

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

**COMMENTS OF THE MINORITY MEDIA AND TELECOMMUNICATIONS
COUNCIL, COMMUNICATIONS WORKERS OF AMERICA, HISPANIC
TECHNOLOGY AND TELECOMMUNICATIONS PARTNERSHIP, HISPANICS IN
INFORMATION TECHNOLOGY AND COMMUNICATIONS, LEAGUE OF UNITED
LATIN AMERICAN CITIZENS, NATIONAL ASSOCIATION OF HISPANIC
PUBLICATIONS, NATIONAL PUERTO RICAN COALITION, OFFICE OF
COMMUNICATION OF THE UNITED CHURCH OF CHRIST, INC., AND UNION DE
TRABAJADORES DE COMUNICACIONES**

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I. INTRODUCTION AND SUMMARY

As use of advanced services among the general population increases, those without basic telecommunications services may find themselves falling behind in a number of ways.²

While the U.S. mainland stands on the brink of an evolutionary closure of the digital divide, a growing concern has surrounded the Commonwealth of Puerto Rico's ("Puerto Rico") continued struggles to expand basic wireline telephone service coverage for 31% of its population. The lack of wireline penetration on Puerto Rico appears to evidence a structural failure of one of the critical precepts of U.S. telecommunications law and policy. The

¹ These Comments represent the institutional views of the parties and thus are not intended to represent the individual views of each of the parties' officers, directors or members.

² See Falling Through the Net: Defining the Digital Divide, U.S. Department of Commerce, National Telecommunications and Information Administration (July 1999).

Commission should be commended for initiating direct action to address these conditions in Puerto Rico, and ensuring that all Americans are beneficiaries of the digital revolution.

Specifically, we fully support the tentative conclusion issued by the Commission in its Notice of Proposed Rulemaking, issued December 9, 2005, that the Commission should establish a non-rural insular support mechanism.³ Although in 1996 Congress revised the Communications Act to ensure universal service for all citizens of the U.S., the Commission had never before fully addressed the insular areas as required by the Act. Puerto Rico has actually experienced stagnation in dial tone penetration rates since the 2001 phase down of the Commission's non-rural support mechanism.⁴ We continue to be concerned that the digital divide is broadening because the Commission's universal service high-cost support mechanism is premised on nationwide standards that do not incorporate the diverse and complex logistical challenges presented by Puerto Rico's topography and low per capita income. For these reasons, prompt action by the Commission on its tentative conclusion to establish a non-rural insular universal service mechanism is warranted to address the compelling needs of Puerto Rico as well as to complete fully the implementation of the Act.

Until the Commission addresses this shortcoming in universal service implementation, Puerto Rico's citizens will be placed at further educational, healthcare, social and economic disadvantage relative to other Americans. Inaction could also jeopardize the soundness and security of the national telecommunications system and disproportionately impact the nation's Hispanic population both in Puerto Rico and on the mainland. This inequity can be quickly remedied by adopting the Commission's tentative conclusions and establishing the proposed

³ See Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking, FCC 05-205, ¶¶30-38 (2005) ("NPRM")

⁴ See Letter from Nancy J. Victory to Jeffrey Carlisle, Chief, Wireline Competition Bureau, CC Docket No. 96-45, at Attachment B (Nov. 4, 2004) ("November 2004 Letter") (referencing Puerto Rico Telephone Company data on percentage of households with a Puerto Rico Telephone Company wireline telephone line).

non-rural insular support mechanism, which would represent only approximately 0.59% of total universal service program collections, to finance Puerto Rico’s funding shortfall.

In its proceedings on universal service in tribal lands, the Commission recognized the necessity of addressing inadequacies in the universal service support mechanism because subscribership fell very far – unacceptably far – below the national average.⁵ It initiated additional targeted support to create financial incentives for greater deployment of telecommunications facilities in those areas. Similarly, Puerto Rico’s sub-70% average subscribership level is lower than that of any state.⁶ As it did for tribal lands, the Commission should recalibrate its funding mechanism for universal service in Puerto Rico, and by adopting its tentative conclusion.

II. INTEREST OF COMMENTING PARTIES

MMTC et al. respectfully submits these comments in response to the Commission’s December 9, 2005 Notice in the universal service proceeding. The commenting parties herein include civil rights, business and consumer organizations representing the interests of low-income and minority consumers of basic telecommunications services. The commenters seek to ensure that all citizens of the United States enjoy an equal opportunity to receive the full technological and social benefits of full integration and connectedness to society – the ultimate goal of universal service. These comments are limited to consideration of universal service support to Puerto Rico, and do not address the broader non-rural high-cost mechanism. We are

⁵ See Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, 17 FCC Red 12208, 12216 ¶32 (2000) (“Twelfth Report and Order”).

⁶ Table 16-3, Trends in Telephone Service, FCC Wireline Competition Bureau (May 2004), avail. at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend504.pdf (“Trends in Telephone Service”). Arkansas has the lowest telephone penetration rate on the mainland (87.4%). See Table 2, Telephone Penetration by Income by State, FCC Wireline Competition Bureau (July 2005).

appreciative of the opportunity to highlight the need for action in Puerto Rico, and to commend the Commission for recognizing a potential shortcoming in its universal service policies.

III. THE COMMISSION'S IMPLEMENTATION OF CONGRESS' UNIVERSAL SERVICE MANDATE WILL NOT BE COMPLETE UNTIL IT HAS RESOLVED THE SPECIALIZED NEEDS OF NON-RURAL INSULAR AREAS INCLUDING PUERTO RICO

The Commission's previous decisions to initiate a new calculation method for high cost support, and phase-down high-cost loop support have placed future Puerto Rican economic and human development at great risk. Today, ten years following the 1996 Act, the initial recommendation of the Federal-State Joint Board on Universal Service to create a mechanism to address long-standing gaps in penetration rates for insular carriers has still not been accomplished.⁷ Encouragingly, the Commission is addressing the inequitable outcome of its rules for Puerto Rico's residents in its Notice's tentative conclusion.⁸

As shown herein, the most reasonable means of bringing Puerto Rico's telephone infrastructure up to the standard enjoyed by Americans on the mainland is to establish a non-rural insular universal service mechanism in expedited fashion.

A. Puerto Rico's Citizens Have Less Access To Basic Telecommunications Service Than The Rest Of The Nation's Citizens

Currently, Puerto Rico's penetration rate for telephone service stands below 70%.⁹ This figure is at least 24% below the national average and 17.4% below the lowest penetration rate on the mainland.¹⁰ While the mainland penetration rate is now 94%,¹¹ rural parts of Puerto Rico

⁷ See Federal-State Joint Board on Universal Service, Recommended Decision, 12 FCC Rcd 87, 271 ¶356 (1996) ("First Recommended Decision"). The Federal-State Joint Board (the "Joint Board") also recommended that the Commission continue to use frozen embedded per-line costs for rural carriers in Alaska and insular areas until further review. Id.

⁸ Notice ¶¶30-38.

⁹ Id. ¶31.

¹⁰ See U.S. Telephone Penetration by Income by State, supra n. 6.

¹¹ Notice n. 92.

have less than 50% phone penetration.¹² There are approximately 200 rural communities in Puerto Rico encompassing 200,000 households that have no telephone infrastructure at all.

Statistics fail to impart the gravity of the situation for residents outside of Puerto Rico's three main urban areas.¹³ Low penetration rates translate into lagging economic and educational development, lack of access to basic health care and emergency services,¹⁴ and lagging access to advanced information services such as broadband and Internet.¹⁵ It may come as no surprise that these areas are also the least developed economically.

B. The Costs Of Operating Insular Telephone Service Are Above Average And Difficult To Recoup

Insular local exchange carriers ("LECs") such as the Puerto Rico Telephone Company ("PRTC") face unique environmental and operational challenges in providing service and maintaining facilities. Loop costs are above national average.¹⁶ High poverty rates hamper the

¹² See Departamento de Planificación Técnica División de Pronósticos, "Percentage of Households with a PRT's Telephone Line December 2002" Petition for Clarification and/or Reconsideration of the Puerto Rico Telephone Company, Inc., Federal-State Joint Board on Universal Service, CC Docket No. 96-45, January 14, 2004,

¹³ One-third of the population resides in the San Juan-Carolina-Bayamon area.

