**Before the**

**Federal Communications Commission**

**Washington, D.C. 20554**

In the Matter of )

)

The Uniendo a Puerto Rico and the Connect ) WC Docket No. 18-143

USVI Fund )

)

Connect America Fund ) WC Docket No. 10-90

)

ETC Annual Reports and Certifications ) WC Docket No. 14-58

**Comments of Tri-County Telephone Association, Inc.**

These comments are offered by Tri-County Telephone Association, Inc. (“TCT”), a rural telecommunications company and recipient of high-cost funds. TCT submits these comments in opposition to the Commission’s proposed use of high-cost funds for natural disaster recovery. Specifically, TCT submits that the Uniendo a Puerto Rico Fund and the Connect USVI Fund (“Puerto Rico/USVI Funds”) create an irresponsible precedent for the administration of the universal service fund (“USF”) and are contrary to the underlying purpose of § 254 of the Telecommunications Act of 1996 (the “Act”).[[1]](#footnote-1)

1. **The High-Cost Fund is an Inappropriate Source of Funding for Natural Disaster Recovery**

The Commission’s proposal to spend up to $230 million in additional funds to rebuild communications networks damaged from a natural disaster is an unprecedented use of the high-cost fund. In the aftermath of Hurricane Katrina, the Commission waived certain rules and forbore from enforcing certain provisions of the Telecommunications Act in order to permit carriers to use pre-existing high-cost funds to rebuild their networks.[[2]](#footnote-2) But in that case, the Commission took care to be sure the funds advanced came from high cost funds which would otherwise have been payable. The Commission certainly has never gone so far as to reshape the high-cost fund for this purpose.

Since Hurricane Katrina, the United States has withstood numerous natural disasters, many of which presumably damaged, or even destroyed, communications networks.[[3]](#footnote-3) Were the Commission to dip into USF programs each time communications networks were damaged by a natural disaster, it would cripple the USF. In 2017 alone, natural disasters caused $306 billion in damage to the United States.[[4]](#footnote-4) The high-cost fund is not designed to fund the telecom-related portion of these recovery efforts, and neither is any other USF program.

Other sources of funding are much more apt for this purpose. For example, the Federal Emergency Management Association provides various forms of assistance for natural disaster relief.[[5]](#footnote-5) Philanthropy, non-profit organizations,[[6]](#footnote-6) and insurance play large roles in long-term recovery. These are programs actually financially designed to meet the needs of natural disaster recovery, and thus the appropriate avenues. The high-cost fund, by contrast, is financially designed to respond to disparities in the cost of providing service between rural and urban parts of the country. Its level of funding is determined by the ratio of total projected quarterly expenses of the universal service support mechanisms to the total projected collected end-user interstate and international telecommunications revenues.[[7]](#footnote-7) This calculus leaves no room for natural disaster recovery. At the same time, the Commission’s willingness to act as an effective insurer of last resort sends a strong signal to carriers, especially those in areas prone to natural disasters such as floods or hurricanes, that they can skimp on private insurance coverage with the confidence that the FCC will intervene to make other telecom provides throughout the country make up the shortfall in casualty insurance. This is exactly the wrong message that the Commission should be sending, especially without any mandate from Congress whatsoever to be serving as an inexpert, adhoc provider of disaster insurance whenever it sees fit.

Moreover, the amount of support the Commission is proposing to provide is seemingly pulled out of thin air. Under the Commission’s proposal, the Commission would immediately make available $51.2 million for hurricane recovery in Puerto Rico, along with $13 million for the Virgin Islands.[[8]](#footnote-8) This is on top of the $65.8 million already distributed to eligible carriers in those territories with no offset against future distributions. As with the original $65.8 million, this extraordinary action is being taken without any opportunity for input from the public. As detailed in TCT’s July 13, 2018 petition for reconsideration of the Commission’s Order, there is no “emergency” situation at this point that justifies the abandonment of normal notice and comment procedures required by the Administrative Procedures Act. In stage II of its proposed assistance to the islands, the Commission proposes to add an additional $105 million in hurricane relief over the next ten years (fixed services) and three years (for mobile services). This adds up to $230 million. The Commission makes no effort to identify the costs that this level of support will cover. It “expect[s] that this support will provide meaningful relief to carriers,”[[9]](#footnote-9) but it is unclear why the Commission has this expectation. Given the large amount of proposed spending, one would expect the Commission to carefully calculate the amount of support it will provide and identify the costs involved. But in its haste to aid the islands, the Commission has simply thrown money at the problem with no factual basis for the amounts involved. Congress can do this, but an administrative agency cannot.

Unfortunately, this is not the first time the Commission has irresponsibly administered the USF. In 2012, the Commission acknowledged that the administration of the high-cost program needed improvement.[[10]](#footnote-10) The Government Accountability Office confirmed as much two years later, releasing findings that the high-cost program lacks transparency and accountability.[[11]](#footnote-11) The Puerto Rico/USVI Funds are steps in the wrong direction.

