

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the matter of)	
)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers)	CC Docket No. 00-256
)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation)	CC Docket No. 98-77
)	
)	
Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers)	CC Docket No. 98-166
)	

EX PARTE OF PUERTO RICO TELEPHONE COMPANY, INC.

José E. Arroyo Dávila
Vice President – Legal Regulatory Affairs
Puerto Rico Telephone Company

Gregory J. Vogt
Bradley K. Gillen
WILEY, REIN & FIELDING LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7000

Counsel for PRTC

February 28, 2003

Table of Contents

- I. Universal Service Funds Are Essential To Keep Rates in Puerto Rico Affordable.2
 - A. PRTC Faces Unique Burdens In Serving Puerto Rico.2
 - B. Other Sources of Revenue Are Not Viable Options for PRTC.5
 - C. PRTC’s Drop In Support Already Has Had Negative Effects In Puerto Rico.5
- II. The Commission Should Expeditiously Address PRTC’s Concerns Based on the Mandate of Section 254.6
- III. PRTC Should Receive Universal Service Support Under An Insular Mechanism Based on Embedded Costs.8
 - A. The Commission Should Adopt A Universal Service Mechanism For Non-Rural Insular Carriers Similar to the Mechanism for Rural Carriers.8
 - B. A Non-Rural Insular Mechanism Would Provide Essential Support For Universal Service Without Any Windfall to Carriers.9
- IV. Long Term Support Should Be Maintained.....10
 - A. Long Term Support Should Be Maintained At Current Levels, Even If It Is Incorporated Into The New Interstate Common Line Support Mechanism.11
 - B. PRTC Should Not Be Denied LTS Through A Forced Transition To Price Caps.11
- V. Conclusion.14

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the matter of)	
)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers)	CC Docket No. 00-256
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation)	CC Docket No. 98-77
)	
Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers)	CC Docket No. 98-166
)	

EX PARTE OF PUERTO RICO TELEPHONE COMPANY, INC.

Puerto Rico Telephone Company, Inc. (“PRTC”) is facing the deterioration of its universal service support, which is critically needed to maintain affordable rates in Puerto Rico. Section 254 mandates that the Commission ensure the comparability and affordability of rates in insular areas. In the FCC’s proceeding on support for insular areas, PRTC demonstrated that high-cost support is vital to maintaining affordable rates, given the unique costs and challenges of serving Puerto Rico. Puerto Rico’s support, however, is at risk because PRTC is a *non-rural* insular carrier – and currently under the non-rural high-cost support mechanism. Consequently, PRTC has been faced with the elimination of approximately \$50 million in support because of the lack of universal service mechanism for insular areas. If the Commission does not address PRTC’s urgent call for an insular universal service mechanism, the mandates of Section 254 may not be maintained.

To this end, the FCC should adopt an embedded cost mechanism for non-rural insular carriers, as it did for rural carriers. Doing so is necessary to provide PRTC, and other eligible telecommunications companies with needed funds to fulfill the Commission’s mandate under Section 254 and only results in a modest increase to the fund. In addition, PRTC’s long term support must remain at current levels, even if long term support is incorporated into the interstate common line support (“ICLS”) mechanism. Moreover, PRTC should not be denied long term support through a forced transition to price caps. The all-or-nothing rule should be eliminated or, at a minimum, permanently waived.

I. Universal Service Funds Are Essential To Keep Rates in Puerto Rico Affordable.

PRTC’s provision of affordable service depends on continued universal service support. Operating in an insular area, PRTC faces high costs in providing service. However, because PRTC is treated as a non-rural carrier, it has rapidly lost most of its high-cost support. The loss of universal service support jeopardizes PRTC’s ability to offer quality service, which is both reasonably comparable to the services offered in urban areas and continues to be offered at affordable rates. This is antithetical to Congress’ goals under Section 254.

