



REDACTED – FOR PUBLIC INSPECTION

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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 Notice dated October 12, 2018
WC Docket Nos. 18-143, 10-90 and 14-58
Puerto Rico Telephone Company, Inc.
REQUEST FOR CONFIDENTIAL TREATMENT (CONFIDENTIAL ATTACHMENT)**

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 Notice, 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 Notice in the above-referenced dockets. Accordingly, the enclosed Ex Parte Notice is stamped "Confidential – Not for Public Inspection." PRTC is filing a redacted version of the Ex Parte Notice via the Electronic Comment Filing System.

The Ex Parte Notice 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 Notice:

- a) Figures regarding the operational status of various network components after Hurricane Maria and the progress made;
- b) Diagram depicting damage to PRTC's main fiber ring routes after Hurricane Maria;
- c) Figures regarding the operational status of PRTC interconnection points after Hurricane Maria and the progress made, and chart depicting areas with damage; and
- d) Chart depicting the current status of PRTC's fiber optic rings.

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 its Ex Parte Notice.

(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' commercial operations

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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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 Comments contain 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 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 Notice 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).

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(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 that the Commission withhold the relevant information in the Ex Parte Notice 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

Edgar Class
Counsel for Puerto Rico Telephone Company, Inc.

Enclosure



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October 12, 2018

Notice of *Ex Parte* Communication

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

**Re: WC Docket Nos. 18-143, 10-90 and 14-58
Puerto Rico Telephone Company, Inc.**

Dear Ms. Dortch:

On October 10, 2018, Enrique Ortiz de Montellano (Chief Executive Officer and President of Puerto Rico Telephone Company, Inc. ("PRTC")), Francisco Silva (General Counsel of PRTC), Alejandro Cantú Jiménez (General Counsel of America Movil S.A.B. de C.V.), Tom Navin and the undersigned, participated in a meeting with Alexander Minard, Rebekah Douglas, Christian Hoefly and Talmage Cox, all of the Wireline Competition Bureau.

At the meeting, PRTC thanked the Commission for the creation of the Uniendo a Puerto Rico Fund and the assistance the Commission has provided to Puerto Rico in the aftermath of Hurricanes Irma and Maria. PRTC discussed the attached PowerPoint presentation, explaining the progress PRTC has made rebuilding its network and restoring service to customers, as well as the challenges that remain. The parties discussed PRTC's recommendation that the Commission increase the Stage 2 budget for fixed providers, the benefits of offering the right of first refusal to PRTC, and how the Commission might structure an alternative competitive request for proposal process, if necessary.

PRTC also explained how it conducted an analysis using the Connect America Cost ("CAM"), which demonstrates that: (a) the Commission's proposed budget of \$44.5 million in annual support is not sufficient to meet the goals of the Uniendo Fund; and (b) 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. PRTC indicated that it would file the analysis in an *ex parte*, which it is doing contemporaneously with the filing of this notice.

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Portions of the attached PowerPoint presentation contain confidential and commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act. Therefore, PRTC is including a Request for Confidential Treatment along with the instant Ex Parte Notice. In accordance with the Commission's rules, PRTC respectfully requests that unredacted copies of this this Ex Parte Notice not be made publicly available. A redacted version of the Ex Parte Notice is being filed electronically in the above-referenced dockets.

Please contact the undersigned with any questions.

Respectfully submitted,

/s/ Edgar Class

Edgar Class
Counsel for Puerto Rico Telephone Company, Inc.

Enclosure

cc: Alexander Minard
Rebekah Douglas
Christian Hoefly
Talmage Cox



Uniendo a Puerto Rico Fund

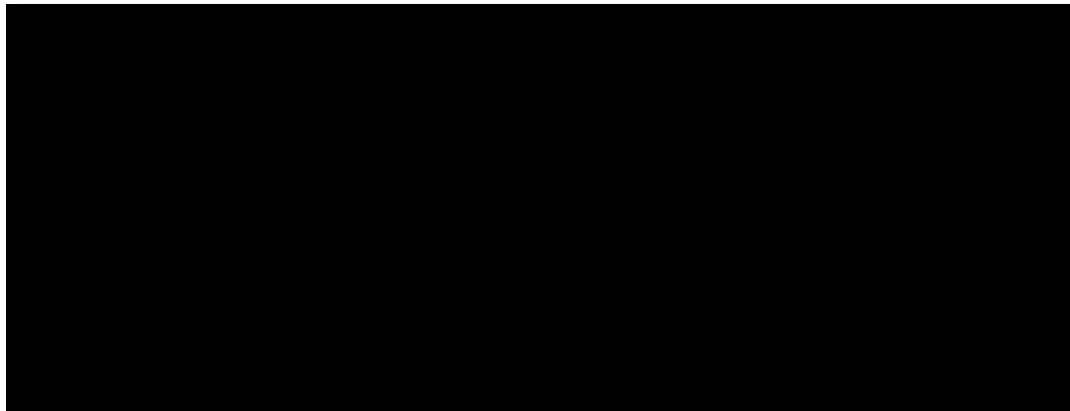
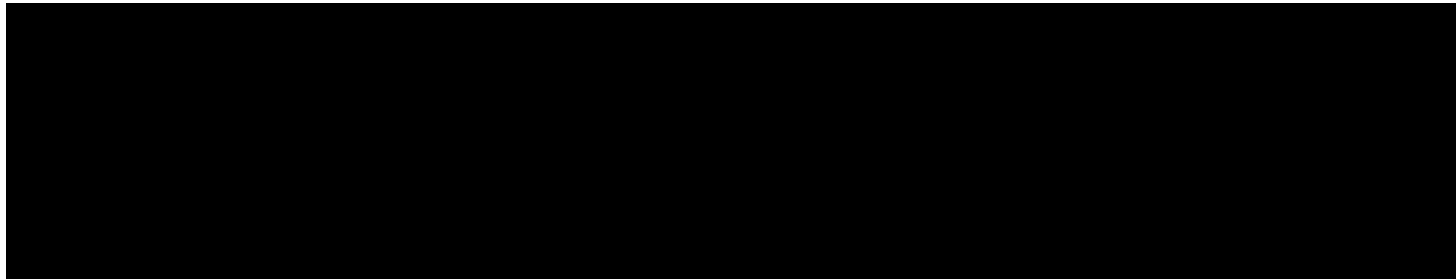
WC Docket No. 18-143