1. **The Commission Does Not Have Legal Authority to Enact the Uniendo a Puerto Rico Fund and the Connect USVI Fund**

The Puerto Rico/USVI Funds represent not only poor policy choice, but *unlawful* policy choice.The FCC “literally has no power to act ... unless and until Congress confers power upon it.”[[12]](#footnote-12) When Congress passed the Act, it found that the universal service mechanisms existing at the time adequately promoted universal service.[[13]](#footnote-13) It therefore instructed the FCC to promulgate rules that *preserved* universal service. Congress also sought to ensure that changes in markets and technology would be equally realized by both rural and urban areas. Accordingly, it instructed the Commission to promulgate rules that would *advance* universal service. The Commission only has authority to enact universal service policies intended to further these two specific goals.[[14]](#footnote-14) The Puerto Rico/USVI Funds are completely unrelated to the goals of preserving universal service, as it existed prior to the Act’s passage. The funds also are completely unrelated to the goal of urban and rural areas equally realizing communications innovations.

At no point did Congress contemplate the use of the USF to respond to natural disasters when it enacted the Act. In fact, the authorization required is currently pending in the House of Representatives, which introduced a bill in January to authorize the use of high-cost support for restoration of telecommunications capabilities following a major disaster or emergency (“H.R. 4832”).[[15]](#footnote-15) The Commission is putting the cart before the horse by beginning to enact rules directly contemplated by H.R. 4832 before Congress has even enacted H.R. 4832. Of course, even the proposed bill would only authorize prepayment of otherwise payable high cost support, and only for areas where there is no service by carriers not eligible for high cost support. What the Commission has proposed here goes well beyond what Congress itself has considered authorizing.

Why would Congress introduce H.R. 4832 if the Act already authorized the Commission to use high-cost support to restore communications networks following a major disaster? Congress likely found it plainly obvious that this authorization does not exist. The Act mandates that the Commission establish “predictable” universal service support mechanisms so that the resulting support would be “sufficient” to achieve the guiding principles listed in Section 254.[[16]](#footnote-16) The completely unprecedented nature of the Puerto Rico/USVI Funds renders them *unpredictable* support mechanisms.

Further, the high-cost program is based upon § 254(b)(3), which provides that consumers in rural, insular, and high-cost areas should have access to telecommunications services at rates that are “reasonably comparable to rates charged for similar services in urban areas.”[[17]](#footnote-17) The Commission has offered no evidence that consumers in Puerto Rico and the USVI have experienced higher rates for service than other parts of the country as a result of Hurricanes Maria and Irma. The Commission makes clear that there is *less* service, not that service has become more expensive.

In sum, TCT has serious concerns about the Commission’s mishandling of the high-cost program. Carriers contribute, at consumers’ expense, to the high-cost fund for very specific purposes. The Commission is neglecting to put those funds toward their intended purposes. While natural disaster recovery is an admirable intention, the frequency of natural disasters necessitates careful financial planning and the appropriate use of resources. In this case, the Commission seeks to make use of resources in a manner unauthorized by Congress.

Respectfully submitted,

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July 26, 2018

1. 47 U.S.C. § 254. [↑](#footnote-ref-1)
2. *In re Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up*, Order, FCC 05-178, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 03-109 (rel. Oct. 14, 2005). [↑](#footnote-ref-2)
3. Federal Emergency Management Agency, https://www.fema.gov/disasters (last visited July 19, 2018). [↑](#footnote-ref-3)
4. Doyle Rice, *Natural disasters caused record $306 billion in damage to U.S. in 2017*, USA Today (Jan. 8, 2018), *available at* https://www.usatoday.com/story/weather/2018/01/08/natural-disasters-caused-record-306-billion-damage-u-s-2017/1012924001/. [↑](#footnote-ref-4)
5. 44 C.F.R. § 206.3. [↑](#footnote-ref-5)
6. Council on Foundations, https://www.cof.org/content/disaster-philanthropy (last visited July 19, 2018). [↑](#footnote-ref-6)
7. 47 C.F.R. § 54.709. [↑](#footnote-ref-7)
8. The Uniendo a Puerto Rico Fund and the Connect USVI Fund, Order and Notice of Proposed Rulemaking, FCC 18-57, WC Docket Nos. 18-143, 10-90, 14-58, para. 15 (rel. May 29, 2018). [↑](#footnote-ref-8)
9. *Id.* para. 31. [↑](#footnote-ref-9)
10. *See In re Universal Service Contribution Methodology A National Broadband Plan For Our Future*, Further Notice of Proposed Rulemaking, FCC 12-46, WC Docket No. 06-122, GN Docket No. 09-51 (rel. April 30, 2012). [↑](#footnote-ref-10)
11. U.S. Gov’t Accountability Off., GAO-14-587, FCC Should Improve the Accountability and Transparency of High-Cost Program Funding (2014). [↑](#footnote-ref-11)
12. *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). [↑](#footnote-ref-12)
13. *Qwest Commc'ns Int'l, Inc. v. FCC*, 398 F.3d 1222, 1236 (10th Cir. 2005) (citing 47 U.S.C. § 254(b)). [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. *See* H.R. 4832, 115th Cong. § 2 (2018). [↑](#footnote-ref-15)
16. 47 U.S.C. § 254(b)(5). [↑](#footnote-ref-16)
17. *Id.* § 254(b)(3). [↑](#footnote-ref-17)