



REDACTED FOR PUBLIC INSPECTION

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VIA ELECTRONIC FILING

March 28, 2019

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

Re: Confidentiality Request for Certain Information Provided as Part of Puerto Rico Telephone Company, Inc.'s Ex Parte Presentation in WC Docket Nos. 18-143, 10-90, and 14-58

Dear Ms. Dortch:

Pursuant to Sections 0.457 and 0.459 and 1.1206 of the Commission's rules,¹ Puerto Rico Telephone Company, Inc. ("PRTC") hereby requests confidential treatment of certain confidential business information contained in documents being filed today as part of PRTC's Ex Parte Notice. Specifically, PRTC requests that the presentation marked "**CONFIDENTIAL—NOT FOR PUBLIC INSPECTION**" in the Ex Parte Notice be withheld from routine public inspection, as it contains sensitive business information. 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").² Exemption 4 permits parties to withhold from public information "trade secrets and commercial or financial information obtained from a person and privileged or confidential."³ 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 substantial harm to the competitive position of the person from whom the information was obtained.⁴

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,

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

² See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

³ 5 U.S.C. § 552(b)(4).

⁴ 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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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 figures regarding the operational status of various fixed and mobile network components after Hurricane Maria and the progress made. 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'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 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)).

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(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).

(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.

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Please contact the undersigned with any questions.

Respectfully submitted,

/s/ Edgar Class

Edgar Class
Counsel for Puerto Rico Telephone Company, Inc.

Attachments



REDACTED – FOR PUBLIC INSPECTION

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Notice of Ex Parte Presentation (WC Docket Nos. 18-143, 10-90 and 14-58) –
Puerto Rico Telephone Company, Inc.**

Dear Ms. Dortch:

On March 27, 2019, Puerto Rico Telephone Company, Inc. ("PRTC") met with staff from the Wireline Competition Bureau to discuss the Uniendo a Puerto Rico Fund in the above-referenced dockets. Specifically, we met with Kris Monteith, Daniel Kahn, Ryan Palmer, Alexander Minard, Jesse Jachman, Dangkhua Nguyen and, by telephone, Rebekah Douglas. The participants on behalf of PRTC were Enrique Ortiz, Mario Barrera, Francisco Silva, Dave Blessing, and the undersigned. PRTC's presentation in the meeting followed the attached presentation, which was distributed to the meeting attendees.

Portions of PRTC's written presentation contain confidential and commercially sensitive information. A redacted version of the presentation is enclosed with this letter, which is being filed electronically in the above-referenced dockets. The confidential version of the presentation, along with a request for confidential treatment, is being filed with the Commission in accordance with 47 C.F.R. §§ 0.457, 0.459 and 1.1206. In accordance with the Commission's rules, PRTC respectfully requests that unredacted copies of this presentation not be made publicly available.

Please contact the undersigned with any questions.

Respectfully submitted,

/s/ Edgar Class

Edgar Class
Counsel for Puerto Rico Telephone Company, Inc.

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Attachment

cc: Kris Monteith
Daniel Kahn
Ryan Palmer
Alexander Minard
Jesse Jachman
Dangkhoa Nguyen
Rebekah Douglas



Uniendo a Puerto Rico Fund

WC Docket Nos. 18-143, 10-90, 14-58

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

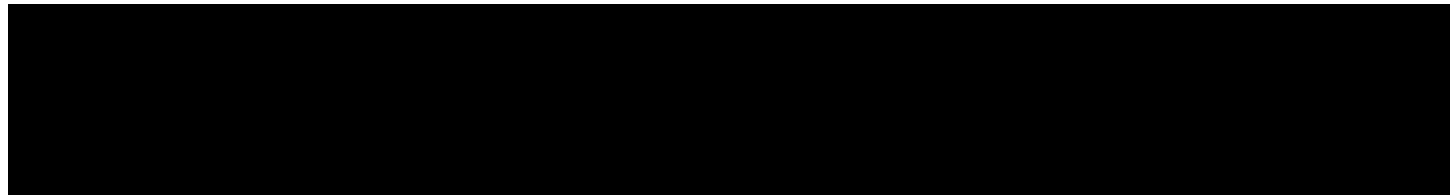
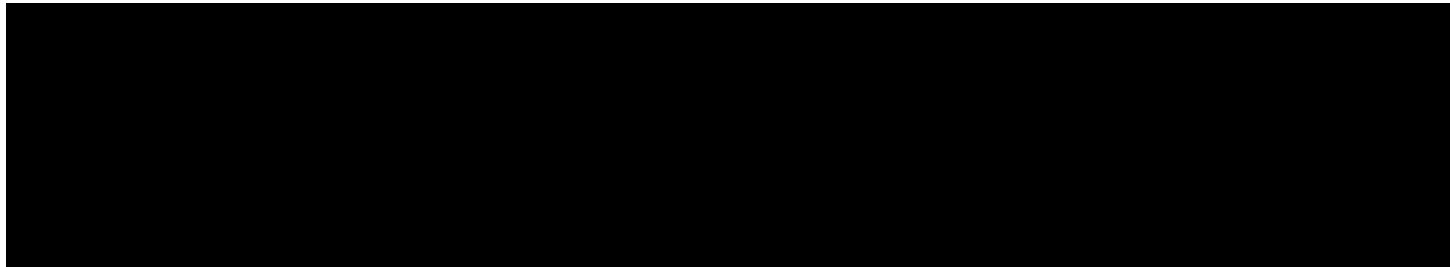
March 27, 2019
Washington, DC



