Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122

COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

Puerto Rico Telephone Company, Inc., dba Claro ("PRTC"), by its attorneys, submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") in the above-referenced docket seeking comment on establishing an overall cap on the four Universal Service Fund ("USF") programs.[1] PRTC appreciates the Commission's continuing efforts to ensure the efficient and responsible use of USF funds. However, an overall cap would pit deserving beneficiaries against one another and result in funding reductions in a manner inconsistent with the statutory goals of preservation and advancement of universal service. Therefore, the Commission should decline to impose an overall cap.

I. THE USF PROGRAMS ARE CRITICALLY IMPORTANT TO NON-CONTIGUOUS INSULAR AREAS SUCH AS PUERTO RICO.

Pursuant to Section 254(b) of the Communications Act, as amended, the Commission must ensure that "[c]onsumers in all regions of the Nation, *including low-income consumers and those in rural, insular, and high cost areas*," have access to telecommunications and information services.[2] Puerto Rico is a non-contiguous insular area with the lowest income levels in the nation

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[1] *Universal Service Contribution Methodology*, WC Docket No. 06-122, FCC 19-46, Notice of Proposed Rulemaking (rel. May 31, 2019) ("NPRM").

[2] 47 U.S.C. § 254(b)(3) (emphasis added).

that has been battling a chronic economic and fiscal crisis for over a decade and that is still recovering from the catastrophic damage of two major back-to-back hurricanes. The USF programs are critically important to Puerto Rico, and PRTC is concerned about the impact that adoption of a combined cap could have on the island.

There are numerous factors that make building and operating a modern network in Puerto Rico unique. These factors include: (a) higher shipping-related costs, since all the supplies necessary for creating and maintaining a telecommunications infrastructure must be shipped and stored at considerable expense; (b) higher operational costs associated with the topography of Puerto Rico, such as the rough, hilly terrain and heavy tropical vegetation in sparsely populated inland areas; (c) higher operational costs associated with the climate of Puerto Rico, which is corrosive and inhospitable to telecommunications equipment, leading to accelerated deterioration of equipment; and (d) higher operational costs associated with severe tropical weather in the Caribbean, which requires frequent reconstruction of existing infrastructure due to storm and hurricane damage.[3]

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[3] *See* Comments of Puerto Rico Telephone Company, Inc., WC Docket No. 18-143, at 12-13 (Jul. 26, 2018); Comments of Puerto Rico Telephone Company, Inc., WC Docket No. 10-90, at 5 (Apr. 28, 2017); Comments of Puerto Rico Telephone Company, Inc., WC Docket No. 10-90, at 8 (Sept. 12, 2013); *see also Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 193 (2011) ("USF/ICC Transformation Order") (recognizing that price cap carriers serving territories outside the contiguous United States face unique operating conditions and challenges that may result in cost characteristics that differ from those of mainland LECs, and directing the Wireline Competition Bureau to consider the unique circumstances of price cap carriers serving Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands and Northern Marianas Islands when adopting a cost model and whether the model provides sufficient support for carriers serving these areas); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 112 (1997) (acknowledging that "insular areas generally have subscribership levels that are lower than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations").

Residents of Puerto Rico have a significantly lower per capita income than any state in the United States. According to Data USA, the 2017 median household income in Puerto Rico was $19,343 (down from $20,078 in the prior year).[4] This was less than half the median household income of the lowest U.S. state (Mississippi: $43,529).[5] Indeed, 44.9 percent of the population lives below the poverty line, a number that is far greater than the national average of 13.4 percent.[6] The lack of disposable income manifests itself in low broadband adoption rates, which, in turn, leads to higher operation costs that depress potential investment due to eroding margins.

The government of Puerto Rico is in deep financial distress. On May 3, 2017, Puerto Rico, with approximately $123 billion in debt and pension obligations that far exceed the $18 billion bankruptcy filed by Detroit in 2013, sought what is essentially bankruptcy relief under Title III of the Puerto Rico Oversight, Management and Economic Stability Act ("PROMESA").[7] The government has implemented strict austerity measures, which include raising taxes and reducing government services. Puerto Rico's population has been falling for nearly a decade, and the pace of decline has accelerated in recent years, which further impacts the local economy.