A. PRTC Faces Unique Burdens In Serving Puerto Rico.

To maintain affordable rates, PRTC must overcome the economic and geographic challenges of serving an insular area. The FCC recognizes 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.”¹ Similarly, the Commission understands that “subscribership levels provide relevant information

¹ *Federal-State Joint Board On Universal Service*, Report and Order, 12 FCC Rcd 8776 at ¶ 112 (1997) (“*First Report & Order*”).

regarding whether consumers have the means to subscribe to universal service and, thus, represent an important tool in evaluating the affordability of rates.”²

Nowhere is this more true than in Puerto Rico. In fact, Puerto Rico’s 74.5% telephone subscribership rate³ is far below the nation average of 95.5%.⁴ Even more troubling, telephone subscribership in Puerto Rico’s rural communities is well below even Puerto Rico’s overall subscribership rate. Many areas have penetration rates of 60% or less.⁵ The island’s low telephone penetration rate is due to: (1) a lack of facilities to serve certain areas due to the unusually high costs associated with providing telephone service on an island; (2) large rural areas with a dispersed population; and (3) the low income of the average Puerto Rico consumer. Economic development of these areas of the island relies in part on continued infrastructure investment by PRTC, which may prove difficult without needed universal service support provided under an insular mechanism. Few carriers – non-rural or rural – face comparable hurdles.

PRTC faces uncommonly high expenses in serving Puerto Rico. Puerto Rico’s rural interior is mountainous and sparsely populated.⁶ PRTC must overcome significant physical

² *Id.*

³ Puerto Rico Telephone Company, Inc., Comments Updating Petition for Reconsideration of First Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, at 5 (filed Aug. 20, 2001) (“*PRTC Update Comments*”).

⁴ *Telephone Subscribership in the United States*, (rel. Nov. 8, 2002), available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/subs0302.pdf.

⁵ Consider the penetration rates for the following municipalities: Maunabo - 60%; Ciales - 60%; Naguabo - 58%; Comerio - 56%; Las Marias - 56%; and Guanica - 52%. *Id.* at 6.

⁶ Puerto Rico has three urban areas. The rest of the population lives in low-density rural regions. Comments of Puerto Rico Telephone Company, Inc., *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, at 4-5 (filed Dec. 17, 1999) (“*PRTC Insular Comments*”).

barriers, at substantial cost, to install and maintain facilities in this terrain.⁷ The need for longer wires and the difficult installation, and provision of service, and maintenance create high costs to serve these areas, which constitute a significant portion of Puerto Rico. The cost per local loop to install wireline service in these areas ranges from \$5,000 to more than \$15,000 in some instances.⁸

PRTC also faces costs and risks associated with its insular nature. For example, equipment and supplies must be shipped to the island, at great expense. This significantly increases infrastructure costs, and requires PRTC to maintain a large inventory of supplies and repair parts. And, Puerto Rico also faces debilitating damage from frequent, severe hurricanes. For example, in 1999, Hurricane Georges caused more than \$80 million in damages to PRTC facilities.⁹

These environmental and operational challenges are exacerbated by the low average income in Puerto Rico. The percentage of Puerto Rico's population below the poverty rate is 55%.¹⁰ The \$8,000 average per capita income in Puerto Rico is approximately half that of Mississippi, the U.S. state with the lowest per capita income.¹¹ The increased costs associated with living on an island are reflected in Puerto Rico's 133.8 cost of living index, which is much

⁷ *Id.* at 7.

⁸ Comments of Puerto Rico Telephone Company, Inc., *Federal-State Joint Board on Universal Service: Interim Hold Harmless Provision of the Commission's High-cost support Mechanism*, CC Docket No. 96-45, at 7 (filed Dec. 1, 1999).

⁹ *PRTC Insular Comments* at 7-8. After Hurricane Georges, insurance costs soared, forcing PRTC to self-insure against windstorm damage for facilities located beyond 1,000 feet of a central office. This leaves over 85 percent of outside plant self-insured.

¹⁰ *PRTC Update Comment*, at 5.

¹¹ *PRTC Insular Comments* at 9.

higher than the national average of 100.¹² The operational realities faced by PRTC are not reflected in the model, which provides PRTC with zero dollars in high-cost support.

B. Other Sources of Revenue Are Not Viable Options for PRTC.

PRTC needs federal universal service support. PRTC's current revenues are not sufficient to ensure affordability of rates and fund needed investment. Nor can PRTC simply increase rates, given the already low penetration rate in Puerto Rico. Any rate increases would have to be spread over a relatively small number of customers, resulting in significant rate increases per-customer and causing subscribership levels to plummet further.

Intrastate universal service funds are not an additional source of support.¹³ As the Joint Board has recognized, this option is not viable in all states;¹⁴ and Puerto Rico is a prime example. There are not enough carriers in Puerto Rico to generate enough internal revenues to create a sufficient intrastate universal service fund.

