

April 2, 2019

VIA ECFS (PUBLIC VERSION)
HAND DELIVERY (CONFIDENTIAL VERSION)

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

Re: Notice of *Ex Parte* Communication
WC Docket Nos. 18-143, 10-90, 14-58

Dear Secretary Dortch:

Liberty Cablevision of Puerto Rico, LLC (“Liberty”) submits this *ex parte* letter as a follow up to its November 2018 meetings with Chairman Pai and Commission staff.¹ In those meetings, Liberty expressed (i) a willingness to “explore additional ways to allocate Uniendo a Puerto Rico Fund Stage 2 (“Uniendo”) support” through a competitive bidding process as well as (ii) its concern that the per location high cost threshold approach employed in the Connect America Fund (“CAF”) program to distribute funding in the mainland U.S. was not well suited for Puerto Rico.²

The Commission has recognized that after the devastation that followed the 2017 hurricanes, there exist “unique circumstances presented by the widespread destruction of critical infrastructure” in Puerto Rico, and other complicating factors such as the significant outbound migration.³ One particular challenge the Commission has identified is whether the Connect America Cost Model (“CAM”)—which was created for the very different circumstances in the mainland U.S.—would accurately identify the number of locations unserved by 10/1 Mbps broadband service in a given geographic area in Puerto Rico.⁴ Specifically, the Commission noted

¹ Letter from Danielle Frappier and Christopher Cook, Counsel, Liberty Cablevision of Puerto Rico, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-143, 10-90, 14-58 (filed Nov. 20, 2018).

² *In Re the Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5404 (FCC rel. May 9, 2018) (“Uniendo Order and NPRM”). As explained in the Reply Comments of Liberty Cablevision of Puerto Rico, LLC (filed August 8, 2018) (“Liberty Reply Comments”) at 9-12, there is no empirical basis for PRTC’s proposal to grant it a right of first refusal for the Stage 2 funding or base the distribution of those funds on PRTC’s past election to receive frozen support.

³ Uniendo Order and NPRM at ¶¶ 45, 49.

⁴ *Id.* at ¶ 49.

the distinct challenges related to “possible changes in the number of locations post-hurricane and the difficulties in obtaining more recent, accurate data...”⁵ Multiple commenters, providing telecommunications services in Puerto Rico, made these same observations.⁶

Liberty submits that the CAM approach is not the most efficient or best-suited for the distribution of Stage 2 funding in Puerto Rico because its very structure is premised on the ability of the model to produce a precise location count and related per location high cost threshold. The structure of the CAM approach breaks down, however, when the Commission lacks current and accurate counts of unserved locations in a given area, which the Commission itself recognizes in its May 28, 2018 Notice of Proposed Rulemaking (“NPRM”). In light of the above, Liberty proposes instead that the Commission distribute funding using a slightly different model.

Applicants Bear Primary Responsibility for Gathering Location Data

First, applicants for Uniendo funding should bear the primary responsibility for determining the number of locations in a given geographic area. The Commission should put the burden on the entities seeking millions of dollars in funding to gather the data necessary to estimate how much funding they will provide versus how much they will need from the fund. Moreover, based on the commenters participating in the proceeding, most bidders for Stage 2 funding will likely be those already providing service in Puerto Rico.⁷ These entities will have a much better sense of which locations are still inhabited or habitable, and which are unserved by 10/1 Mbps broadband service based on their existing operations. Bidders will be incented to gather the necessary data to crafting a sustainable business case to support their bids.

Award Funding Based on Total Funding per Census Block Group, Not per Location

Second, Liberty proposes that the Commission heavily weight bids for Stage 2 funding that seek the least amount of funding for the relevant Census block groups but without engaging a granular cost per location analysis. Bidders will have an incentive to create bids based on sufficiently accurate location counts and cost estimates lest they over-count and overbid for funding. But avoiding an overly granular approach would spare Puerto Rico the added delay caused by drilling down into precise per location costs. In other words, Liberty is suggesting that the Commission rely on competitive forces among the bidders (subject to appropriate verification—see below) to yield the correct level of funding on a Census block group basis. The

⁵ *Id.* at ¶ 50.

⁶ See Liberty Reply Comments at 6-7.

