In addition, the Commission has broadly defined commercial information, stating that “[c]ommercial” is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business’s commercial operations.” *Southern Company Request for Waiver of Section 90.629 of the Commission’s Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

(4) *Explanation of the Degree to Which the Information Concerns a Service that is Subject to Competition (Section 0.459(b)(4))*. Substantial competition exists in Puerto Rico both in the wireline and wireless sectors. The presence of competitors makes imperative the confidential treatment of sensitive commercial information.

(5) *Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))*. Release of the information in the *Ex Parte* Letter could have a significant impact on PRTC’s commercial operations. If business partners/customers or competitors had access to this information, it could negatively affect PRTC’s future negotiations with potential and existing business partners/customers. Specifically, business partners/customers could use the information in the *Ex Parte* Notice to negotiate more favorable terms in their own agreements. Competitors could use this information to better compete against PRTC. Thus, it is “virtually axiomatic” that the information qualifies for withholding under Exemption 4 of FOIA, see *National Parks and Conservation Ass’n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir., 1976), and under Sections 0.457(d)(2) and 0.459(b).

(6) *Identification of Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))*. None of this information is provided to the public, and PRTC does not provide this information to third parties except pursuant to agreements to maintain confidentiality.

(7) *Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of Information to Third Parties (Section 0.459(b)(7))*. PRTC has not made this information available to the public and has not disclosed the information to any third parties except pursuant to arrangements intended to maintain confidentiality.

(8) *Justification of Period During Which the Submitting Party Asserts that the Material Should Not be Available for Public Disclosure (Section 0.459(b)(8))*. PRTC respectfully requests

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that the Commission withhold the relevant information in the *Ex Parte* Letter from public inspection indefinitely. PRTC would not, in the normal course of business, provide this information to the public.

Please contact the undersigned with any questions.

Respectfully submitted,

/s/ Edgar Class

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Counsel for Puerto Rico Telephone Company, Inc.

Enclosure



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VIA ELECTRONIC FILING

October 12, 2018

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Secretary
Federal Communications Commission
445 12th Street, SW, Rm. TW-A325
Washington, DC 20554

Re: *Ex Parte*, Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications, WC Docket Nos. 18-143, 10-90 and 14-58

Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. ("PRTC"), by its attorneys, hereby files this *ex parte* presentation to submit for the record in the above-referenced proceedings additional data to assist the Federal Communications Commission ("FCC" or "Commission") as it decides the appropriate budget for fixed providers in the Uniendo a Puerto Rico Fund ("Uniendo Fund") as well as how best to structure Stage 2 for fixed providers to support the Commission's goals of restoring service throughout the island, hardening communications networks, and expanding access to broadband Internet service.¹

1. Size of the Fund

The Commission has proposed \$8.4 million in additional annual support for fixed service. However, the Connect America Cost ("CAM") Model demonstrates that the Commission's proposed budget is not sufficient to meet the goals of the Uniendo Fund.

The CAM v4.11 estimates that to build a fiber to the premises broadband-capable network to 1.67 million locations in Puerto Rico will require \$1.957 billion in investment. The Cost Investment Detail Report of CAM v4.11 estimates the annual cost to operate such a network would be \$553 million. This represents an average cost across all 1.67 million locations in Puerto Rico of \$27.60 per location per month. The CAM cost estimates, however, assume there are 1.67 million locations in Puerto Rico and a 75 percent take rate, neither one of which matches existing conditions on the island.

¹ The Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications, WC Docket Nos. 18-143, 10-90 and 14-58, FCC 18-57, Order and Notice of Proposed Rulemaking (rel. May 29, 2018) ("*Uniendo NPRM*").

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According to the 2010 Census, there were 1.357 million household units in Puerto Rico.² That number has been falling since 2010. Since the hurricanes, the number of households and business locations has fallen more dramatically. Even before the hurricanes, Puerto Rico's struggling economy and low personal income levels resulted in take rates significantly below the CAM's assumption. Additionally, competition exists in the most populated and commercially viable areas of Puerto Rico, resulting in further reductions in take rates.