C. PRTC's Drop In Support Already Has Had Negative Effects In Puerto Rico.

PRTC's ability to invest in infrastructure improvements and modernization has been seriously impeded in part because of the decline in universal service funds. Significant development efforts would be more likely if the correct amount of universal service funds were provided to PRTC. Meeting these critical infrastructure needs is critical to ensuring that a modern level of quality services are available as ubiquitously as possible in Puerto Rico.

The reduction in the historical level of universal support that has been created by the rules applicable to non-rural companies, places serious pressure on the ability of PRTC to

¹² *Id.* at 10.

¹³ *Federal-State Joint Board on Universal Service*, Recommended Decision, FCC 02J-2, CC Docket No. 96-45, at ¶ 24 (rel. Oct. 16, 2002).

¹⁴ *Id.* at ¶ 25.

maintain universal service at affordable and comparable prices. The reduction from over \$50 million per year in support to \$0 in a little over three years is a staggering decline for a company any size, let alone PRTC. Given the other unique challenges that PRTC faces that are described above, it has not been able to make adjustments to such a steep decline in this short time period. Clearly, this drastic decline is not consistent with the Commission's stated desire to provide a reasonable transition to the new system for non-rural carriers, under its hold harmless and phase-out rules.

II. The Commission Should Expeditiously Address PRTC's Concerns Based on the Mandate of Section 254.

Section 254(b)(3) requires the FCC to address the unique needs of insular areas, providing that consumers "in rural, insular, and high cost areas, should have access to telecommunications and information services . . . at rates that are reasonably comparable to rates charged for similar services in urban areas."¹⁵ Puerto Rico is an "insular" area within the meaning of this provision.¹⁶

Under basic principles of statutory construction, the Commission must establish a universal service mechanism for insular areas separate and apart from that provided for rural and high-cost areas.¹⁷ By failing to do so, the Commission has neglected to give effect to every word and term in the statute.

¹⁵ 47 U.S.C. § 254(b)(3).

¹⁶ See, e.g., *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177 at ¶¶ 135, 138 (1999) (tentatively concluding that Puerto Rico is an insular area, and expressing concern "about the low subscriberhip levels in insular areas, including Puerto Rico").

¹⁷ See, e.g., *United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (It is a "duty to give effect, if possible, to every clause and word of a statute.").

Although this proceeding addresses insular areas¹⁸ – and PRTC has filed comments demonstrating the unique difficulties associated with serving Puerto Rico,¹⁹ and a Petition for Reconsideration of the *First Report & Order* urging the Commission to establish a universal service mechanism for insular carriers – the Commission has thus far failed to act, seven years after passage of the Act.

Without prompt action, PRTC and other eligible telecommunications companies will remain under the universal service mechanism for non-rural carriers established for the nation’s largest telephone companies. That mechanism eliminates \$50 million in high-cost support, compared with PRTC’s 2000 support levels.²⁰ If not for hold-harmless support, which is itself being phased-out, Puerto Rico would receive no high-cost support whatsoever. Clearly, these results do not provide sufficient support for a high cost area with low penetration like Puerto Rico, and cannot be reconciled with the statute.

In contrast, the FCC has adopted a universal service mechanism for rural carriers based on embedded costs because the Commission believed it would be a more reliable mechanism for those carriers. The Commission concluded that a “modified embedded cost mechanism ... will provide rural carriers with specific, predictable, and sufficient support ... consistent with the goals and principles set forth in section 254 of the Act.”²¹ Similarly, embedded costs, for insular

¹⁸ *Federal-State Joint Board On Universal Service: Promoting Deployment And Subscribership In Unserved And Underserved Areas, Including Tribal And Insular Areas*, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 99-204 (Sept. 3, 1999) (“*Insular Areas FNPRM*”).

¹⁹ *PRTC Insular Comments*; Reply Comments of Puerto Rico Telephone Company, Inc., *Insular Areas FNPRM*, (filed Jan. 19, 2000).

²⁰ *PRTC Update Comments* at 7.

²¹ *RTF Order*, 16 FCC Rcd at ¶ 31. The Commission acknowledged that “the forward-looking cost mechanisms available at that time could not predict the costs of serving rural areas with sufficient accuracy.” *Id.* at ¶ 6.

companies, are a far more reliable method of assuring that carriers receive sufficient support to maintain affordable rate because of the unique characteristics of insular companies.²² Simply stated, Puerto Rico is suffering from the sudden, unsupported elimination of all high-cost support when another, more reliable, cost support methodology justifies a different result.²³ Moreover, nearly all other insular carriers already receive such support based on embedded costs because they meet the technical definition of “rural.”