¹⁴ Health indicators correlate closely with a nation's phone penetration. See Section V *infra*. See also Debbie Becht, Kevin Taglang & Anthony Wilhelm, "The Digital Divide and the US Hispanic Population," The Digital Beat, Vol. 1, No. 13, 6 (August 1999), avail. at www.benton.org/publibrary/digitalbeat/db080699.html.

¹⁵ *Id.* The "Digital Divide" is a measure of a society's lack of access to the benefits of technology. This gap can also be seen as a symptom of the society's lack of development in other areas such as health, education and commerce. Thus bridging this gap can also help address societal problems that can be alleviated through technology. A nation's progress is also measured by the equal distribution of wealth and resources. If a community is unable or cares not to ensure that all its members have an equal opportunity to succeed, its overall growth will be hampered by its inequities. One of the great equalizers in modern society is the access to information. The most basic technology that allows one to communicate directly with others as well as to access various sources of information is the simple landline telephone. In an age where cell phones are becoming ever smaller and new communication technologies abound, it is easy to forget that the heart of information and communication technologies (ICTs) is the basic terrestrial telephone. See Allen S. Hammond, IV, Universal Access, in Making Universal Service Policy, Enhancing the Process Through Multidisciplinary Evaluation, p. 100-101, 102 (Sterling, ed., 1999).

¹⁶ Costs per local loop in Puerto Rico range from \$5,000 to \$15,000. Notice, ¶31. Limited road service on parts of the island greatly impedes telephone build-out and increases maintenance costs. High shipping costs, the corrosive nature of the environment, and volatile weather conditions make servicing the island more expensive than on the mainland. Puerto Rican telephone companies are unable to raise rates to cover these higher operation costs because of the lower average income of the population. In contrast, loop costs on the mainland are about \$1,100 per line. See Crandall, "The Economic Impetus for Convergence in Telecommunications," in Law and Regulation of Common Carriers in the Communications Industry, 302 (2nd ed., 1996). Loop costs ranged from \$39.58 per month in Montana to \$8.11 per month in Washington, D.C. and tend to correspond to the distribution of population density

ability to recover the costs of providing service from end users:¹⁷ without subsidies, customers in sparsely populated areas and outlying regions are unwilling to pay the high rates necessary to provide service.

Commenters in prior proceedings have submitted evidence to the Commission regarding the many logistical challenges faced in expanding telephone service in remote rural regions on the mainland.¹⁸ Rural LECs face special obstacles: dispersed populations require longer wires and permit lesser economies in installation, service, and maintenance.¹⁹ These include rugged terrain, lack of good roads, the low average income of residents and the relatively high cost of living, which limits cost recovery.²⁰ These types of conditions are almost identical to conditions faced in building out telephone systems in insular terrains such as Puerto Rico.²¹

In Puerto Rico and other insular areas, all supplies, tools and maintenance equipment must be imported at high cost. Maintenance and repair costs are also comparatively high due to the tropical climate, inclement weather patterns and mountainous terrain.²² Thus, approximately 200 rural communities in the mountainous interior and along the coast lack basic telephone service. Under the Synthesis Model, mainland carriers with much higher penetration rates and a

in the state. See Dr. Michael D. Pelcovits, Universal Service: The Stakeholder Response, Benton Foundation (December 1996), avail. at www.benton.org/Policy/Uniserv/Conference/pelcovits.html.

¹⁷ See Becht *et. al.*, *supra* n. 14. Fifty-five percent of Puerto Rico's population is below the poverty line, and the average per capita income is \$16,800, or approximately half that of the lowest per capita income on the mainland. In contrast, Puerto Rico has a 133.8% cost of living index compared to the national average of 100%.

¹⁸ First Report and Order, 12 FCC Rcd at 8936 ¶294.

¹⁹ *Id.*

²⁰ See Petition for Clarification and/or Reconsideration ¶17-18.

²¹ See *id.*, n. 59. Comparing Mississippi, with a penetration rate of 89.9 percent and \$9.00 per month of monthly loop support to Puerto Rico, which has lost \$8.00 of monthly loop support.

²² Most of Puerto Rico is mountainous, with a coastal plain belt in the north. It has experienced natural disasters of a magnitude significant enough to require complete rebuilding of the island's telecommunications infrastructure in 1918 (earthquake), 1928 (Hurricane San Felipe) and 1998 (Hurricane Georges). See Ramón Morales Cortés, "Telecommunications in Puerto Rico" (October 25, 2001), avail. at <http://www.vii.org/papers/puer.htm>.

fraction of Puerto Rico's service costs receive greater funds than received under the historic high-cost program.²³

C. Calculation Methods For Determining High Cost Support Produce Incongruous Results For Puerto Rico

The record developed in earlier universal service proceedings has provided the Commission with substantial evidence and recommendations regarding the incongruity between Puerto Rico's actual operational costs and current funding levels. In the past nine years, there have been a series of proceedings addressing the unique challenges facing rural carriers, general high-cost carriers and carriers on tribal lands, but this Notice represents the first concrete step to ensure that universal service is a reality with respect to insular areas.²⁴

As described in greater detail herein, prior to the creation of the non-rural mechanism, all carriers received support based on their actual network costs. Under that approach, carriers were eligible for support if their costs exceeded the national average cost by 115 percent. Given its disproportionately high-costs, Puerto Rico consistently received \$40-\$50 million in support annually under that funding mechanism.

The Commission six years ago shifted a subset of carriers, non-rural carriers, to a new mechanism based on a hypothetical forward-looking cost model. The new model provided support to only those states whose forward-looking costs exceeded the national average. Puerto

²³ See id.

²⁴ See, e.g., Federal-State Joint Board on Universal Service Announces the Creation of a Rural Task Force. Solicits Nominations for Membership on Rural Task Force, Public Notice, FCC 97J-1 (1997); Underserved NPRM(seeking comments on impediments to increased telecommunications deployment and subscribership in unserved and underserved regions of the US, including tribal lands and insular areas); Twelfth Report and Order, 17 FCC Rcd at 12226 ¶32 (promoting telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities; recognizing that subscribership levels are below the national average in low-income, rural areas and in certain insular areas but declining to adopt actions taken in the order more generally to all insular areas); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, 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, Report and Order, 16 FCC Rcd 11244 (2001) ("Rural Task Force Order").

Rico has never been eligible to receive support under this new mechanism due primarily to the inability of that mechanism to accurately reflect the network costs of serving an insular community.

At this same time, the Commission maintained a modified version of its actual cost-based mechanism for rural carriers citing substantial concerns with the workability of a forward looking cost-based approach for those carriers. Many of these same concerns exist for carriers serving insular areas. This *Notice* provides the Commission the opportunity to formerly recognize that its non-rural mechanism is not the appropriate funding mechanism for Puerto Rico.

D. Addressing The Needs Of Non-Rural Insular Areas Is Long Overdue

Prior to the Joint Board's initial recommended decision on universal service, PRTC and other parties in Alaska and insular areas noted that proxy models were not appropriate for determining their high cost support.²⁵ The Joint Board subsequently urged the Commission to provide separately for insular areas.²⁶ It also advised the Commission to identify areas where the forward-looking cost of service exceeded a cost-based benchmark and provide extra support to any state that could not maintain reasonable comparability.²⁷ An additional recommendation was that the Commission work with an affected state if subscribership levels in that state fell

²⁵ See, e.g., Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking and Order Establishing a Joint Board, CC Docket No. 96-45, 11 FCC Rcd 18092 (1996); Comments of Alaska Tel. at 5; Comments of Alaska Public Utilities Commission; Comments of Guam Telephone Authority at 5-6; Reply Comments of Virgin Islands Telephone Corporation. PRTC has also commented that the peculiar topography and extreme weather in their service areas result in high loop costs and has noted that any resulting loss of revenues from the existing fund levels would greatly increase local rates. See NPRM CC Docket No. 96-45, Further Comments of PRTC at 3-4 (August 2, 1996), avail. at <http://www.info-ren.org/projects/universal-service/further-comments/html/rural-telephone-coalition.html>.