Adjusting for the number of billed locations by assuming a take rate of 35 percent (585,000 subscribers), the effective cost per subscriber location is \$78.86 per month. PRTC estimates the average revenue per user ("ARPU") to be approximately \$65. Based on a \$65 ARPU and a 35 percent take rate, the annual subscriber revenue is expected to be \$456 million (585,000 x \$65 x 12). The difference between the CAM estimated cost of \$553 million and expected subscriber revenue of \$456 million is \$97 million. This deficit would be expected to be recovered through federal support. The Commission's proposal of \$44.5 million of annual support would recover just over 50 percent of the \$97 million deficit.³

To address the inadequacy of the Commission's proposed budget, PRTC proposed the adoption of an additional annual budget for fixed providers of \$62 million above the existing legacy frozen support for a total of \$98 million per year.⁴ If offered this funding on a right of first refusal basis, PRTC will be prepared to modernize and expand voice and high-speed broadband service to a specified percentage of locations within a very aggressive timeframe.⁵

With no guarantee of federal funding, PRTC is currently implementing a build-out plan that effectively replaces the legacy copper distribution network that was destroyed by the

² Puerto Rico: 2010; Summary of Population and Housing Characteristics, U.S. Department of Commerce, U.S. Census Bureau, Issued September 2012.

³ PRTC acknowledges that CAF Phase II support is not intended to make carriers whole by fully recovering any difference between cost and subscriber revenue. However, the Uniendo Fund is a specific response to a unique and devastating natural disaster. Unlike CAF Phase II, the Uniendo Fund is intended to not only expand broadband availability, but also restore networks devastated by a natural disaster. *See Uniendo NPRM* at ¶ 28 ("We recognize that a longer-term solution is needed to rebuild, improve, and expand service in Puerto Rico and the U.S. Virgin Islands given the widespread devastation to communications networks caused by the hurricanes."). Additionally, the hurricanes devastated a Puerto Rico economy already mired in a long-standing recession, a situation not contemplated in CAF Phase II.

⁴ Puerto Rico Telephone Company, Inc. Comments at p. 15; Puerto Rico Telephone Company, Inc. Reply Comments at 16.

⁵ Puerto Rico Telephone Company, Inc. Comments at pp. 20-22; Puerto Rico Telephone Company, Inc. Reply Comments at pp. 16-17.

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hurricanes with fiber and fixed wireless service that is capable of up to 1 gigabit. Specifically, PRTC proposes to spend [begin confidential information] [end confidential information] for a network that will provide Gigabit Passive Optical Network-based service to [begin confidential information] [end confidential information] locations and fixed wireless service to [begin confidential information] [end confidential information] locations. While PRTC's proposal would provide high-speed broadband to [begin confidential information] [end confidential information] of the CAM locations and [begin confidential information] [end confidential information] of the pre-hurricane number of households, that still leaves areas uncovered by any carrier. These areas represent those with the highest cost and the most in need of funding. Depending on the level of funding authorized, PRTC could also expand its commitment to serve them.

2. Use of Municipios to Distribute Support and Establish Build-out/Service Obligations

Regardless of the size of the Uniendo Fund, the Commission can use the CAM model to allocate support on a census block level but award aggregated census block support at the municipio level. Municipios represent known and measurable political, operational and social delineations throughout Puerto Rico. A comprehensive broadband expansion project, such as PRTC's build-out proposal, would require a large degree of planning, coordination and cooperation with the municipal authorities. Municipal authorities are less likely to cooperate if modern facilities are built on one side of the street but not on the other to accommodate what they will view as arbitrary boundaries.

The following describes the process by which David Blessing of Parrish Blessing & Associates, a consultant for PRTC, used the CAM model results to determine support amounts by municipio:

- a) The Commission published a report from the CAM model that lists all the census blocks with locations in Puerto Rico along with the model-estimated cost and number of locations.⁶ The location and cost estimates from the CAM 4.2 CB Summary Node 4 Customer Report were used to calculate the baseline model-based support by census block using the Commission assumptions of a \$52.50 high cost benchmark and a support cap of \$200 per location (A-Cam support cap).
- b) The support by census block was rolled up to the municipio level. Census Bureau data was used to map census blocks to municipios.

⁶ See Report SS20141208CAM_4_2 CBSummary_Node4Workin Cust found in Posted Data Sets of the CAM Website.

