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July 20, 2018

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: *Ex Parte* Notice in WC Docket Nos. 18-143, 10-90, 14-58 and 17-287; and PS Docket No. 17-344**

Dear Ms. Dortch:

On Wednesday, July 18, 2018, Joseph Torres, Jessica J. González and Matt Wood of Free Press met with Commissioner Jessica Rosenworcel and her staff, Travis Litman, Kate Black, and Jessica Martínez.

Free Press discussed the Commission's hurricane recovery response in Puerto Rico and the U.S. Virgin Islands, and the funds established in response thereto. We thanked Commissioner Rosenworcel for urging the Commission to hold public hearings and issue a report detailing what happened to communications infrastructure on the islands as a result of Hurricanes Irma and Maria.

We presented research to question whether the carriers were properly prepared to deal with Hurricane Maria and its aftermath and urged the Commission to examine whether it should adopt regulations to ensure that carriers are better prepared in the future. Namely, we said the Commission should consider strengthening regulations requiring carriers to pre-position equipment on islands before hurricanes make landfall. We explained that two Puerto Rico carriers, Claro and AT&T, took dramatically different approaches that yielded different response capabilities and results.

For example, Claro Puerto Rico pre-positioned generators, diesel fuel, batteries, and vehicles some 72 hours before the hurricane struck Puerto Rico.<sup>1</sup> Claro services were back online much quicker than other carriers, and many Puerto Ricans thus switched to Claro after the hurricane, according to news reports.<sup>2</sup>

AT&T, on the other hand, did not pre-stage recovery assets on the island. Joan Marsh, AT&T's EVP of Regulatory and State External Affairs, wrote in a blog post last September:

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<sup>1</sup> See Wireless Estimator, "Lack of On-Site Generators, COWs, Contributes to Puerto Rico's Still Horrendous Cell Service" (Oct. 2, 2017), <http://wirelessestimator.com/articles/2017/lack-of-on-site-generators-contributes-to-puerto-ricos-still-horrendous-cell-service/>.

<sup>2</sup> See Nick Brown and Robin Respaut, "Puerto Ricans Desperate for Cell Service Turn to Mexican Carrier," *Reuters* (Oct. 2, 2017), <https://www.reuters.com/article/usa-puertorico-slim/puerto-ricans-desperate-for-cell-service-turn-to-mexican-carrier-idUSL2N1MC0HS>.

“The impact of Maria on Puerto Rico and the U.S. Virgin Islands is different on so many fronts. First, and importantly, they are islands. Although we were able to pre-stage fuel, we could not pre-stage recovery assets in fear that they would be lost. And getting recovery assets to the islands is a huge challenge given the damage sustained at the airports and the need, particularly on Puerto Rico, to give priority access to life-sustaining supplies, including food, water and fuel.”<sup>3</sup>

AT&T’s excuses are insufficient, however, in light of learning from past storms. In 2006 the Commission created an independent panel to examine the impact of Hurricane Katrina on the communications infrastructure. That panel found that lack of pre-positioned back-up equipment was one of the “significant impediments” in the recovery of communications networks.<sup>4</sup>

Free Press explained that it is critical for the Commission to examine what happened, and to respond with any necessary regulatory measures to ensure that we learn from mistakes that were made. This is especially important in light of a FEMA report released earlier this month that found FEMA was unprepared to respond to the aftermath of Hurricane Maria. That report found that the failure of the communications system throughout the islands served as a major obstacle in the overall recovery efforts. The FEMA report called for encouraging “critical infrastructure owners and operators and state and local governments, to invest in more resilient infrastructure.”<sup>5</sup>

Next, we discussed the *Uniendo a Puerto Rico Fund* and asked how the Commission will evaluate whether funds are properly used for communications recovery for the people of Puerto Rico. The *Order and Notice of Proposed Rulemaking* in that proceeding aims to guard against “duplicative recovery and . . . waste, fraud, and abuse,” by ensuring that carriers do not “use this support for costs that are (or will be) reimbursed by other sources of funding inclusive of federal or local government aid or insurance reimbursements.”<sup>6</sup> It also prohibits carriers “from using Stage 1 support for other purposes, such as the retirement of company debt” unrelated to hurricanes.<sup>7</sup>

This is solid policy, but the Commission’s proposal to rely on just a random audit process is underwhelming – and it simply may not be enough to deter fraud as the Commission passes hundreds of millions of USF dollars to these carriers. This stands in stark contrast to the verification procedures for a grant of just \$9.25 per month to Lifeline providers, with expenditures designed to ensure that poor people have access to communications. In that program, each individual participant must pre-certify before accessing an incredibly modest sum of USF monies.

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<sup>3</sup> Joan Marsh, “The Tale of Three Storms,” AT&T Policy Blog (Sept. 28, 2017), <https://www.attpublicpolicy.com/public-safety/the-tale-of-three-storms/>.

<sup>4</sup> Independent Panel Reviewing the Impact of Katrina on Communications Networks, Report and Recommendations to the Federal Communications Commission, at i (June 12, 2006), <https://transition.fcc.gov/pshs/docs/advisory/hkip/karrp.pdf>.

<sup>5</sup> 2017 Hurricane Season FEMA After-Action Report, at 38 (July 12, 2018), <https://www.fema.gov/media-library-data/1531743865541-d16794d43d3082544435e1471da07880/2017FEMAHurricaneAAR.pdf>.