The already precarious financial situation of Puerto Rico was further intensified by the 2017 hurricane season. Hurricane Maria destroyed thousands of homes and businesses. Between 3,000 to 5,000 people died, making Hurricane Maria one of the deadliest disasters in U.S. history. The damage to the communications network proved catastrophic, leading the Commission to create the Uniendo a Puerto Rico Fund ("Uniendo Fund") with the goal of rebuilding, improving

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4 Data USA, Puerto Rico, Median Household Income, *available at* https://datausa.io/profile/geo/puerto-rico/#about (last visited July 24, 2019).

5 Data USA, Mississippi, Median Household Income, *available at* https://datausa.io/profile/geo/mississippi (last visited July 24, 2019).

6 Data USA, Puerto Rico, Poverty by Age and Gender, *available at* https://datausa.io/profile/geo/puerto-rico/#about (last visited July 24, 2019).

7 In re Commonwealth of Puerto Rico, Debtor, Title III, Case No. 17-cv-01578 (D.P.R. May 3, 2017).

and expanding voice and broadband networks in Puerto Rico.[8] As the Commission's Public Safety and Homeland Security Bureau notes in its *2017 Atlantic Hurricane Season Impact on Communications Report and Recommendations*, the havoc wreaked by Maria in Puerto Rico alone is projected to have caused at least $100 billion in damage.[9]

Given the conditions in Puerto Rico previously described, the continued availability of specific and predictable USF programs is more critical than ever.

II. IMPOSING A COMBINED CAP ON THE USF PROGRAMS WOULD UNDERMINE THE COMMISSION'S POLICY OBJECTIVES.

The NPRM proposes establishing an annual combined cap of $11.42 billion on all four USF programs, which is the sum of the authorized budgets for the four universal service programs in 2018.[10] The NPRM states that a cap would "strike the appropriate balance between ensuring adequate funding for the universal service programs while minimizing the financial burden on ratepayers and providing predictability for program participants."[11] The NPRM states that an overall cap will enable the Commission to "take a more holistic view when considering future changes to the universal service programs and their impact on overall USF spending."[12] In addition, the NPRM states that by linking the expenditures in multiple USF programs through an overall cap, the Commission seeks "to promote a robust debate on the relative effectiveness of the

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8 *Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications*, WC Docket No. 18-143, *et al*., Order and Notice of Proposed Rulemaking, FCC 18-57 (May 29, 2018) ("Uniendo NPRM"). The Commission also created the Connect USVI Fund ("USVI Fund") to rebuild, improve and expand voice and broadband networks in the U.S. Virgin Islands.

9 *2017 Atlantic Hurricane Season Impact on Communications Report and Recommendations*, Public Safety Docket No. 17-344 (Aug. 2018), ¶ 8 (citations omitted)

10 NPRM ¶ 9. The NPRM states that the authorized budgets in 2018 were $2.28 billion for Lifeline, $4.5 billion for High-Cost, $4.062 billion for E-Rate, and $581 million for Rural Health Care. *Id*. n.22.

11 NPRM ¶ 9.

12 *Id*. ¶ 9.

programs."[13] As discussed below, a combined cap is not only unnecessary, but it would also be inconsistent with Congressional mandate.

A. A combined cap would be inconsistent with the USF's statutory goals of preservation and advancement of universal service.

Section 254(b) of the Communications Act requires the Commission to establish "predictable and sufficient" mechanisms to preserve and advance universal service.[14] To comply with this directive, the Commission created four separate and distinct USF programs: the High-Cost program (known as the Connect America Fund), the Lifeline program, the Schools and Libraries program (known as E-Rate), and the Rural Health Care program. The programs have different demands and funding needs. Currently each USF program is already capped or operating under a targeted budget.[15]

Under a combined cap, if the Commission were to increase funding in one program, it might have to decrease funding in one or more of the other USF programs. This approach would adversely impact the Congressional mandate that there be "specific, predictable and sufficient" funding mechanisms to preserve and advance universal service. Several parties have expressed concern with this outcome. For instance, several members of Congress told the Commission that "[t]he USF programs were not intended to compete against each other for funding and pitting them against each other for funding does nothing to advance the goal of achieving universal service."[16]

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[13] *Id.* ¶ 9.

[14] 47 U.S.C. § 254(b)(5).

[15] *See* NPRM ¶¶ 1, 5-8.