**Presentation by Puerto Rico
Telephone Company, Inc. d/b/a Claro**

October 10, 2018
Washington, DC



PRTC Restoration Efforts



Confidential

PRTC Restoration Efforts:



[REDACTED]

- [REDACTED]

[REDACTED]

Confidential

Uniendo a Puerto Rico Fund Rulemaking Proceeding

Confidential

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Need for Increased Budget for Fixed Providers

- Consensus that the proposed budget should be increased
 - Devastation by the hurricanes was catastrophic.
 - Unique costs and challenges of providing service in Puerto Rico
 - Commission's expanded universal service goals for Puerto Rico now include hurricane restoration, broadband expansion, and network hardening objectives.
- PRTC's hurricane restoration costs alone approximate the fixed broadband service budget proposed in the NPRM
- Additional annual budget for fixed providers of \$62 million above existing legacy frozen support would be more commensurate with carriers' restoration costs and capital expenditures required for meeting the Commission's objectives.

Budget for Fixed Providers (cont'd)

- CAM v4.11 demonstrates that the proposed fixed budget is not sufficient
 - \$1.957 billion investment to build FTTP network to 1.67 million locations in PR
 - \$553 million annual cost to operate such a network
 - Average cost across 1.67 million locations is \$27.60 per location per month
 - Model assumes 1.67 million locations in PR and a 75% take rate but these are overstated
 - 1.357 million household units per 2010 Census and falling ever since
 - Take rates significantly lower due to struggling economy and low income levels
- If we adjust for the number of billed locations by assuming a take rate of 35 % (585,000 subs), the effective cost per subscriber location is \$78.86 per month
- Assuming \$65 ARPU and 35% take rate, annual subscriber revenue is \$456 million

Budget for Fixed Providers (cont'd)

- Difference between CAM estimated cost of \$553 million and expected subscriber revenue of \$456 million is \$97 million
- FCC's proposal of \$44.5 million would recover just over 50% percent of the \$97 million deficit
- To address shortfall in the Commission's proposed budget, PRTC proposes 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

Right of First Refusal

- Commission should offer the right of first refusal (“ROFR”) to PRTC to accelerate restoration and expansion of broadband service and avoid inefficient duplication of facilities.
- No other broadband provider in Puerto Rico can combine the efficiencies, scale, scope and history of providing service to bring advanced broadband services to unserved areas throughout the island.
- If offered the additional \$620M funding on a ROFR basis, PRTC is prepared to modernize and expand broadband service of at least 10/1 Mbps, and up to 1 gigabit.

Alternative Competitive RFP Process

- If PRTC declines to make the commitment to offer the specified service in exchange for the additional fixed support, the Commission should allocate the support using a competitive request for proposal (“RFP”) process.
 - Single-stage application process should allow for at least two rounds
 - Proposals should be scored based on:
 - Amount of support sought (but should not be the most heavily weighted factor);
 - Number of locations to be served;
 - Metrics of the proposed service (*e.g.*, speed, latency, minimum usage allowance);
 - Schedule for completion; and
 - Financial and technical capabilities
- An auction approach would only introduce inefficiencies and delays.

Competitive RFP Process (cont'd)

- Term of Support
 - A ten-year term of support is appropriate and consistent with FCC actions in other proceedings.
- Eligibility
 - Eligible providers should be limited to those that had an existing fixed network and provided broadband services to residential customers in Puerto Rico prior to the hurricanes.
 - Existing providers with established track records are better equipped to rebuild and expand service quickly and are less likely to default on their service obligations.

Competitive RFP Process (cont'd)

- Minimum geographic area
 - Use of municipalities would allow providers to achieve economies of scale that would not be available with smaller areas
- Eligible Areas
 - Funding should be allocated between municipalities using CAM model support by census blocks
 - Only areas unserved by unsubsidized competitor eligible for support
 - Census blocks mapped to municipalities and support rolled up to municipality level
 - Support may be used in all areas of Puerto Rico
 - Properly designed build-out obligations to target support to unserved areas
 - Eliminates need to establish a challenge process
 - Encourages expansion of service to previously unserved areas

Competitive RFP Process (cont'd)

- Number of Locations in Each Geographic Market
 - Difficult to determine the number of locations in post-hurricane Puerto Rico
 - Commission should evaluate proposals to serve all locations in a municipality without determining exactly how many
- Service Obligations
 - Proposed 10/1 Mbps, 100ms latency, and 170GB/average usage metrics are appropriate
 - Support recipients should be required to offer voice telephony service throughout the entire supported geographic area, regardless of the platform