²⁶ See *supra* n. 7.

²⁷ See First Recommended Decision, 12 FCC Rcd at 99 ¶18.

below existing levels.²⁸ The Commission's Universal Service First Report and Order, and subsequent orders implementing the decision, changed the universal rules for non-rural carriers based on mainland assumptions and models.²⁹ Although it instituted temporary hold-harmless provisions to maintain PRTC's high-cost loop support for a short period of time, it did not address the Joint Board's recommendations regarding insular carriers or those with uniquely high costs.³⁰

PRTC's subsequent Petition for Reconsideration of First Report and Order³¹ asked the Commission to review its obligation under the 1996 Act to provide that rates in rural, insular and high cost areas be "reasonably comparable" to rates charged for similar services in urban areas³² and its mandate to establish specific, predictable and sufficient universal service support for insular areas.³³ PRTC petitioned the Commission to treat non-rural carriers in insular areas as

²⁸ See *id.* at 184-85 ¶184.

²⁹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) ("First Report and Order"). The First Report and Order determined that all non-rural areas should be transitioned to forward-looking cost-based support. The actual development and implementation of the non-rural model did not occur until the Ninth and Tenth Report and Orders, discussed at n. 31 *infra*.

³⁰ In the First Report and Order, the Commission promised to investigate low subscribership in insular areas but did not otherwise address insular needs and denied PRTC's request that non-rural carriers in Alaska or in insular areas be treated as rural carriers. First Report and Order at 8946 ¶315. The Commission also denied PRTC's request for a postponement of the conversion to the forward-looking economic costs model for calculating high-loop costs. See *id.* The Commission limited federal high cost support to 25 percent of the difference between forward-looking costs of providing supported services and a national revenue benchmark. *Id.* (this approach was subsequently abandoned for a national benchmark based on costs). The Commission's rules did not include a separate high cost support mechanism for insular areas. See *id.* at 8925, 9190 ¶¶269, 808. The Commission found that there was no basis for postponing application of the forward-looking support mechanism because, unlike smaller rural carriers, PRTC possessed "sufficient economies of scale and scope to deal with the cost of providing service in their areas." *Id.*

³¹ See Petition for Reconsideration of the Puerto Rico Telephone Company, CC Docket No. 96-45, 4 (July 17, 1997). In 2001, upon request from the Commission, PRTC filed comments updating this petition. See Comments of PRTC, Updating Petition for Reconsideration of First Report and Order, CC Docket No. 96-45 (Aug. 20, 2001) ("Update Comments"). PRTC again asked the Commission to reconsider its failure to create a specific mechanism for calculating high cost support for insular areas.

³² See 47 U.S.C. §§254(b) (1), (b) (3) (i).

³³ See 47 U.S.C. §254(b) (5).

rural carriers in 1997.³⁴ In an ex parte filing dated February 28, 2003, PRTC requested that the Commission create a separate category of “non-rural insular” carrier for purposes of calculating high cost support.³⁵ The Commission’s Order on Reconsideration denied PRTC’s 1997 petition, but did not address the requests for a separate category of funding for non-rural insular carriers.³⁶

In the Seventh, Ninth and Tenth Report and Orders, the Commission defined “reasonably comparable” and “sufficient” and formally established the use of the Synthesis Model for determining high cost support.³⁷ The Synthesis Model was designed with mainland assumptions and mainland data, and did not take into account insular areas and Alaska. PRTC did not qualify for high cost support under the new methodology. Following court challenges to the Commission’s reports and orders,³⁸ the Commission revised some of the rationales and

³⁴ See Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997) (“Fourth Reconsideration Order”).

³⁵ See Ex Parte of Puerto Rico Telephone Company, Inc., from Gregory J. Vogt, Counsel for Puerto Rico Telephone Company, Inc., CC Docket Nos. 00-256, 96-45, 98-77, 98-166 (February 28, 2003); Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Gregory J. Vogt, Counsel for Puerto Rico Telephone Company, Inc., CC Docket No. 96-45, 00-256, 98-77, 98-166 (June 6, 2003).

³⁶ See Federal-State Joint Board on Universal Service, Order on Reconsideration, CC Docket No. 96-45, 19 FCC Rcd 23824 at ¶20 (rel. November 29, 2004) (“Order on Reconsideration”).

³⁷ In the Seventh Report and Order, the Commission defined reasonably comparable as “a fair range of urban/rural rates both within a state’s borders, and among states nationwide.” The Commission further explained that a “fair range” of rates means that “support levels must be sufficient to prevent pressure from high costs and the development of competition from causing unreasonable increases in rates above current, affordable levels.” See id., 14 FCC Rcd at 8092 ¶30. In the Ninth Report and Order, the Commission determined that “reasonably comparable must mean some reasonable level above the national average forward-looking cost per line, i.e., greater than 100 percent of the national average.” See Federal-State Joint Board on Universal Service, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20463 ¶54 (1999) (“Ninth Report and Order”). The Ninth Report and Order replaced the existing embedded-cost mechanism with a system based on forward-looking economic costs. The mechanism provides support for the percentage of the costs per line allocated to the intrastate jurisdiction that exceed a national benchmark of 135 percent. In the Tenth Report and Order, the Commission finalized the model platform used to estimate the forward-looking costs of a non-rural carrier’s operations under the high cost universal service support mechanism adopted in the Ninth Report and Order. See Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs, Tenth Report and Order, CC Docket Nos. 96-45, 97-160, 14 FCC Rcd 20156 (1999) (“Tenth Report and Order”), affirmed, Qwest Corp. v. FCC, 258 F.3d 1191 (10th Cir. 2001).

³⁸ See Texas Office of Public Utility Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999) (“TOPUC”) (resolving federal/state jurisdictional issues in Seventh Report and Order, affirming the Commission’s forward-looking cost models and reversing rules allowing recovery of universal service funds through access charges imposed on

definitions for its high cost support mechanism, but did not take the opportunity to address whether this mechanism fulfills its “comparability” and “sufficiency” standards as applied to insular areas.³⁹

The Commission has also postponed or avoided serious analysis of questions regarding the effectiveness of the Synthesis Model for areas with uniquely high costs. For instance, in November 1998 the Joint Board issued a Second Recommended Decision, recommending additional federal support to areas significantly above the national average and for carriers whose average costs throughout its study area significantly exceed the national average.⁴⁰ The Commission also received comments regarding the insufficiency of high cost support for uniquely situated carriers in 1998, 1999 and 2000.⁴¹ The Commission concluded that the appropriate context to address these issues were in petitions for reconsideration of the Ninth and Tenth Reports and Orders, or in future comprehensive review of the forward-looking

interexchange carriers); Qwest, 258 F.3d at 1201 (10th Cir. 2001) (remanding the Ninth Report and Order to the Commission for failure to define adequately the key statutory terms “reasonably comparable” and “sufficient” and the basis for the 135% funding benchmark, among other issues).

³⁹ See Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, CC Docket No. 96-45, 18 FCC Rcd 22559, 22637 ¶139 (2003) (“Remand Order”).

⁴⁰ Federal-State Joint Board on Universal Service, Second Recommended Decision, CC Docket No. 96-45, FCC 98J-7, 13 FCC Rcd 24744, 24754 ¶¶18-19 (1998). The Joint Board also advised the continuation of hold harmless support for Puerto Rico. Id. at 24764 ¶53.

