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*Sara F. Seidman*

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June 5, 1998

HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

**RE: Ex Parte Presentation**
Proposals to Revise the Methodology
for Determining Universal Service Support
CC Docket Nos. 96-45, 97-160; DA 98-715

Dear Ms. Salas:

On June 4, 1998, Richard J. Lubasch, Senior Vice President, General Counsel, and Secretary of CoreComm Incorporated, Francisco J. Silva, Legal Counsel of Cellular Communications of Puerto Rico, Inc. (a wholly-owned subsidiary of CoreComm Incorporated), and the undersigned met with Natalie Wales and Robert Loube of the Common Carrier Bureau to discuss universal service support as applied to the Commonwealth of Puerto Rico. The points we raised are reflected in the attached documents, which were provided to the Commission participants at the meeting.

Pursuant to sections 1.1206(b)(1) and (b)(2) of the Commission's rules, an original and one copy of this letter and attachment are being filed with the Office of the Secretary. Copies of the letter and the attachment are also being served on the Commission personnel in the meeting.

Sincerely,

Sara F. Seidman

cc: Robert Loube
Natalie D. Wales

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## CELLULAR COMMUNICATIONS OF PUERTO RICO, INC.

**Methodology for Determining Universal Service Support for Puerto Rico**
CC Docket Nos. 96-45, 97-160; DA 98-715

**Severely Reducing USF Support to Puerto Rico Would Harm Competition and Consumers.**

- CCPR urges the Commission to maintain Puerto Rico's universal service support at current levels, as proposed by the Puerto Rico Telephone Company ("PRTC"), subject to certain modifications and conditions outlined below.

- Under the Commission's proposed proxy model methodology for non-rural LECs, PRTC calculates that funding to the Commonwealth would be reduced from the current level of $145 million to $37 million (BCPM) or $685,020 (Hatfield), with the federal government funding only 25 percent of those amounts.

- This $100 million or greater loss to the Commonwealth overnight would be devastating to competition and consumers.

- Even if PRTC so desired, it would not be able to reduce its inflated costs in time to compensate for the funding reduction. Because the Puerto Rico Regulatory Board would be unlikely to permit a significant increase in local rates to make up for the lost funds, the only place PRTC could recover its loss would be from CCPR and PRTC's other competitors.

- If federal funding is cut as proposed, the Board would feel compelled to establish a sizable local universal service fund. Because there are so few telecommunications providers operating in Puerto Rico, each carrier's contribution would likely represent a very large percentage of its gross revenues.

- PRTC and the Board would also seek to collect the lost support from competitors in the form of increased access and interconnection charges, both of which are already at levels that severely hamper competition.

**Maintaining Current Funding for Puerto Rico must be Conditioned on Concrete Steps by PRTC and the Board to Promote Competition and Reduce Costs.**

- CCPR strongly opposes PRTC's suggestion that implicit subsidies (i.e., access and interconnection charges) cannot be reduced unless the federal government increases USF support to Puerto Rico.

- While PRTC points to Puerto Rico's insularity in an effort to explain its high operating costs, it has submitted no evidence to demonstrate that providing service on an island necessarily leads to such a result. The only explanation for PRTC's outrageous costs is PRTC's position

as a virtually unregulated, government-owned monopolist with a bloated payroll and no incentive to become more efficient.

- Under PRTC's proposal, PRTC would have no reason to become more efficient. PRTC would continue to receive $145 million from the federal government free and clear, and the federal government would be required to cover any additional expenses, justified or not, that PRTC might incur for the foreseeable future.

- PRTC and the Board should be required to file quarterly reports with the Commission demonstrating that they have eliminated unlawful cross subsidies, lowered access and interconnection rates based on legitimate forward looking cost studies, established performance standards consistent with those of incumbent LECs in the rest of the country, and reduced PRTC's costs to a reasonable level.

- The Board also should not be permitted to use local fund contributions to cover PRTC's required reductions in access and interconnection charges or support for eligible telecommunications carriers other than PRTC. Rather, the Commission should rule that all contributions to a local Puerto Rico fund will be offset by a corresponding decrease in the amount of federal funding provided to the Commonwealth.