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- c) The CAM model was then run assuming a \$44.5 million annual budget as proposed by the Commission and the \$98 million budget proposed by PRTC.
- d) Two iterations at each proposed budget level were run – one assuming only census blocks unserved by a competitor were eligible for support and one assuming that all census blocks were eligible for support. The iterations consisted of determining the high cost benchmark that distributes the budgeted amount constrained by the per location support cap and the support eligibility assumption. The support amounts were then rolled up to the municipio level.

Exhibit 1 contains an Excel spreadsheet with the reserve price and support amount calculated at census block level and rolled-up to the municipio level. Column D of the Tab “Municipio Summary” shows the annual CAM 4.2 model-based cost broken out by municipio. The baseline support by municipio is shown in Column E. The estimated support by municipio under each budget proposal and eligibility assumption is shown under the heading “Annual Support: Reserve Price.” The results of this analysis may be summarized as follows:

- All municipios received some level of support.
- Individual municipio support amounts vary depending on support budget and census block support eligibility assumption (whether census blocks with a fixed competitor providing service are eligible for support.)
- Rural municipios would receive more support per location than urban municipios.
- These observations may be shown using the following sample of five municipios (*see table on next page*). Vieques and Adjuntas are considered mostly rural while Mayaguez and Carolina are considered urban.

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	\$44.5 Million Annual Support (FCC Proposal): Support Restricted to CB's Without Comp. BB Provider				\$44.5 Million Annual Support (FCC Proposal): All CBs Eligible for Support		
	Reserve Price (Model-based Annual Support)	10 Year Support Total	10 Year Support per Location		Reserve Price (Model-based Annual Support)	10 Year Support Total	10 Year Support per Location
Adjuntas	\$1,252,086	\$12,520,860	\$1,533.48		\$970,541	\$9,705,414	\$1,188.66
Arecibo	\$884,844	\$8,848,440	\$200.38		\$1,172,887	\$11,728,872	\$265.61
Carolina	\$583,572	\$5,835,720	\$71.51		\$632,588	\$6,325,876	\$77.51
Mayagüez	\$179,880	\$1,798,800	\$40.75		\$629,012	\$6,290,118	\$142.51
Vieques	\$1,060,842	\$10,608,420	\$1,891.66		\$544,285	\$5,442,854	\$970.55
	\$98 Million Annual Support (PRTC Proposal): Support Restricted to CB's Without Comp. BB Provider				\$98 Million Annual Support (PRTC Proposal): All CBs Eligible for Support		
	Reserve Price (Model-based Annual Support)	10 Year Support Total	10 Year Support per Location		Reserve Price (Model-based Annual Support)	10 Year Support Total	10 Year Support per Location
Adjuntas	\$2,215,596	\$22,155,960	\$2,713.53		\$1,398,981	\$13,989,806	\$1,713.39
Arecibo	\$2,064,542	\$20,645,424	\$467.54		\$2,839,654	\$28,396,538	\$643.07
Carolina	\$1,433,390	\$14,333,904	\$175.64		\$1,691,708	\$16,917,076	\$207.29
Mayagüez	\$379,493	\$3,794,928	\$85.98		\$1,810,677	\$18,106,775	\$410.23
Vieques	\$2,068,210	\$20,682,096	\$3,687.96		\$922,458	\$9,224,584	\$1,644.90

Along with the awarding of support, build-out and service obligations should be established at the municipio level to maximize efficiency. Municipio boundaries are well-defined, which makes any challenge process easier to administer. The build-out obligations may be established requiring all locations in a given area are to be served without prescribing a set number. This is highly desirable because the loss of many household and small business locations, as well as the migration of residents to the U.S. mainland, would make it extremely difficult to determine whether the obligation to build to a pre-determined number of locations has been met. Additionally, municipio authorities could assist in certifying that the obligations have been met with respect to the locations within their respective jurisdictions.

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Please contact the undersigned with any questions.

Respectfully submitted,

/s/ Edgar Class

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Counsel for Puerto Rico Telephone Company, Inc.

Enclosure (Exhibit 1)

cc: Alexander Minard
Rebekah Douglas
Christian Hoefly
Talmage Cox