⁴¹ See, e.g., Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77, Notice of Proposed Rulemaking, 13 FCC Rcd 14238 (1998) (“Access Charge Reform Order”); Common Carrier Bureau Seeks Comment on Federal-State Joint Board on Universal Service Recommendations for Phasing Down Interim Hold-Harmless Provision, CC Docket No. 96-45, Public Notice, 65 Fed. Reg. 44507 (July 18, 2000). In the Underserved NPRM, when the Commission sought comment on how to increase deployment and subscribership in underserved regions, including insular areas, PRTC requested that the Commission maintain its existing embedded cost methodology until a suitably accurate mechanism could be adopted for insular areas. See Reply Comments of PRTC, CC Docket No. 96-45, 2-3 (Jan 19, 2000) (arguing that “universal service would be promoted by providing support carriers serving insular areas based on actual carrier costs.”) Remand Order NPRM, Petition of Puerto Rico Telephone Company at 2-3 (1999) (submitting evidence of low subscribership levels and other challenges and requesting treatment as a rural carrier for purposes of determining intrastate high cost support).

mechanism.⁴² But these issues were not addressed in the Commission’s Remand Order, nor are they addressed in this Notice.⁴³

Thus, ten years after the passage of the 1996 Act, Puerto Rico remains without an appropriate universal service mechanism. The Commission should be commended for now focusing attention on this important issue and making a tentative conclusion to move forward in adopting an insular mechanism. We urge the Commission to move quickly to adopt its tentative conclusion.

IV. UNIVERSAL SERVICE SUPPORT FOR PUERTO RICO IS NOT “SUFFICIENT” OR “COMPARABLE”

The Commission’s recent revisions of the high-cost support program have had a detrimental impact on universal service in Puerto Rico. From the inception of the high cost support program to 1996, PRTC achieved a dramatic 45% increase in penetration rates on the island.⁴⁴ However, since the Commission began its phase down of funding in 2001, penetration rates have stagnated and capital investments have been reduced. As explained in Section III (C) above, the current high-cost calculation methodology does not take into account the unique costs associated with providing service in insular areas and thus does not deliver “sufficient” or “comparable” funding to Puerto Rico. Other factors unique to Puerto Rico exacerbate this result.

A. Puerto Rico Carriers Cannot Achieve Desirable Penetration Rates Through Economies Of Scale

The Commission assumed in 1997 that PRTC, as the twelfth largest telephone company in the United States at that time, could achieve economies of scale to make up for reduced

⁴² See Thirteenth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45 15 FCC Rcd 24422, 24429 ¶14 (2000).

⁴³ See Remand Order, 18 FCC Rcd at 22637-38 ¶139-140; Notice n. 86.

⁴⁴ Notice ¶31.

universal service support.⁴⁵ In previous filings, PRTC submitted data and records explaining why this assumption is flawed, because PRTC lacks the economies assumed by a carrier of its size due to the insular characteristics addressed below.⁴⁶

Unlike other subsidiary companies receiving high cost support, PRTC and other Puerto Rico carriers have no means to recoup the high sunk costs associated with expansion and maintenance. In the past, PRTC did invest large amounts of funds and efforts to achieve significant increases in penetration rates on the island, but it cannot be expected to continue aggressive capital investments at a loss.⁴⁷

For instance, high shipping costs, lack of good roads and lack of electricity are issues that hamper build-out.⁴⁸ Consequently, the Commission's 1997 view that Puerto Rico carriers possess sufficient economies of scale to maintain universal service coverage is inaccurate. We applaud the Commission for not taking the opportunity in this Notice to revisit that determination.

B. Puerto Rico Lacks The Necessary Resources To Offset Lost Federal Support

Puerto Rico carriers do not have a customer base that can absorb the large increase in rates that would be needed to sustain universal service throughout the island.⁴⁹ The Commission itself acknowledged in the Universal Service First Report and Order that a disparity between

⁴⁵ See First Report and Order at 9190 ¶269.

⁴⁶ Comments of PRTC, CC Docket No. 96-45, 3-4 (1998); see also Letter from Telecommunications Regulatory Board of Puerto Rico to William E. Kennard, Chairman, CC Docket No. 96-45 (May 7, 1998); Puerto Rico Presentation on Insular Areas, CC Docket No. 96-45, 3 (September 13, 1996); Comments of PRTC, CC Docket No. 96-45, 28 (Dec. 19, 1996); Petition for Clarification at 16.

⁴⁷ November 2004 Letter, Attachment B.

⁴⁸ Notice ¶31.

⁴⁹ See PRTC 1999 Comments, p. 5.

instituting a competitive system and failing to address the effects of the new rules on the existing subsidy system would raise the threat of serious disruption in universal service.⁵⁰

Increases in rates and a further decline in the universal service system may have irreversible consequences for Puerto Rico and should not be a prerequisite to support that is expressly mandated by Congress. Thus, requiring Puerto Rico carriers to recover their increased costs from end users raises the prospect that customers will drop their telephone service and thus “compromise the objective of universal service.”⁵¹

C. The Lifeline And Link-Up Programs Will Not Resolve Deficiencies In High Cost Support

We strongly agree with the Commission that Puerto Rico needs both high cost support and low-income support: the Notice accurately concludes that “a special support mechanism, in combination with the Commission’s low-income program, will help to combat the problem of low subscribership in Puerto Rico.”⁵²

In prior decisions, the Commission stated that the Lifeline and Link-Up programs are sufficient to address shortfall in universal service funding that has occurred since implementation of the new high cost support mechanisms.⁵³ The Lifeline and Link-Up programs, however, will not resolve inadequacies in high cost support funding in Puerto Rico because those proper decisions presumed the existence of telephone infrastructure.⁵⁴ Furthermore, while a focus on

⁵⁰ See Comptel, 117 F.3d at 1073, citing First Report and Order, 12 FCC Rcd at 9146-48 ¶¶719, 720. See also National Association of State Utility Consumer Advocates v. FCC, 372 F.3d 454, 457 (D.C. Cir. 2003) (“NASUCA”), citing Access Charge Reform Order, 13 FCC Rcd at 15998 (Commission kept the SLC capped at \$3.50 per line due to concern that a higher price for basic dial tone could cause rural customers to discontinue service – contrary to the Commission’s mandate to ensure universal service).

⁵¹ See NASUCA at 457.

⁵² Notice ¶33.

⁵³ Puerto Rico was estimated to receive \$12 million in low-income support under the Lifeline and Link-Up programs in 2004.

⁵⁴ Notice ¶34.

lowering service costs for qualifying low-income consumers is important, it does not sufficiently minimize the extraordinarily high costs of expanding facilities in insular areas with geographically remote locations, difficult terrain and low customer concentration.⁵⁵ Available Lifeline support will not achieve higher penetration rates in Puerto Rico, particularly if Puerto Rico carriers have to increase local rates to cover the shortfall in universal service funding.⁵⁶

D. Reasonable Comparability Of Rates Is A Valuable Goal That Should Be Harmonized With The Goal Of Universal Service

Consistent with the Notice, the Commission is looking more holistically at its universal service programs and its need to ensure not only reasonable comparability of rates among states, but also the achievement other Section 254 goals including reasonable penetration rates. The Commission's past focus on competition may have overlooked the fact that "universal service is intended to benefit the customer not the carrier."⁵⁷

As stated by the Commission, the purpose of universal service support has always been to promote universally available telephone service at reasonable and affordable rates.⁵⁸ Further, as

⁵⁵ See Petition for Reconsideration of the Puerto Rico Telephone Company, *supra* n. 30, at 19-20. Lifeline was designed to increase subscribership by reducing qualifying low-income consumers' monthly basic local service charges. 47 C.F.R. §54.405. Link-Up helps consumers through partial payment of initial service connection charges for a subscriber's primary residential connection. The Commission cannot say that it has achieved sufficient support under Section 254 by referencing its programs under Lifeline and Link-Up. Section 254 of the 1996 Act addresses separately the need for universal service funding for insular areas. In fact, Section 254(j) preserves the Lifeline Assistance program and specifically distinguishes it from other parts of Section 254. TOPUC, 183 F.3d at 424. Under principles of statutory construction, since these programs are intact and separate, Congress clearly did not intend any one to negate the others. See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-843 (1984) (where "Congress has directly spoken to the precise question at issue," courts give effect to its unambiguously expressed intent").

⁵⁶ See Reply to Opposition to Petition for Reconsideration, Puerto Rico Telephone Company, CC Docket No. 96-45, 3-4 (Aug. 28, 1997).