- To encourage PRTC to reduce costs expeditiously, the Commission should set January 1, 2001 as the outside date for Puerto Rico's carriers to come into compliance with the rules for non-rural carriers.

- If the recently announced transfer of control of PRTC to GTE is consummated, the Commission should rethink whether a more rapid transition is warranted.

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MAY 29 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554

| | | |
|---|---|---|
| In the Matter of | ) | CC Docket No. 96-45 |
| Proposals to Revise the Methodology for Determining Universal Support | ) | CC Docket No. 97-160 |
| | ) | DA 98-715-USF Proposal |

**REPLY COMMENTS OF**
**CELLULAR COMMUNICATIONS OF PUERTO RICO, INC.**

Cellular Communications of Puerto Rico, Inc. ("CCPR"), by its attorneys, hereby files its reply comments in response to the Commission's public notice in the above-captioned proceeding.[1]

## INTRODUCTION

CCPR urges the Commission to adopt the proposal for determining universal service support for insular areas submitted by the Puerto Rico Telephone Company ("PRTC"), subject to the modifications and conditions proposed by the Association of Competitive Telecommunications Providers ("ACTP").[2] CCPR concurs with ACTP that, while grant of PRTC's request to maintain universal service funding in "insular areas" at current levels would reward the company for decades of inefficient and anticompetitive behavior, drastically reducing federal universal service funding to Puerto Rico overnight pursuant to the Commission's

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[1] Public Notice, Common Carrier Bureau Seeks Comments on Proposals to Revise the Methodology for Determining Universal Service Support, DA 98-715 (rel. April 15, 1998).

[2] See Comments of the Association of Competitive Telecommunications Providers (filed May 15, 1998) ("ACTP Comments"). CCPR is a member of ACTP.

forward-looking cost models would have a devastating effect on consumers and competition in the Commonwealth.

CCPR strongly opposes, however, PRTC's assertion that it should not be required to lower access charges or eliminate other implicit subsidies unless the Commission increases universal service funding to Puerto Rico. Puerto Rico currently receives considerably more support than any state in the country and unless PRTC is forced to take immediate and meaningful steps aimed at lowering its costs and promoting competition, the federal government can expect to subsidize PRTC's operations at these unreasonable levels for the foreseeable future.

As APCT proposes, the Commission should explicitly condition continued funding at current levels on the filing of quarterly reports by both PRTC and the Telecommunications Regulatory Board of Puerto Rico ("Board") demonstrating that they have eliminated unlawful cross subsidies, lowered access and interconnection rates based on legitimate forward looking cost studies, and reduced PRTC's costs to reflect the new competitive environment in which it now operates. In addition, the Commission should take into account the announcement made this week that GTE has agreed to purchase a controlling interest in PRTC and determine whether consummation of that transaction would warrant a faster transition to a forward looking methodology for calculating universal service funding.[3]

[3] See TR Daily, "GTE Agrees To Pay $375 Million for Operating Control of PRTC" (May 27, 1998).

## I. USE OF THE FCC'S FORWARD LOOKING METHODOLOGY TO DETERMINE SUPPORT FOR PUERTO RICO WOULD HAVE AN EXTREMELY ADVERSE IMPACT ON COMPETITION AND CONSUMERS

Puerto Rico now receives $145 million in explicit universal service support, all from the federal government. Under the Commission's proposed proxy model methodology for non-rural LECs, PRTC calculates that funding to the Commonwealth would be reduced to $37 million (BCPM) or $685,020 (Hatfield), with the federal government funding only 25 percent of those amounts. If the Commission does not amend its rules, in seven months, Puerto Rico will suffer a more than $100 million loss.

CCPR has been providing cellular telephone service to customers in Puerto Rico for almost a decade and it currently is the largest telecommunications competitor to PRTC in the Commonwealth. Competing against an entrenched monopolist has always been a struggle for CCPR and that effort is made more difficult by the fact that PRTC receives both explicit and implicit subsidies far in excess of carriers in the rest of the United States. While an enormous proportion of CCPR's revenues are transferred each month to PRTC in the form of interconnection, access, and other charges, PRTC simply takes the Commission's $145 million and applies it to its bottom line.