[16] Letter from Representatives Mark Pocan, Cindy Axne, Sanford D. Bishop, Jr., Cheri Bustos, G.K. Butterfield, James E. Clyburn, TJ Cox, Angie Craig, Ro Khanna, Ron Kind, Ann Kirkpatrick, James P. McGovern, Ilhan Omar, and Peter Welch to Chairman Ajit Pai and Commissioners Michael O'Reilly, Brendan Carr, Jessica Rosenworcel and Geoffrey Starks, WC Docket No. 06-122, at 2 (dated July 9, 2019). Indeed, on June 25, 2019, the House of Representatives unanimously adopted House Amendment 483 to H.R. 3351, the FY2020 Financial Services and General Government Appropriations Act that would prohibit implementation of the proposed rule. *Id.* Similarly, the National Association of State Utility Consumer Advocates ("NASUCA") urged the Commission not to adopt the proposal because "it would be inconsistent with the USF's statutory goals of *preservation* and

Gila River Telecommunications, Inc. states that, under the proposed rule, the need to ration support amongst program participants could generate greater uncertainty and unpredictability.[17] Specifically, and as the Education and Library Networks Coalition states, a combined cap "would lead inexorably to at least some USF beneficiaries not knowing how much, if any, USF support they will receive from year-to year and to some or all USF beneficiaries receiving support that is completely insufficient to their needs."[18] According to the AARP, benefiting one program to the detriment of another program is a result that "would undermine Universal Service objectives."[19]

It is important for the Commission to have flexibility to address the universal service needs of Americans. For instance, this flexibility permitted the Commission to respond quickly to the devastation caused by the 2017 hurricane season in Puerto Rico and the U.S. Virgin Islands by creating the Uniendo Fund and USVI Fund. These new mechanisms, if structured and funded appropriately, will be critical to the recovery, hardening and expansion of broadband networks in the territories.[20] Similarly, the Commission recently announced that it will create a new Rural Digital Opportunity Fund ("RDO Fund") under the High-Cost program at a cost of $20.4 billion

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advancement of universal service." National Association of State Utility Consumer Advocates, Resolution 2019-04, *Urging the Federal Communications Commission to Refrain from Adopting a Hard Cap on the Overall Size of the Federal Universal Service Fund and Instead Focus on Universal Service Goals and Contributions Reform*, approved June 20, 2019, *available at* https://www.nasuca.org/nwp/wp-content/uploads/2019/07/2019-04-NASUCA-Telecom-Resolution-re-NPRM-to-Cap-the-USF.pdf (last visited July 24, 2019) (emphasis added).

[17] Comments of Gila River Telecommunications, Inc., WC Docket No. 06-122, at 3 (filed July 15, 2019).

[18] Comments of the Education & Libraries Networks Coalition, WC Docket No. 06-122, at 7 (filed July 23, 2019).

[19] Comments of AARP, WC Docket No. 06-122, at 15 (filed July 15, 2019) (stating that "The NPRM's policy of robbing Peter to pay Paul is the wrong policy and would undermine Universal Service objectives").

[20] In the Uniendo proceeding, PRTC submitted to the Commission a detailed analysis using the CAM model demonstrating that the Commission's proposed budget for fixed providers in Puerto Rico through Stage 2 of the Uniendo Fund is not sufficient to meet the Commission's goals in that proceeding. PRTC *Ex Parte*, WC Docket No. 18-143 (Oct. 12, 2018); PRTC *Ex Parte*, WC Docket No. 18-143 (Nov. 2, 2018). To address this shortfall, PRTC has proposed the adoption of an additional annual budget for fixed providers in Puerto Rico of $62 million above the existing legacy frozen support for a total of $98 million per year. *See* PRTC Comments, WC Docket No. 18-143, at 15 (Jul. 26, 2018); PRTC Reply Comments, WC Docket No. 18-143, at 16 (Aug. 8, 2018).

over ten years to bring high-speed broadband service to unserved Americans.[21] Assuming that the RDO Fund is created and funded after the imposition of any hard cap that might be implemented, and that the Commission does not proactively include the $20.4 billion in any such hard cap, the Commission would have to reduce funding from the E-Rate, Lifeline and/or Rural Health Care programs, or increase funding for the High-Cost program (and thus, the overall USF cap). If it is the former, their "relative effectiveness" cannot be easily compared because each program serves its own purpose and group of consumers. If it is the latter, the Commission would have defeated the purpose of adopting a combined cap in the first place.