⁵⁷ EPTC v. FCC, 201 F.3d 608, 621 (5th Cir. 2000); see also Qwest, 258 F.3d at 1201. Further, the Commission regulatory scheme contains enough checks on fraud, waste and gaming to prevent unfair or injurious results as a result of establishing an insular support mechanism.

⁵⁸ See Ninth Report and Order, 14 FCC Rcd at 20434 ¶1.

noted by the Court in Comptel, the Commission must see to it that both universal service and local competition are realized and cannot sacrifice one goal in favor of the other.⁵⁹

As recognized by its tentative conclusions, the Commission's task has so far been incomplete with respect to insular universal service.⁶⁰ It has attempted to remove barriers to competition without addressing the barriers to universal service – and the potential impact of competition on these barriers – for Puerto Rico's citizens.⁶¹

Low subscribership rates are the antithesis of universal service. Subscribership levels provide relevant information regarding whether consumers have the means to subscribe to universal service and, thus, represent an important tool in evaluating the affordability of rates.⁶² The Commission should move quickly to address the issue of low subscribership in Puerto Rico and give Puerto Rico the support it needs through the adoption of its tentative conclusion.

V. THE NOTICE PROVIDES AN OPPORTUNITY TO MEET FULLY THE LEGAL AND POLICY GOALS OF UNIVERSAL SERVICE FOR INSULAR AREAS

A. The Adoption Of An Insular Mechanism Fulfills Congress' Mandate

The provision of universal telephone service at reasonable rates for all Americans is closely linked to the continued economic growth of the domestic telecommunications industry.⁶³

⁵⁹ See also Competitive Telecommunications Association v. FCC, 117 F.3d 1068, 1074 (8th Cir. 1997) (Comptel) (“Clearly Congress did not intend that universal service should be adversely affected by the institution of cost-based rates.”) See also EPTC v. FCC, 201 F.3d. at 615.

⁶⁰ The Joint Board noted in the Second Recommended Decision that one consequence of developing competition for high-volume, urban customers may be erosion of the implicit support system that protects consumers in rural, insular and high cost areas from unaffordable rates. Second Recommended Decision, 13 FCC Rcd at 24746 ¶3. It asked the Commission to be mindful – in the transition to a competitive environment – of the competing goals of supporting high cost areas and maintaining a support system sized to not over-burden consumers. Id.

⁶¹ See e.g. Seventh Report and Order, 14 FCC Rcd at 8092 ¶30 (interpreting the goal of maintaining a “fair range” of rates to mean that support levels must be sufficient to prevent pressure from high costs and the development of competition from causing unreasonable increases in rates above current, affordable levels).

⁶² First Report and Order, 12 FCC Rcd at 8838-39 ¶112 (1997).

⁶³ H.R. 2030, 100th Cong. (1987).

Universal service or “the notion that everyone should be provided the opportunity to receive basic telephone service at an affordable rate, regardless of geographic location or economic status” is of key importance to Congress and has always been recognized as a basic goal of national telecommunications policy. This goal has been expressed through a variety of legislative initiatives.⁶⁴ For example, under the Mann-Elkins Act, Congress required common carriers to provide service on request at just and reasonable rates.⁶⁵

Congress made universal service “a basic goal of telecommunications regulation” when it determined that the Commission’s role included ensuring access to plain old telephone service within reasonable penetration rates.⁶⁶ Section 151 of the 1934 Act directed the Commission to “make available a rapid, efficient, nationwide and world-wide wire and radio communication service with adequate facilities at reasonable charges ...”.⁶⁷ The language of Section 151 reflected Congress’ intent to make affordable nationwide communication services generally available in all regions of the nation.⁶⁸

Following the 1934 Act, Congress focused on the distribution of consumer premises equipment to eligible households as a tool for establishing the universal service system. These efforts were followed by subsidies and transfer payments after the 1984 AT&T divestiture. Efforts to achieve universal service included the carrier premises equipment vouchers, the access carrier line charge, Lifeline and Link-Up, the Long Term Support program and, ultimately, the Universal Service Fund. Legislative debates leading to the “Lifeline Service Act of 1987” and

⁶⁴ Patricia M. Worthy, Racial Minorities and the Quest to Narrow the Digital Divide: Redefining The Concept of “Universal Service”, 26 *Hastings Comm. & Ent. L. J.* 1, 3 (2003).

⁶⁵ 1910 Pub. L. #61-218, 36 Stat. 539 as amended at 47 U.S.C. §601 (1934)

⁶⁶ See TOPUC, 183 F.3d at 405.

⁶⁷ See 47 U.S.C. §151.

⁶⁸ See In Re AT&T, 71 FCC 2d 1 (1979).

the “Telecommunications Equipment and Information Act of 1987” acknowledged the link between universal service at reasonable rates and continued economic growth of the domestic telecommunications industry.⁶⁹

These universal service goals were codified under the 1996 Act, when Congress expressly directed the Commission to ensure the availability of universal service in accordance with the guiding principles of Section 254 and the recommendations of the Federal-State Joint Board on Universal Service.⁷⁰ These principles include that universal service be explicit and sufficient, specific and predictable, be provided in all regions of the nation, to all citizens, including low income consumers and those in rural, insular and high cost areas.⁷¹ Section 254 evinces Congress’ view that “universal service is a cornerstone of the Nation’s communications system.”⁷²

Thus, from its inception, the Commission’s legislative mandate has included the obligation to safeguard the public right to affordable and widely available telecommunications service, and to encourage the development of infrastructure in the areas least likely to maintain it: rural, insular, and high-cost areas. The effect on Puerto Rico when the Commission began to phase down high-cost support in 2001, illustrates the importance of Congress’ mandate and the need for the Commission to move quickly to adopt its tentative conclusion and establish a non-

⁶⁹ H.R. 291, 100th Cong. (1987); H.R. 2030, 100th Cong. (1987).

⁷⁰ 47 U.S.C. §254. Congress also directed the Joint Board and the Commission to be guided by such other principles as they determine to be consistent with the Act, and necessary and appropriate for the protection of the public interest, convenience and necessity. 47 U.S.C. §254(b) (3), (5).

⁷¹ See 47 U.S.C. §254(e). The 1996 Act requires the Commission and the Federal-State Joint Board to base policies for the preservation and advancement of universal service on principles which include: (1) that all of the universal service objections established by the Act, including those for low-income individuals, for consumers in rural, insular and high cost areas, and for schools, libraries and rural health care providers, be implemented; (2) that rates for basic residential service be maintained at affordable levels; (3) that universal service funding mechanisms be explicit; and (4) that the benefits of competition be brought to as many consumers as possible. It is incumbent on the Commission to harmonize all goals and principles while encouraging competition.

⁷² Committee Report on draft bill.

rural insular support mechanism. Such action is necessary to reverse the negative trends in Puerto Rico.

Based on Congress' traditional concerns in this area,⁷³ and its express directives to the Commission, the Commission should be applauded for acknowledging that Puerto Rico merits expanded efforts and adequate support to achieve telephone penetration rates comparable to the rest of the country.⁷⁴

B. The Record Demonstrates A Clear Need For The Commission's Proposed Non-Rural Insular Mechanism

1. It is well established that the current universal service policies are inadequate and ill-equipped to address Puerto Rico's unique conditions

In general, the Commission must base actions and line drawing on the record before it, including reasonably sufficient data. Over the past nine years in various universal service proceedings, PRTC has submitted statistical evidence to show that the caps and regulatory changes imposed by the Commission do not sufficiently support the universal service system in Puerto Rico. Until this Notice, the Commission failed to present or undertake economic analysis addressing the significant impact of its new regulations on insular carriers.⁷⁵

In the past, the Commission has based its high cost funding mechanism on mainland costs and models not applicable to areas such as Puerto Rico. In the Fifth Report and Order, for instance, the Commission adopted a model platform based on certain assumptions about soil and

⁷³ On other tracks, Congress amended the Rural Electrification Act of 1936 to institute loan programs to fund improvement, construction and expansion of telephone facilities in rural regions. See Rural Economic Development Act of 1936, as amended, H.R. 3581, 101 Cong. §§702, 722 (1989). A further legislative amendment provided loans for expansion of fiber optic lines in these areas. During the 1987 amendments to the Lifeline Act, Congress reiterated the goal of universal services at reasonable rates for all Americans, especially the poor, the elderly and the handicapped.