Despite these anticompetitive obstacles, CCPR is extremely concerned that a drastic reduction in universal service funding to Puerto Rico would severely hamper its ability to compete at all. There is simply no reason to believe that, even if PRTC so desired, it would be able to reduce its bloated costs in time to compensate for the funding reduction. There is also no reason to believe that the Puerto Rico Board would permit a significant increase in local rates to make up for the lost funds. Accordingly, the only place PRTC could recover its loss would be from CCPR and PRTC's other competitors.

As APCT explained, if federal funding is cut as proposed, the Board would feel compelled to establish a sizable local universal service fund. Because there are so few telecommunications providers operating in Puerto Rico, each carrier's contribution would likely represent a very large percentage of its gross revenues. Even though providers are permitted in theory to pass on such charges to their customers, this option is not viable in reality. A number of customers would be forced to forgo or curtail communications services if their rates were to reflect the full amount of the local fund. For the cellular business, this could be devastating, as wireless services would be first to be eliminated when consumers have to make a choice between their home and mobile phones. Moreover, it is probable that the Board would try to fashion its funding mechanism to keep PRTC's local rates low and put the full brunt of universal service on PRTC's competitors. This alone would seal the fate of the little competition that now exists on the island.

In addition, PRTC's own statements make it clear that PRTC and the Board would seek to collect the lost support from competitors in the form of implicit subsidies.[4] Given the already exorbitant access and interconnection charges on the island, this result is unacceptable from a competitive standpoint. As APCT stated, there is virtually no intra-island toll competition today because access charges often exceed the retail toll rate charged by PRTC. Similarly, despite negotiations and an extensive arbitration proceeding, CCPR is required to pay 300 times more for interconnection than competitive carriers on the mainland. The Board and the Puerto Rico legislature both profess that promoting telecommunications competition is one of their major

[4] Comments of Puerto Rico Telephone Company at 2 (filed May 15, 1998) ("PRTC Comments") ("Under the proxy model methodology, however, PRTC will receive no support that would allow for a reduction in any implicit subsidies and instead encourages possible increases in interstate carrier common line charges and basic local service rates.")

objectives for the Commonwealth. CCPR fears, however, that the steps that have been taken this past year would be counteracted immediately if universal service funding to Puerto Rico is cut as proposed.

## II. MAINTAINING CURRENT FUNDING FOR PUERTO RICO MUST BE CONDITIONED ON CONCRETE STEPS BY PRTC AND THE BOARD TO PROMOTE COMPETITION AND REDUCE COSTS

While PRTC points to Puerto Rico's insularity in an effort to explain its high operating costs, it has submitted no evidence to demonstrate that providing service on an island necessarily leads to such a result. Indeed, PRTC cannot demonstrate that labor costs are higher in Puerto Rico than other areas of the country, that weather conditions or the terrain are more severe, that taxes are more onerous, or that there is any other condition unique to an island economy that justifies PRTC's stated costs. To the contrary, labor rates are generally lower in Puerto Rico than in most states, blizzards and mountains in the Northwest and hurricanes and swamps in the South surely rival weather patterns and terrain obstacles experienced in the Commonwealth, and PRTC is exempt from federal corporate tax obligations. The only explanation for PRTC's outrageous costs is PRTC's position as a virtually unregulated, government-owned monopolist with a bloated payroll and no incentive to become more efficient.

For this reason, PRTC's assertion that "the universal service funding amount must exceed the amount [currently] provided to a carrier through LTS and the high cost fund" if the Commission wishes to eliminate implicit subsidies from the interstate access charge regime must be rejected.[5] If the Commission merely maintains the status quo as PRTC desires, PRTC would have no reason to become more efficient. Under PRTC's proposal, PRTC would continue to

[5] See PRTC Comments at 10 (emphasis added).

receive $145 million from the federal government free and clear, and the federal government would be required to cover any additional expenses PRTC might incur for the foreseeable future. While universal service requirements are intended to ensure telecommunications service to all citizens at affordable rates, Congress also decreed that the funding mechanism must be competitively neutral. It is not competitively neutral to permit PRTC to collect exorbitant implicit subsidies from its competitors through access and interconnection charges and at the same time receive ever increasing explicit subsidies from the government.