Why we are here

- Provide you with update regarding PRTC's restoration efforts
- Discuss how to minimize or eliminate problem of orphaned areas
- Review key aspects of PRTC's proposal

PRTC Restoration Efforts



Problem of Orphaned Areas

- NPRM raised possibility of inviting a second round of proposals, with the difference between bids and reserve prices in the first round being transferred to raise the reserve price of remaining areas in the second round (§ 58)
 - Process would lead to excessive delay – price cap orphaned areas still not addressed almost 4 years after final award announced
 - In CAF Phase II, there were many orphaned census blocks even after they were not selected either as part of a right of first refusal round or later at auction
 - 27% of the eligible locations were not subject to a winning bid after CAF Phase II Auction 903
 - Problem likely to be exacerbated in Puerto Rico due as much to low income (per capita income in Puerto Rico is 37% of national average) as hurricane devastation

Problem of Orphaned Areas (cont'd)

- NPRM raised, as a backstop, requiring PRTC to serve orphaned areas using a share of the existing frozen support with corresponding service obligations to be determined after the competitive proposal process is complete (§ 59)
 - Based on CAF Phase II experience, process will not be a short one, nor will it be easy under the process proposed in the NPRM
 - Likely reason that no provider bid on the orphaned areas is that the reserve price is too low to induce a provider to bid
 - Orphaned areas under price caps (and associated support) remain with ILEC without build-out obligation - would PRTC be required to build out to areas where it declined to bid?

Orphaned Areas Minimized with Larger Geographic Unit

- ***Best way to minimize or eliminate orphaned areas is to base the support on larger geographic unit:***
 - RoFR – an island-wide commitment with 100% build-out obligation
 - Contrast to price cap state-level commitment of 100% of supported locations
 - If not, award support based on competitive proposals with municipio as the minimum geographic unit
 - Require that all locations within an awarded municipio have broadband available at the end of the period
- Island-wide commitment eliminates orphan areas; municipio commitment eliminates orphan areas within municipio, but still leaves some possibility of unawarded municipios
- A competitive bidding process awarding support based on census blocks, groups or allows providers to cherry-pick which units to bid on, which typically do not include the most difficult to serve areas

Budget for Fixed Providers

- PRTC proposes the adoption of an additional annual budget for fixed providers of \$62M above the existing legacy frozen support for a total of \$98M per year
 - PRTC's detailed analysis using CAM model demonstrating that the proposed budget for fixed providers is not sufficient to meet the goals of the Uniendo Fund
 - 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 less than 50% percent of the \$97 million deficit
 - Using the FCC's CAM Model support allocation by census block, support may be rolled up to the municipio level and allocated based on the adopted budget
- The Commission must consider not only the post-hurricane network devastation in Puerto Rico, but also the increased levels of poverty and population loss when estimating the amount of universal service funding necessary to achieve its goals

PRTC's Proposal

- If offered the \$98M per year on a right of first refusal (RoFR) basis, PRTC will be prepared to modernize and expand voice and high-speed broadband service of at least 10/1 Mbps, and up to 1 gigabit to 100% of inhabited locations in 10 years
 - Would accelerate longer-term efforts to rebuild and expand voice and broadband infrastructure for the benefit of the largest number of locations in the shortest amount of time and the most economically efficient manner
 - Would avoid inefficient duplication of facilities
 - Would not restrict competition because, even under the previous support regime, the locations targeted by the RoFR did not have service to begin with
 - 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

PRTC's Alternative Proposal

- If the Commission declines to adopt a RoFR approach, it should award Stage 2 fixed support through a competitive RFP process
- Proposals should be scored based on:
 - Amount of support sought -- but this should not be the most heavily weighted factor because it would penalize proposals that reflect the increased costs of deploying a storm-hardened network
 - 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

Minimum Geographic Area

- ***Commission should use municipios as the basic geographic areas for Stage 2 fixed support, as proposed in the NPRM***
 - Municipios represent known and measurable political, operational and social delineations (see PRTC Ex Parte, Oct. 12, 2018)
 - Would allow providers to achieve economies of scale that would not be available with smaller areas
 - Using areas smaller than municipios would be economically inefficient and administratively unworkable
 - There are 78 municipios, 55,405 census blocks and 2,551 census block groups
 - Basing support on smaller minimum geographic areas would force the Wireline Bureau to evaluate and adjudicate 710 or 32 times the number of transactions
 - Would lead to a significant number of disputes concerning borders, which goes against the Commission's goal of expediting Stage 2 support
 - ***Will likely result in providers cherry-picking the most profitable areas while leaving a large number of orphaned areas, which would hurt consumers in Puerto Rico***

Allocation of Stage 2 Fixed Support

- ***Commission should use the CAM model to allocate support on a census block level but award aggregated census block support at the municipio level***
 - Census blocks mapped to municipalities and support rolled-up to the municipio level
 - See PRTC’s Ex Parte dated October 12, 2018
 - Only areas unserved by unsubsidized competitor eligible for support
 - 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