⁷ In fact, Liberty has proposed that the Commission only permit those entities currently providing service in Puerto Rico to bid for Uniendo funding. *In Re the Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications*, Comments of Liberty Cablevision of Puerto Rico, LLC (filed July 26, 2018) (“Liberty Comments”) at 30-31.

alternative of reconciling a CAM-like model to the on-the-ground realities in Puerto Rico would be overly complex, time-consuming and unlikely to lead to a materially better result.

Targeted Commission Review of Bidder Methodologies

Third, Liberty proposes that the Commission require bidders to demonstrate that their methodologies of identifying inhabited/habitable locations unserved by 10/1 Mbps broadband service produce a reasonably accurate count, so that there is accountability for funding awarded, but without requiring a CAM-level of precision. It has been nearly 1.5 years since the hurricanes, and it is imperative that the Commission distribute Stage 2 as soon as possible. Liberty submits that it is imminently reasonable of the Commission to distribute funding on a relatively macro basis that relies on a competitive bidding process plus a targeted review by Commission staff on the bidder's methodologies, particularly in a case where the Commission has already recognized that obtaining timely and accurate location counts will be difficult. In the limited instances where there is only one bidder, the Commission could compare the per location funding request to the per location request(s) in analogous areas.

Census Block Groups Not Municipios

Finally, for the reasons articulated in its comments, Census block groups are the appropriate geographic unit on which funding determinations should be based.⁸ To the extent that a larger, contiguous area offers economic or operational efficiencies in particular instances, bidders could propose to serve multiple neighboring Census block groups in their bids. Based on Liberty's on-the-ground experience, particularly after the hurricanes, municipios contain a variety of population density and topographical differences, which could result in the inefficient distribution of funding in portions of the municipio where funding may not be warranted, or at least not at the same level as in the rest of the municipio. The same municipio can contain densely populated and sparsely populated areas with different funding and telecommunication needs.

⁸ Liberty Comments at 24-25; Liberty Reply Comments 8-9.

To illustrate how Liberty’s proposal might work in practice, Liberty conducted neighborhood walkthroughs in the eleven Census block groups of the Cayey municipio to determine which locations are receiving 10/1 Mbps broadband service. Liberty provides the number and approximate percentage of unserved locations in each Census block group below.

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[illegible]

[[END CONFIDENTIAL]]

The above data show that the number of unserved locations among Census block groups in the same municipio can vary greatly from the average conditions present across a municipio. For example,

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] Both of these groups vary considerably from the overall average in the municipio, which is [[BEGIN CONFIDENTIAL]] [[END

CONFIDENTIAL]] Other providers are just as capable as Liberty at conducting such walk-throughs and other research to confirm the number of unserved locations. There is no reason, therefore, to fund portions of the municipio that are already funded.

While the table above only provides data on service disparities in a single municipio—Cayey—Liberty submits that the conditions in Cayey are comparable to those of other rural municipios located in Puerto Rico's more mountainous regions. As such, basing funding determinations on a municipio level would further engrain already problematic service disparities across the Island. It would similarly ignore the nuances of addressing the needs of historically remote and underserved groups. Lastly, it would entrench the same conditions that made the impact of hurricanes Irma and Maria so disastrous, and that the Commission has set out to redress through the Uniendo fund.

Based on this kind of specific location count information (and in the case of bidders such as Liberty, its experience in serving the various communities of Puerto Rico), providers would bid for a total dollar amount of funding for each Census block group, explaining the bases for their location counts. The Commission would then award points based on the overall funding requested for that Census block group (or set of groups) compared to other bids for the area, and the reasonableness of its methodology of identifying locations. This approach would avoid lengthy proceedings to first determine the number of locations in each geographic area, conduct a challenge process to further refine that number, and determine a precise per location high cost threshold before a bidding process could even begin. Instead, it would permit the Commission to rely on the market forces of competitive bidding to determine adequate levels of funding, and distribute that funding as quickly as possible.

Liberty very much appreciates the opportunity to provide its further thoughts on how to best structure Stage 2 of the Uniendo program, and looks forward to working with the Commission on improving access to broadband throughout Puerto Rico.

Portions of this letter contain confidential and commercially sensitive information. Therefore, pursuant to Sections 0.457 and 0.459 of the Commission's rules, Liberty has included a Request for Confidential Treatment along with this *ex parte* notice. In accordance with the Commission's rules, Liberty respectfully requests that unredacted copies of this *ex parte* notice not be made publicly available. A redacted version of the *ex parte* notice is being filed electronically via ECFS in the above referenced dockets.

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Respectfully submitted,



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