B. A combined cap would be inconsistent with the USF's statutory goals.

Each USF program is already capped or operating under a targeted budget. Specifically, the authorized program levels in 2018 were $4.5 billion for High-Cost, $4.062 billion for E-Rate, $2.28 billion for Lifeline, and $581 million for Rural Health Care.[22] The E-Rate and Rural Health Care programs operate under self-enforcing caps.[23]

In the *USF/ICC Transformation Order*, the Commission established the budget for the High-Cost program and an automatic review trigger if the budget is threatened to be exceeded.[24] As the Commission stated in that order, the combination of a budget and the automatic review trigger "will provide for more predictable funding for carriers and will protect consumers and businesses that ultimately pay for the fund through fees on their communications bills."[25] Rather than adopting a combined cap, which would pit deserving beneficiaries against one another, the

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[21] Commission Meeting Agenda: FCC To Hold Open Commission Meeting Thursday, August 1, 2019 (rel. July 25, 2019), *available at* https://docs.fcc.gov/public/attachments/DOC-358689A1.pdf (last visited July 24, 2019).

[22] NPRM ¶ 9 n.22.

[23] *See Id.* ¶ 17, n.35.

[24] *Id.* ¶ 5 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17668, ¶ 18).

[25] *USF/ICC Transformation Order*, 26 FCC Rcd at 17668, ¶ 18.

Commission should seek to flesh out the automatic review trigger mechanism to permit it to exercise fiscal responsibility while maintaining predictability for program participants.

The Lifeline program does not have a self-enforcing cap, but one is not needed. First, the program is woefully underutilized.[26] According to USAC's estimate of Lifeline participation based on the 2016 U.S. Census American Community Survey (ACS), only 28 percent of households eligible for Lifeline used the program.[27] Even in Puerto Rico, which has a significantly lower per capita income than any state in the nation, only 65 percent of eligible households participated in the program.[28] In fact, Lifeline expenditures decreased from $2.1 billion to $1.5 billion between 2012 and 2016, respectively. Second, a self-enforcing cap on a program that is underutilized would undermine the purpose of the program, which is to help make communications services more affordable for qualifying low-income households. Lastly, the Commission ought to consider that, because the Lifeline program is currently underutilized, it – more than any other program – would run the risk of losing the unused funds in its budget.

C. The Commission has the tools necessary to evaluate the financial aspects of the USF programs without the imposition of a combined cap.

Throughout the NPRM, the Commission states that a combined cap will allow it to evaluate the financial aspects of the USF programs and consider future changes and their impact on overall USF spending in a more holistic way.[29] The Commission has access to quarterly and annual contribution reports prepared by the Universal Service Administrative Company ("USAC").

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26 NPRM ¶ 8 (noting that "recent demand has been considerably lower than the authorized budget levels").

27 USAC, "Lifeline Participation," https://www.usac.org/li/about/process-overview/stats/participation.aspx (last visited July 24, 2019).

28 *Id*.

29 NPRM ¶¶ 1, 9.

These reports are based on the projected demand for each of the four USF programs and estimated contribution revenues.

The Commission also has other resources at its disposal. The *Universal Service Monitoring Report* provides data related to the four USF programs, including industry revenues and contributions, support for the programs, telephone subscribership and penetration, rates and price indices, network usage and growth, quality of service, infrastructure, expenses, and investment. Data from FCC Form 477 helps the Commission identify areas that need USF support for the provision of voice and broadband service. The *Communications Marketplace Report* provides a comprehensive evaluation of the state of communications in the country. Among other things, this report includes an assessment of the state of deployment of communications capabilities and a list of geographic areas that are not served by any provider of advanced telecommunications capability.[30] All of these resources can and should inform the Commission's evaluation of the USF programs without having to impose a combined cap.

III. CONCLUSION

PRTC supports the Commission's efforts to safeguard the universal service fund and ensure it is spent prudently and in a consistent manner across all programs. However, implementation of an overall cap would ultimately force the Commission to make decisions that would harm one program to benefit another, thus undermining the Congressional mandate that there be "specific, predictable and sufficient" funding mechanisms to preserve and advance universal service. PRTC is particularly concerned about the impact an overall cap would have on Puerto Rico given the high cost of providing service in the territory, the low income levels, the ongoing economic crisis over the past 13 years, and the widespread destruction caused by the 2017

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[30] Communications Marketplace Report, GN Docket No. 18-231, FCC 18-181, Report (rel. Dec. 26, 2018).

hurricane season. In light of the foregoing, PRTC respectfully urges the Commission to decline to adopt a combined USF cap and terminate the instant proceeding.

Respectfully submitted,

By: *__/s/ Edgar Class__*

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