⁷⁴ See Section V infra.

⁷⁵ See Alenco Communications, Inc. v. FCC, 201 F.3d 608, 624 (5th Cir. 2000) ("Alenco").

terrain.⁷⁶ This would generate inadequate computations when applied to the terrain found in the majority of Puerto Rico's underserved areas. In general, the Commission adopted its cost benchmarks and its high cost support mechanism without explicit empirical findings regarding the impact for insular areas. Consequently, this Notice is critical to the Commission's efforts to determine if it has met the objectives of Section 254 with respect to Puerto Rico.⁷⁷

The Commission has stated that "large telephone companies, such as PRTC, should possess economies of scale and scope to deal efficiently with the cost of providing service in their areas."⁷⁸ As demonstrated above, the characteristics of telecommunications service that would enable economies of scale, including strong telecommunications infrastructure, concentrated consumer demand and enough profitable customers to purchase vertical services, are not available in Puerto Rico.

The record shows that, in Puerto Rico, adequate high cost support is necessary in order to maintain quality service at affordable rates.

2. The public interest strongly supports adoption of a non-rural insular mechanism

In carving out universal service policies, the Joint Board and the Commission may be guided by such other principles as they determine to be consistent with the Act, and necessary and appropriate for the protection of the public interest, convenience, and necessity.⁷⁹ Further, the Commission also has the duty to "prescribe such rules and regulations as may be necessary in

⁷⁶ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs, CC Docket No. 97-160, Fifth Report and Order, 13 FCC Rcd 21323 ¶2 (1998) ("Fifth Report and Order"). See also Ninth Report and Order, 14 FCC Rcd 20457 ¶45 n. 136; id. at 20463-64 ¶55; Tenth Report and Order, 14 FCC Rcd at 20159 ¶2, 20167 ¶20, 20168 ¶23 and 20170 ¶28.

⁷⁷ See Qwest, 258 F.3d at 1203.

⁷⁸ First Report and Order, 12 FCC Rcd at 8946 ¶315.

⁷⁹ 47 U.S.C. §254(b) (7).

the public interest.”⁸⁰ A non-rural insular mechanism and the promise of increased penetration rates in Puerto Rico are clearly in the public interest.⁸¹

The language of Section 151 neatly summarizes the chief reasons for Congress’ adherence to the goals of increased universal service: national defense, promoting safety of life.⁸² The changes to a country’s social indicators as its number of telephone lines increases underscore the importance of expanded networks. When developing countries improve their ability to use new technologies, and as these technologies become more accessible to its citizens, they can be used to empower citizens, improve social service provision and alleviate poverty.⁸³ In fact the United Nations Human Development Report notes that ICT development can contribute directly to human development.⁸⁴

It is important to keep in mind that increased penetration rates would not only directly benefit the 200,000 Puerto Rican households who currently have no telephone service at all, but it would also raise the standard of living on the entire island and add to mainland America’s economic development. Although there is a large international digital divide between developed and developing nations generally, the biggest digital divide is often within a country itself.⁸⁵ Puerto Rico is such a case in point, having a much lower level of wireline phone penetration than mainland United States. The uneven penetration of telephone lines in Puerto Rico results in unbalanced development throughout the island and in the country.

⁸⁰ Id., §201(b).

⁸¹ See “ICT in a Developing Country Context: An Indian Case Study.” Chandrashekar, United Nations Human Development Report 2000 (“Chandrashekar”).

⁸² 47 U.S.C. §151.

⁸³ Id.

⁸⁴ Chandrashekar, p. 11.

⁸⁵ Id. at 34.

While the capital, San Juan, enjoys a penetration rate of approximately 80%, some rural areas have a less than 50% penetration. Some of the mountainous, densely vegetated interior areas of the island do not even have any telephone service at all. This is due to a number of factors, including the higher costs of providing telephone service in this terrain, the insular nature of the island, and the area's general economic condition.

The poor economic condition of areas lacking basic telephone service is caused in part because of its lack of telephone service. Since the fixed line telephone is the most basic form of technology, its absence excludes citizens from the benefits of any newer technology.⁸⁶ In the cases of cross-country disparities in personal computer penetration and Internet penetration, telephone density is a factor in both.⁸⁷

Previously, Puerto Rico had received substantial amounts of high cost universal service funding annually. Since the Commission's revision of its high cost fund methodology in 1999, Puerto Rico no longer receives any high-cost loop assistance, save hold-harmless support. Unless such funding is restored, the maintenance and expansion of affordable telephone services throughout Puerto Rico will be extremely difficult. Thus Puerto Rican development, stemming from PRTC's expansion of phone penetration from as low as 25% in some areas to over 70% overall during the time between the high cost program's inception until 1996, will be halted.

- Internet Access

Puerto Rico's citizens have less access to the Internet as a result of fewer telephone lines.⁸⁸

⁸⁶ Id. at 34.

⁸⁷ "The Determinants of the Global Digital Divide: A Cross-Country Analysis of Computer and Internet Penetration," Chinn and Fairlie; National Bureau of Economic Research Working Paper 10686, August 2004.

⁸⁸ In Thorough Americans: Minorities and the New Media (Aspen Institute, 1998), Penn State University's Jorge Reina Schement writes, "telephone penetration deserves special attention because it constitutes the access point to

- Disaster Preparedness

Not only can the telephone be used to get help in medical and other emergencies, it is a useful tool for city planning. When cell phones do not work, terrestrial phones often still do. Being able to communicate with public officials is instrumental in strengthening civil society.⁸⁹ When all of Puerto Rico's citizens are able to connect with their government and each other, growth will be spread more evenly. What is more, in many remote areas in Puerto Rico there is a lack of any telecommunications infrastructure, wireline or wireless. The annual tropical weather affecting Puerto Rico requires significant expenditure in both manpower and resources by PRTC to ensure full preparedness in case of natural disaster. PRTC has established a fully functional Emergency Operations Center, and has acquired the necessary equipment and supplies to both maintain and re-establish telecommunications services after a severe storm, e.g., storage or battery banks and generators.

- Literacy

Greater telephone penetration is also an indicator of higher rates of literacy. Those who have access to a fixed line telephone will in turn be able to benefit most from information technology investments and thus become better educated and more highly skilled. While literacy is a requirement to fully utilizing the Internet and there are high costs associated with accessing some ICTs, the benefits of a telephone are more universally accessible.⁹⁰ Data from developing countries show that ICT dissemination fosters economic development, and strengthens political

many of the new services, such as e-mail and the Internet, associated with the new technologies... When a person lacks access to a telephone, he or she is functionally cut off." Debbie Becht, Taglang & Wilhelm, supra n. 14.

⁸⁹ Id. at 5.

⁹⁰ World Institute for Development Economics Research Discussion Paper No. 2002/75, "The Internet and Economic Growth in Least Developed Countries – A Case of Managing Expectations?" Charles Kenny; August 2002, at 11.

rights and civil liberties.⁹¹ While Internet hosts, Internet users, personal computers and mobile phones represent indicators of ICT for purposes of this study, the fixed line telephone is the precursor and foundation for these other information communication technologies.

- Development

There seems to be a direct correlation between the number of telephone lines in a nation or region and its level of development. With a population of over 739 million people, there are only 14 million telephone lines in Africa, far fewer than in many Western metropolitan cities.⁹² While global information technology advances are being touted as the key to developing countries socio-economic development, it is important to note that Internet service providers (ISPs) and telecommunication operators would prefer areas where basic telecommunications infrastructure already exists.⁹³ Thus there is a strong need for state support to provide basic communications infrastructures where private technology firms are reluctant to invest.⁹⁴ This means that if an area does not have even basic telephone lines, the likelihood that it will get T-1 lines or access to advanced communication technologies is remote, if not impossible. Therefore the absence of telephone lines in parts of Puerto Rico not only leaves its residents disconnected from the rest of the country, it also condemns them to economic stagnation.