<sup>6</sup> *Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket No. 18-143, Order and Notice of Proposed Rulemaking, FCC 18-57, ¶ 21 (rel. May 29, 2018).

<sup>7</sup> *Id.*

We asked the Commission to tighten oversight to ensure that carriers do not “double dip” on recovery monies. Namely, carriers should not receive USF funding designed to reimburse them for losses if they have already recouped those losses through insurance reimbursements. As we explained, this communications recovery effort must benefit affected individuals in hurricane-devastated areas, not become an opportunity for carriers to profit from that devastation or pay down their debt.

We then noted that T-Mobile, for example, stated in its 10-K report to the Securities and Exchange Commission for 2017 that it had “recognized insurance recoveries related to [ ] hurricane losses” in Florida, Texas and Puerto Rico all together, and although the filing did not break down that insurance money by state or territory it totaled approximately \$93 million.<sup>8</sup>

In addition, Michael Thomas Fries, chief executive and vice chairman of Liberty Global, said during a January 2018 investor call that “[w]e have insurance that we haven’t tapped into just yet” in discussing the recovery efforts in Puerto Rico.<sup>9</sup> Meanwhile, a 2017 news article stated that Liberty Global expected to recoup \$75 million in insurance due to hurricane-related damages.<sup>10</sup>

In light of the questions raised by these reported insurance payouts, we suggested that the Commission should require audits for every carrier that receives funds to prevent companies from exploiting the disaster to further their business agendas. For, as AT&T’s Senior EVP and CFO John Stephens said about the situation in Puerto Rico:

“Sometimes an opportunity comes from difficult events, and that is how we are seeing our rebuilding efforts. This will be an opportunity to review our build plans and potentially replace older infrastructure with the latest technology. This will provide a more resilient network with more speed and capabilities for customers.”<sup>11</sup>

The Commission must ensure that this “opportunity” truly does translate to a more resilient network for the people impacted by these hurricanes, not merely an opportunity for carriers to cash in and be compensated for build plans and upgrades they already intended to make and for which they have already budgeted.

We also urged the Commission to ensure that companies receiving recovery money restore services at or above prior levels, and provide minimum service quality levels to their customers.

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<sup>8</sup> T-Mobile, Form 10K filed with the Securities and Exchange Commission for the year ended December 31, 2017, at 27, <http://investor.t-mobile.com/Cache/1500107422.PDF?O=PDF&T=&Y=&D=&FID=1500107422&iid=4091145>.

<sup>9</sup> Liberty Global, Company Conference Presentation, at 8 (Jan. 10, 2018).

<sup>10</sup> Ken Silva, “Cable & Wireless Finances Hit Hard by Hurricanes,” *Cayman Compass* (Nov. 2, 2017), <https://www.caymancompass.com/2017/11/02/cable-wireless-finances-hit-hard-by-hurricanes/>.

<sup>11</sup> Comments of John Stephens, AT&T Inc. Senior Executive Vice President and Chief Financial Officer, Third Quarter 2017 Earnings Call (Oct. 24, 2017), <https://seekingalpha.com/article/4116041-t-t-q3-2017-results-earnings-call-transcript>.

For instance, Daniel Hajj Aboumrad, the CEO of América Móvil, said during an investor call in 2017 that 99 percent of that company's mobile network was back in operation at that time. But when it came to repairing its fixed lines, he said:

“[W]e are working very hard in the fixed and I think it's going to take us a little bit of time to do that. We are, let's say, renewing some part of our fixed network. So in places where we don't have the fixed service already fixed, we're giving them some wireless phones for them to use them.”<sup>12</sup>

This shows the danger of potential downgrades in service, at least in the near- and medium-term, if the Commission is not vigilant. Accordingly, Free Press recommends that the Commission contemplate the following questions and policy recommendations:

- How will the Commission make sure companies that receive funding haven't already recouped their losses through insurance pay-outs? Is the audit process sufficient? It seems that each carrier should, at a minimum, certify that it has not received money for the same purpose from insurance companies or other sources, and that best practices would be to audit each company that receives any accelerated USF support.
- What minimum standards for repaired and restored service should the Commission adopt for carriers that receive funding through this mechanism, to ensure that service is restored at and above the levels previously provided?
- What will happen to funds allocated to Puerto Rico under this mechanism but not expended? Can we ensure those dollars are spent directly on communications services and infrastructure for the people of Puerto Rico?
- The carriers own statements demonstrate that hurricane preparation varied greatly from company to company. Instead of asking the companies for the favor of providing reliable and resilient services in exchange for millions of dollars, what additional requirements should the Commission develop to ensure that carriers have equipment and pre-positioned supplies on site, and take other measures to ensure rapid response to natural disasters?

We respectfully submit this *ex parte* notice pursuant to Section 1.1206(b) of the Commission's rules.

Regards,

/s/ Joseph Torres

Joseph Torres  
Senior Director of Strategy and  
Engagement

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<sup>12</sup> Comments of Daniel Hajj Aboumrad, América Móvil Chief Executive Officer, Fourth Quarter 2017 Earnings Call (Feb. 14, 2018), [http://www.americamovil.com/sites/default/files/2018-02/earnings-call-q4-2017\\_0.pdf](http://www.americamovil.com/sites/default/files/2018-02/earnings-call-q4-2017_0.pdf).