III. PRTC Should Receive Universal Service Support Under An Insular Mechanism Based on Embedded Costs.

Allowing PRTC to receive support based on embedded costs through a universal service mechanism for non-rural insular carriers is necessary to ensure affordable rates for quality service and to respect Section 254’s sufficiency directive for insular areas.

A. The Commission Should Adopt A Universal Service Mechanism For Non-Rural Insular Carriers Similar to the Mechanism for Rural Carriers.

PRTC and other eligible telecommunications carriers should receive universal service funding under a new insular mechanism that resembles the mechanism for rural carriers. Treating PRTC in a similar manner to rural carriers makes eminent sense. PRTC faces the same challenges as rural carriers, and serves extensive rural areas of Puerto Rico. Like rural carriers, PRTC’s insular service area involves high costs to install and maintain facilities and limits the possible economies of scale. Thus, Puerto Rico ratepayers suffer particular harm by the Commission’s failure to ensure that *all* insular carriers receive support based on their embedded costs.

²² *PRTC Update Comments* at 6-8.

²³ *Id.* at 9.

Support for non-rural insular carriers should be based on embedded costs, calculated using the procedures in Part 36 of the Commission's rules. As with support for rural carriers, this funding should not be phased-out over time. Rather, the insular mechanism would remain in place until the Commission completes its "comprehensive review of the high-cost support mechanisms."²⁴ At that time, the FCC could consider whether to replace the insular mechanism as part of overall, long-term changes to its universal service system.

B. A Non-Rural Insular Mechanism Would Provide Essential Support For Universal Service Without Any Windfall to Carriers.

A universal service mechanism for non-rural insular carriers would merely serve to restore high-cost support that is irrationally being denied Puerto Rico under the non-rural mechanism. Using the frozen \$240.00 national average loop cost that applies to rural carriers, for example, PRTC projects that Puerto Rico would receive approximately \$3.08 in monthly support per loop under the proposed insular mechanism, which would entail a total of approximately \$49 million using 2001 data collection forms filed with NECA. This is comparable to the support Puerto Rico received in prior years. For example, from 1998-2000 PRTC received an average of \$3.18 in monthly high-cost support per loop.²⁵

²⁴ *RTF Order*, 16 FCC Rcd at ¶¶ 168-69. Although the Commission initially intended to initiate this review by January 1, 2002, the FCC deferred this action pending the review of the Tenth Circuit's remand of its *Ninth Report & Order. Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking and Order, CC Docket No. 96-45, FCC 02-41 at ¶¶ 27-28 (rel. Feb. 15, 2002); *see also Federal-State Joint Board on Universal Service*, Recommended Decision, FCC 02J-2 at ¶ 28 (rel. Oct. 16, 2002) ("Now that the Joint Board has concluded its recommended decision on the issues in the court's remand, we look forward to a Commission referral of a comprehensive review of the rural and non-rural high-cost support mechanisms.").

²⁵ *See* Industry Analysis Division, Common Carrier Bureau, *State-by-State Telephone Revenues and Universal Service Data*, Table 7 "High-Cost Loop (HCL) Support Program: 2000" (rel Apr. 2001) (\$3.35 monthly high-cost support per loop); Industry Analysis Division, Common Carrier Bureau, *State-by-State Telephone Revenues and Universal Service Data*, Table 1.11 "Projected Non-Rural Carriers High-cost support Payments Per Loop: 1999" (rel. Jan. 2000) (\$2.94 monthly high-cost support per loop); Industry Analysis Division, Common Carrier Bureau, *State-by-State Telephone Revenues and Universal Service Data*, Table 2 "Universal Service Fund (USF): 1998" (rel. Jan. 1999) (\$3.24 monthly high-cost support per loop).

PRTC's \$3.08 per-line support under an insular mechanism would be less than the per-loop support currently received under the rural mechanism by other insular areas. For example, in 2000, the United States Virgin Islands received \$20.21 in monthly support per loop under the rural mechanism.²⁶ This indicates the measured nature of the requested relief.