The World Bank's World Development Report further substantiates this point. There appears to be correlation between the number of telephone mainlines a country has and a number of development indicators. In the realm of communications, information, science and

⁹¹ World Institute for Development Economics Research Discussion Paper No. 2002/77, "The New Economy and Developing Countries – Assessing the Role of ICT Diffusion." Mina N. Balamouni; August 2002, at 11.

⁹² World Institute for Development Economics Research Discussion Paper No. 2002/72 "Inter-Country Variations in Digital Technology in Africa – Evidence, Determinants and Policy Implications." Steve Onyeiwu, July 2002, at 1.

⁹³ World Institute for Development Economics Research Discussion Paper No. 2002/72 "Inter-Country Variations in Digital Technology in Africa – Evidence, Determinants and Policy Implications." Steve Onyeiwu, July 2002, at 19.

⁹⁴ Id.

technology the number of telephone mainlines correspond closely with personal computers, Internet hosts, scientists and engineers in research and development and high technology exports.⁹⁵ Those countries with higher levels of mainline telephones also have a higher gross national product.⁹⁶ In the economic sphere, countries with sufficient telephone lines have higher gross domestic investment and more exports of goods and services.⁹⁷

- Public Health

Most interestingly, in the area of quality of life, it seems that those nations with higher telephone lines have a lower prevalence of child malnutrition, lower under 5 mortality rate, a greater life expectancy at birth, lower rates of adult illiteracy, and greater access to sanitation in urban areas.⁹⁸ There is also a relationship between the percentage of the population below the poverty line and levels of phone penetration.⁹⁹ Public expenditure on education as a percentage of Gross National Product and expected years of schooling are also higher in countries with more mainline telephones.¹⁰⁰

Health indicators correlate closely with a nation's phone penetration. Public expenditure on health as a percentage of Gross National Product, access to improved water source, access to sanitation, the infant mortality rate and maternal mortality rate all compare favorably with the number of fixed telephone lines in a country.

⁹⁵ See World Bank World Development Report 2000/2001, Table 19, Communications, Information, Science and Technology.

⁹⁶ See *id.* at Table 1, Size of the Economy.

⁹⁷ See *id.* at Table 11, Growth of the Economy.

⁹⁸ *Id.* at Table 2, Quality of Life.

⁹⁹ *Id.* at Table 4, Poverty.

¹⁰⁰ *Id.* at Table 6, Education.

3. **Critical Anti-Discrimination Principles Further Warrant Prompt Consideration Of The Commission's Tentative Conclusion**

Although it directed the Commission to expedite rulemaking in a variety of areas, for instance, local competition, universal service, and portability, Congress also inserted the phrase “without discrimination on the basis of race, color, religion, national origin, or sex” as a 1996 amendment to Section 151 of the Communications Act. It is therefore incumbent upon the Commission to avoid even the appearance of creating or exacerbating social and economic disparities as a result of its rulemakings.¹⁰¹

“The goal of universal service is that customers in all regions of the nation have access to telecommunications services.”¹⁰² The absence of a mechanism that adequately addresses insular needs has exacerbated the universal service gap between citizens of Puerto Rico and citizens in rural and other high cost areas on the mainland. While America's fifty states each enjoy over 90% phone penetration, parts of Puerto Rico have less than 50% phone penetration. If such low penetration rates were present in, for instance, Omaha or Salt Lake City, it would be considered a national scandal.

A case in point: the town of Mink, Louisiana made national news when it finally received telephone service in January 2005 - in part because it was difficult for Americans to believe that there were still communities in the United States where telephone service was unavailable. Although Mink “was among the last areas in the nation without telephones,” 200 communities in Puerto Rico still are not wired. It would be a national crisis if the conditions in

¹⁰¹ See e.g. Wash. Indep. Tel. Ass'n v. Wash. Utils. & Transp. Comm'n, 149 Wash 2d 17 (2003). Courts have recognized that regulatory “decisions that permit subsidization of some participants in a market can have the requisite injurious impact on those participants' competitors.” See United States Telecom Assoc. v. FCC, 295 F.3d 1326, 1330 (D.C. Cir. 2002).

¹⁰² Ninth Report and Order, 14 FCC Rcd at 20434 ¶1.

Puerto Rico persisted on the mainland.¹⁰³ The Commission should be commended for taking the necessary first step to address this significant gap.

Failure to address the results of universal service regulations with respect to Puerto Rico also creates an economic disparity between the island and other states. The availability of telephones has a direct impact on trade. Access to telephones impacts on micro-entrepreneurs' choice between trading with middlemen or dealing directly with the consumer is great.¹⁰⁴ This is analogous to the rural areas of Puerto Rico with limited telephone coverage and farmers who could benefit from communicating directly with consumers. One of the biggest benefits of telecommunications is the resulting greater efficiency of the marketplace. The telephone is key to improving trade and commerce. The use of fixed line telephone based technology, including the Internet, results in improved market efficiency through the exchange of information.¹⁰⁵ This market openness and efficiency in turn leads to greater foreign direct investment.¹⁰⁶ Once all areas of Puerto Rico have standardized telephone service, the positive effects of globalization will also be evenly distributed.

A fixed line telephone is the first tool for entry of Puerto Rico's rural citizens into the economy. ICTs, including the telephone, greatly improve the performance of the private sector, increase access to and the quality of education and healthcare, and increase the transparency and accountability of government institutions.¹⁰⁷ Similarly countries where communication is

¹⁰³ See "Mink, La. Will Take Your Call Now," New York Times, Feb. 1, 2005.

¹⁰⁴ "Search Cost and Rural Producers' Trading Choice between Middlemen and Consumers in Bangladesh," Shyamal K. Chowdhury. *Journal of Institutional and Theoretical Economics*; Tuebingen: September 2004. Vol. 160, Issue 3, pp. 522-541.

¹⁰⁵ World Institute for Development Economics Research Discussion Paper No. 2002/77, "The New Economy and Developing Countries – Assessing the Role of ICT Diffusion," Mina N. Balamoune; August 2002, at 5.

¹⁰⁶ Id.

¹⁰⁷ Organization for Economic Co-operation and Development Policy Brief, "Integrating Information and Communication Technologies in Development Programmes," at 2.

difficult and information flows inefficiently tend to be low growth countries.¹⁰⁸ This fact is demonstrated by the uneven levels of income and development between rural and urban Puerto Rico and between Puerto Rico and mainland America.

Thus, low penetration in one state in comparison to the rest of the nation is just as unacceptable and inequitable as low penetration in one area of a state compared to another region. Disparities in interstate commerce will cause disparities in economic development as firms choose states with stronger telecommunications infrastructure. Federal regulations were designed to redress, rather than perpetuate such burdens on interstate commerce and such disparate civic and social opportunities.

Action is necessary in this proceeding because continuing the status quo would exacerbate inequalities, create economic and social disadvantages for Puerto Rico's rural counties, and undermine Congress' goal for a strong national telecommunications infrastructure.¹⁰⁹

4. Adoption Of An Insular Mechanism Is Necessary To Fulfill The Mandate Enunciated In Section 254

The Commission's tentative conclusion is fully consistent with, and required by, the Congressional policies underlying Section 254. Section 254(e) of the 1996 Act¹¹⁰ requires that the Commission provide "sufficient" funding to support universal service in insular high-cost

¹⁰⁸ Id.

¹⁰⁹ Hispanics and other minorities have not fared well with respect to access to telecommunications services, the basic tenet of universal service policies. Since the 70's, persistent gaps in telephone service for minorities, women with children, Native Americans, renters and the unemployed have been documented and the gaps have survived a number of policy remedies. Overall, 89.7% of Hispanic households have telephone service compared to 95% of White households. While twenty-five percent of households with annual income below \$5,000 do not have telephone service, subscription levels for Whites, it is 79% compared to 72.7% for Hispanics. Hispanic households don't reach the 90% subscription level until household income reaches \$20,000/yr and don't reach the national telephone penetration level until \$25,000/yr. See "A Digitally Divided Life," The Digital Beat, Vol. 2, No. 25 (February 29, 2000), avail. at <http://www.benton.org/publibrary/digitalbeat/db022900.html>.