In the competitive environment Puerto Rico hopes to find itself, continued government subsidization of one provider makes no sense. The only way the government can cut the cord between itself and PRTC, however, is to condition continued support on concrete steps to promote competition and lower costs. PRTC must be required to eliminate implicit subsidies without a corresponding increase in universal service funding (federal or state). As APCT proposes, PRTC and the Board should be required to file quarterly reports with the Commission demonstrating that they have eliminated unlawful cross subsidies, lowered access and interconnection rates based on legitimate forward looking cost studies, established performance standards consistent with those of incumbent LECs in the rest of the country, and reduced PRTC's costs to a reasonable level.

In addition, the Board should not be permitted to defeat the Commission's efforts to promote competition and efficiency by covering PRTC's required reductions in access and interconnection charges through local fund contributions. Nor should local contributions be used in the event that eligible telecommunications carriers ("ETCs") other than PRTC require the

diversion of some of federal funds away from PRTC.[6] Rather, the Commission should expressly provide that all contributions made by telecommunications providers to a local Puerto Rico fund will be offset by a corresponding decrease in the amount of federal funding provided to Puerto Rico. Neither the Board nor PRTC have shown, or can show, that the federal government's $145 million is insufficient to provide universal service to the residents of Puerto Rico, as well as ensure that the fund remains truly portable and that the Commission's goals of access charge reform are satisfied.[7]

Finally, the Commission should not, as PRTC suggests, waive the transition to a forward looking methodology for an indefinite period of time. Unless PRTC is facing a date certain, it would have no incentive to reduce costs. Indeed, PRTC would have exactly the opposite incentive because, under its proposal, so long as it demonstrates that its costs are higher than those that would be derived by the proxy model, there will never be a transition to a proxy model methodology.[8] The Commission should instead set January 1, 2001 as the outside date for Puerto Rico's carriers to come into compliance with the rules for non-rural carriers.

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[6] See Letter to William E. Kennard, Chairman, FCC, from Phoebe Forsythe Isales, President, Telecommunications Regulatory Board of Puerto Rico, CC Docket No. 96-45, at 3 (May 7, 1998) (proposing that "[t]o the extent that an ETC considers the per line support level to be too low, the ETC would be able to seek additional support from the Puerto Rico Universal Service Fund").

[7] The federal fund could not be considered legitimately portable if each time a non-incumbent ETC applied for funds, the Board increased the local contributions to cover the loss to PRTC. If a carrier other than PRTC is providing universal service to a customer consistent with the Board's rules, PRTC would no longer be incurring the cost of providing service to that customer itself. Therefore, PRTC should not be compensated for such service through any funding mechanism.

[8] Id. at 3.

In this regard, the Commission also must investigate whether GTE's proposed assumption of control of PRTC should shorten this transition period. While GTE would be acquiring many of the problems inherent in PRTC's operations, GTE has abundant experience operating in a competitive environment and has much larger economies of scale. GTE should not be given the opportunity to lower its level of service to that of PRTC but, rather, should be given the means to bring PRTC into the modern world.

## CONCLUSION

For the foregoing reasons, the Commission should adopt the proposal of PRTC to maintain universal service support for Puerto Rico at current levels, subject to the conditions and modifications set forth above and in the comments filed by APCT.

Respectfully submitted,

**CELLULAR COMMUNICATIONS OF PUERTO RICO, INC.**

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Date: May 29, 1998

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## CERTIFICATE OF SERVICE

I, Tanya Butler, hereby certify that on this 29th day of May, 1998, a copy of the foregoing "Reply Comments Of Cellular Communications of Puerto Rico, Inc." was served via first class mail, postage prepaid or by hand (*) on the following:

Tanya Butler

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