Because nearly all other insular carriers are classified as "rural," they would not receive additional support under the new non-rural insular mechanism. Verizon Hawaii, the other principal non-rural insular carrier, historically has not received high-cost support. Under the new mechanism, it is still unlikely to receive funds, since its per-loop costs consistently are below 115% of the national average.²⁷ Thus, the relief requested would meet universal service goals without any windfall accruing. Overall, this modest change in the rules would also produce a minimal impact on the overall size of the high cost funds of less than 1.5%.²⁸

IV. Long Term Support Should Be Maintained.

Although Puerto Rico's high-cost support under the non-rural mechanism will be eliminated once hold-harmless support is phased out, it still receives long-term support ("LTS").

²⁶ Industry Analysis Division, Common Carrier Bureau, *State-by-State Telephone Revenues and Universal Service Data*, Table 7 "High-Cost Loop (HCL) Support Program: 2000" (rel Apr. 2001).

²⁷ For example, prior to the adoption of the phase-down on hold-harmless support in December 2000, Verizon Hawaii was eligible for hold-harmless support for per loop costs in excess of 115% of the national average. 47 C.F.R. § 36.631. However, Verizon Hawaii (then known as GTE Hawaiian Telephone Company) did not receive such support, indicating that its per loop costs were below that level. *See, e.g.*, USAC Quarterly Administrative Filing, 1Q 2000, Appendix 1 "High Cost Fund Support By Study Area"; USAC Quarterly Administrative Filing, 2Q 2000, Appendix 1 "High Cost Fund Support By Study Area"; USAC Quarterly Administrative Filing, 3Q 2000, Appendix 1 "High Cost Fund Support By Study Area"; USAC Quarterly Administrative Filing, 4Q 2000, Appendix HC1 "High Cost Fund Support By Study Area."

²⁸ In this context, the term "high cost funds" refers to high costs loop support, long term support, safety net support, switching support and interstate access support.

PRTC estimates that it will receive \$79 million in LTS based on projections for 2003.²⁹ That support must be maintained.

A. Long Term Support Should Be Maintained At Current Levels, Even If It Is Incorporated Into The New Interstate Common Line Support Mechanism.

Under the current rules, a carrier would lose its LTS support upon exiting the NECA common line pool or converting to price cap regulation.³⁰ The Commission's proposal to integrate LTS into the ICLS mechanism will solve one of these problems, by allowing carriers to continue recovering the equivalent of their LTS support even after exiting the NECA pool.³¹ However, the FCC must ensure that the incorporation of LTS within the ICLS mechanism does not inadvertently result in the loss of any LTS. Commenters in the *MAG FNPRM*³² have recognized the critical role of LTS in helping high-cost carriers maintain affordable rates.³³ Including it with interstate access support is acceptable, as long as there are no limits on the recovery amounts from past receipts.

B. PRTC Should Not Be Denied LTS Through A Forced Transition To Price Caps.

The Commission's "all-or-nothing" rule forces PRTC to transition to price cap regulation as a result of its acquisition by GTE (now Verizon), resulting in the loss of LTS support. The

²⁹ As per Universal Service Administrative Company Appendix HC 14 2Q2003 (January 31, 2003) PRTC will also receive \$2.3 million in ICLS for 2003.

³⁰ 47 C.F.R. § 54.303(a).

³¹ *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 11244 ¶ 272 (2001) ("*MAG FNPRM*").

³² *Id.*

³³ Comments of Puerto Rico Telephone Company, Inc., *MAG FNPRM*, at 1-6 (filed Feb. 14, 2002) ("*PRTC MAG Comments*"); Comments of NECA, *MAG FNPRM*, at 11-13 (filed Feb. 14, 2002); Comments of The Western Alliance, *MAG FNPRM*, at 10-12 (filed Feb. 14, 2002); Comments of Verizon, *MAG FNPRM*, at 2-3 (filed Feb. 14, 2002); Comments of Innovative Telephone, *MAG FNPRM*, at 5-6 (filed Feb. 14, 2002).

transition would cause a 37% loss in the amount of LTS support PRTC currently receives.³⁴ Obviously, a loss of this magnitude would undermine efforts to provide the citizens of Puerto Rico with affordable high quality service. It also could necessitate common line rate increases, contrary to the intent of CALLS.

As has been amply demonstrated in the *MAG FNPRM* proceeding, the Commission should eliminate the all-or-nothing rule.³⁵ Price cap regulation under the CALLS plan is not appropriate for carriers like PRTC. The high common line revenue requirements of PRTC, which serves exceptionally high-cost areas, cannot realistically be recovered solely through the subscriber line charge (“SLC”). At the same time, the mandatory transition to price caps will result in a loss of significant universal service support. This necessarily will put upward pressure on rates.³⁶ Indeed, the FCC recognized that price cap regulation might not be appropriate for particular mid-sized carriers when it adopted that form of regulation.³⁷ Thus, affiliates of price cap carriers need the flexibility to determine which form of regulation is most appropriate to the affiliates’ particular circumstances.