¹¹⁰ 47 U.S.C. §254(e).

areas.¹¹¹ Only by moving promptly to adopt an insular mechanism will the Commission fulfill Congress' mandate.

C. The Adoption Of A Non-Rural Insular Mechanism Would Be Consistent With The Commission's Universal Service Pronouncements And Policies

The Commission has had an “historical commitment to promote universal service to ensure that all Americans have access to affordable, quality telecommunications services.”¹¹²

Armed with its mandate under Section 151, the Commission has focused on “increasing the availability of reasonably priced, basic telephone service via the landline telecommunications network” since 1934.¹¹³ It has sought to identify impediments to increased telecommunications deployment and subscribership, including tribal lands and insular areas.¹¹⁴ It has also expressed awareness and concern over low penetration levels among particular areas and populations.¹¹⁵ Its regulatory efforts have always included subsidies (implicit and explicit) to achieve greater telephone subscribership.¹¹⁶

The Commission previously announced a goal of providing a mechanism for funding service costs in areas where costs exceeded the national benchmark.¹¹⁷ The Commission has recognized that statewide averaging may not be appropriate for the high cost mechanism

¹¹¹ It is a maxim of statutory construction that all language of a statute must be given effect. See Mississippi Poultry Ass'n v. Madigan, 31 F.3d 293, 304 (5th Cir.1994) (*en banc*) (“[A] statute should be interpreted so as not to render one part inoperative.”)

¹¹² Federal-State Joint Board on Universal Service Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 96-45, CC Docket No. 00-256, 16 FCC Rcd 11246 ¶2 (May 10, 2001) (“MAG Order”).

¹¹³ See TOPUC, 183 F.3d at 406.

¹¹⁴ See Twelfth Report and Order, 17 FCC Rcd at 12211 ¶2.

¹¹⁵ See Rural Task Force Order, 16 FCC Rcd at 11248 ¶10.

¹¹⁶ Id. at 11252 ¶13.

¹¹⁷ See Seventh Report and Order, 14 FCC Rcd at 8092 ¶31.

providing support to rural carriers.¹¹⁸ Similarly, treating Puerto Rico carriers like non-rural carriers without recognizing the unique embedded-costs it faces in Puerto Rico is not an appropriate mechanism for providing high cost support for insular areas. Puerto Rico carriers should be eligible for support under an insular mechanism that resembles the mechanism for rural areas – as the Commission tentatively concludes.¹¹⁹

The Commission has also acknowledged that it must address the needs of remote and insular areas.¹²⁰ It also acknowledged, in the Rural Task Force Order, that programs targeting low-income customers might not be sufficient to address the causes of low subscribership in other areas and among other populations, “especially among low-income individuals in rural and insular areas.”¹²¹ Ten years after passage of the 1996 Act, it is time for the Commission to act quickly to adopt its tentative conclusion and establish a non-rural insular support mechanism. Perpetuating existing universal service policies is unfair to Puerto Rico’s citizens.

VI. THE COMMISSION HAS THE OBLIGATION AND THE AUTHORITY TO REMEDY PUERTO RICO’S FUNDING GAP

A. The Commission Has A Wide Array Of Legal Tools To Draw From In Addressing Puerto Rico’s Gap In Penetration Rates

The Notice correctly recognizes the Commission’s clear authority to act in this instance to adopt a non-rural insular mechanism based on embedded costs.¹²² Within the federal framework, the Commission must devise solutions with distinctly local impact. The Notice recognizes that a one-size-fits all approach may occasionally produce results that actually

¹¹⁸ See, e.g., First Report and Order, 12 FCC Rcd at 8936 ¶294; Fourth Reconsideration Order, 13 FCC Rcd at 5374 ¶92; Tenth Report and Order, 14 FCC Rcd at 20161 ¶5.

¹¹⁹ Notice ¶35.

¹²⁰ See First Report and Order at 12 FCC Rcd at 8839 ¶113 (noting 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.”)

¹²¹ See Rural Task Force Order, 16 FCC Rcd at 11249 ¶11.

¹²² Notice ¶33.

undermine the policy goals underlying its regulations. In similar circumstances, in the Rural Task Force Order, the Commission acknowledged that it would take additional effort to develop a forward-looking mechanism appropriate for rural carriers, because they generally have higher costs attributable to lower subscriber density, small exchanges, and a lack of economies of scale.¹²³ When it comes to redressing Puerto Rico's universal service shortfall, the 1996 Act, the 1934 Act and judicial decision-making have provided the Commission with sufficient mechanisms to address such incongruent outcomes.

B. Application Of Well Established Universal Service Fund Policies Justifies Adoption Of A High Cost Mechanism For Insular Areas

Although competition is a goal of the 1996 Act, the preservation and advancement of universal service is an equally important aspect of this law.¹²⁴ The overall goals of Section 254 are to ensure that consumers in rural, insular, and high cost areas have access to telecommunications services at rates that are affordable and reasonably comparable to rates charged for similar services in urban areas. Section 254 thus takes into account competition, progress and individual welfare. Based on principles of equity and statutory construction, one goal should not be sacrificed in favor of the other.¹²⁵

The Commission's universal service rules reflect a strong bias towards the 1996 Act's competition policies. For example, the Commission has sought to avoid cherry picking of low cost consumers by predicating ETC certification status on a commitment to serve the entire service area for which the ETC seeks designation.¹²⁶ As another example, under Section 254(b)(4) of the 1996 Act, all providers of telecom services must make an equitable and non-

¹²³ See Rural Task Force Order, 16 FCC Rcd at 11247 ¶5.

¹²⁴ See 47 U.S.C. §254(b) (3). See also Twelfth Report and Order, 17 FCC Rcd at 12211 ¶2.

¹²⁵ See Alenco, 201 F.3d at 615.

¹²⁶ See TOPUC, 183 F.3d at 436, citing 47 U.S.C. §214(e).

discriminatory contribution to universal service. Universal service funding is available to all competitive ETCs in Puerto Rico, and such funding is fundamental to any effort to ensure that all of Puerto Rico has access to telecommunications services, as well as the potential for telecommunications competition.

C. Puerto Rico's Case Is Suitable For Immediate Action

As contemplated by this Notice, an insular high cost support mechanism based on insular carriers' actual costs would be limited in scope and application to Puerto Rico. The cost of such a plan would amount to approximately \$3.08 per line in monthly support to Puerto Rico, or 0.59% of total universal service program cost.¹²⁷ In application, the mechanism would affect only Puerto Rico because all other high cost insular areas are already provided for under the rural mechanism.¹²⁸ Given the significant gap in subscribership between Puerto Rico and the mainland, and the length of time insular areas have gone without adequate universal service support, the Commission should act on its tentative conclusion with respect to a non-rural insular mechanism on an expedited basis.

VII. CONCLUSION

The Commission should be commended for taking an affirmative action to remedy a long-standing gap in its universal service policies. As demonstrated herein, Puerto Rico's drop in universal service funding from \$50 million a year to \$0 has already had an adverse effect on telephone infrastructure build-out in Puerto Rico. The social and economic benefits outlined above that are a result of greater phone penetration will be denied to Puerto Rico's citizens unless this funding is restored. Puerto Rico will continue to lag behind in all social and economic indicators until the entire island has the most basic telecommunication technology –

¹²⁷ See Trends in Telephone Service, *supra* n. 6 at 1-2.

¹²⁸ Notice ¶34.

the simple fixed line telephone. Furthermore, the fact that Puerto Rico has been without this necessary high-cost funding for several years necessitates prompt action by the Commission to prevent further erosion.

MMTC et al. respectfully submit that establishing the Commission's proposed insular support mechanism to restore the lost universal service support for Puerto Rico is consistent with the public interest, convenience and necessity. Such action produces the only equitable outcome to the situation experienced by Puerto Rico's citizens and fulfills the Commission's mandates under the 1934 Act and the 1996 Act. Further, eliminating the funding disparity for Puerto Rico harmonizes the universal service goals, pronouncements and policies of the Commission with the actual outcome that its regulations have produced to date.

Respectfully submitted,

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