Further, the all-or-nothing rule is not needed to prevent cost shifting or gaming the system. As an initial matter, where the FCC has granted waivers of the all-or-nothing rule, there has been no evidence of cost shifting. Such harm is thus purely speculative.³⁸ The FCC already

³⁴ *PRTC MAG Comments* at 4. For example, PRTC would not be eligible to participate in the CALLS interstate access universal service fund of \$650 million. *Id.* at 3-4.

³⁵ *MAG FNPRM*, ¶ 267.

³⁶ *See, e.g., PRTC MAG Comments* at 7-9.

³⁷ *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, 6818 (1990).

³⁸ *See, e.g.,* Comments of Verizon, *MAG FNPRM*, at 4; Comments of ITTA, *MAG FNPRM*, at 304; Comments of ALLTEL Communications, Inc., CenturyTel, Inc., Madison River Communications, LLC, and TDS Telecommunications Corporation, at 27-28.

has numerous rules that would prevent cost shifting, such as accounting and cost allocation rules, affiliate transaction rules, jurisdictional separations requirements, and reporting obligations.³⁹ The tariff filing process provides further opportunity to detect and prevent any cost shifting. Finally, Sections 61.41(c) and (d) of the Commission's rules ensure that the choice of price cap or rate-of-return regulation is a one-time event. These rules prohibit a carrier from switching back and forth between the different types of regulation and thereby "gaming" the system.⁴⁰ Consequently, there are no supportable concerns that would justify retaining the all-or-nothing rule.

At a minimum, the FCC should grant a permanent waiver of the all-or-nothing rule for PRTC. Previously, the Commission granted PRTC a limited waiver extending to July 1, 2002 the deadline for PRTC to change to price cap regulation.⁴¹ Following the release of the *MAG FNPRM*, the FCC extended its waiver, pending the outcome of its review of the all-or-nothing rule.⁴² In its petitions, PRTC has demonstrated that special circumstances warrant a permanent waiver and that the waiver is necessary to support universal service and encourage competition in Puerto Rico.⁴³ Consequently, if the Commission retains the all-or-nothing rule in the *MAG FNPRM*, it should grant a permanent waiver for PRTC.

³⁹ *PRTC MAG Comments* at 10.

⁴⁰ *Id.*, at 11.

⁴¹ *PRTC Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission's Rules*, Order, 16 FCC Rcd 12343 (Com. Car. Bur. 2001).

⁴² *ALLTEL Corporation, Petition for Waiver of Section 61.41; ALLTEL Corporation, Petition to Extend Interim Waiver of Section 61.41 of the Commission's Rules; CenturyTel, Inc. and CenturyTel of Alabama, LLC Petition for Waiver of Sections 61.41(b) and (c) of the Commission's Rules; CenturyTel, Inc. and CenturyTel of Missouri, LLC Petition for Waiver of Sections 61.41(b) and (c) of the Commission's Rules; PRTC Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission's Rules*, DA 02-888 at 22 (Wire. Comp. Bur. rel. Apr. 18, 2002).

⁴³ *PRTC Petition for Waiver of Section 61.41 or Section 54.303(a) of the Commission's Rules*, CCB/CPD 99-36 (filed Dec. 10, 1999); *PRTC Supplement to Petition for Waiver*, CCB/CPD 99-36 (filed Feb. 12, 2001); Puerto

V. Conclusion.

The Commission should restore Puerto Rico's high-cost support by adopting a universal service mechanism for non-rural insular carriers based on embedded cost. The Commission also should ensure that PRTC maintains current LTS funding levels. Incorporating LTS into ICLS must be done in a way that maintains existing support levels. Finally, the FCC should eliminate the all-or-nothing rule.

Respectfully Submitted,

By: /s/José E. Arroyo Dávila

José E. Arroyo Dávila
Vice President – Legal Regulatory Affairs
Puerto Rico Telephone Company

Gregory J. Vogt
Bradley K. Gillen
WILEY, REIN & FIELDING LLP
1776 K Street, N.W.
Washington, DC 20006
(202) 719-7000

Counsel for PRTC

February 28, 2003