

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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

**REPLY 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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Introduction and Summary

The Minority Media and Telecommunications Council, et al. (“MMTC”) respectfully submits these reply comments in response to the NPRM in this proceeding.¹ The Commission is to be applauded for moving to address the urgent needs for universal service support in insular areas served by non-rural carriers. Section 254 of the Communications Act mandates that the Commission ensure that insular areas, in particular, receive predictable and sufficient support that can ensure the availability of affordable telecommunications services. Any further delays in implementing a mechanism to address the universal service funding needs of Puerto Rico is antithetical to this mission and will harm communities that can least afford to continue existing with inadequate or non-existent telecommunications infrastructure. Addressing these needs now is critical to reversing the less than 70 percent wireline penetration rate in Puerto Rico and the racial inequality between whites and Hispanic Americans nationwide. Any further delay risks further deterioration of service to unserved and underserved areas of Puerto Rico.

Because these needs are immediate, the Commission should not wait to implement the proposed insular mechanism while considering other, more global, policy issues, such as proposals to fundamentally reform the universal service mechanism. The Commission has taken a similar approach in implementing immediate relief in tribal lands areas although other policy issues that affected tribal lands continued to be debated. As the Commission has already recognized, Puerto Rico faces unique and difficult challenges, such as low penetration, high cost of living, low per capita income, and the uniquely high costs of serving insular areas, including the need to ship most goods in and the effect of the harsh tropical environment on equipment.

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, High-Cost Universal Service Support, WC Docket No. 05-337, Notice of Proposed Rulemaking, 20 FCC Rcd 19731 (2005) (NPRM).

Encouraging investment in insular telecommunications infrastructure and ensuring that existing infrastructure is maintained achieves critical social policies, economic development, and access to broadband services. The Commission should promptly move to address this important area of universal service implementation as mandated by Section 254.

I. The Commission Should Fulfill Its Mandate To Ensure Access To Telecommunications And Information Services “in all regions of the Nation, including...in rural, insular, and high cost areas” At Rates Reasonably Comparable To Those In Urban Areas

While the Commission is not mandated to create a separate universal service funding mechanism for every statutorily protected category, as Sprint Nextel Corporation (“Sprint Nextel”) argues,² the Commission does have an obligation to remedy deficiencies in the USF mechanism that plague insular areas to avoid exacerbating inequalities that result from an undeveloped telecommunications infrastructure. We are encouraged that the Commission has rightly recognized, through its tentative conclusion in the NPRM, that a non-rural insular mechanism is necessary to achieve Section 254’s statutory purposes in insular areas.

The Commission should act in response to record evidence that demonstrates that additional high-cost support is necessary to maintain quality service and to increase Puerto Rico’s substandard telephone penetration rates in Puerto Rico. We do not agree with Dobson’s position that, in applying Section 254(b) the Commission must give greater weight to “principles that promote competition and lead to a reduced fund size.”³ By over-emphasizing the competitive neutrality goals of Section 254, the Commission has unintentionally encouraged

² See Comments of Sprint Nextel (filed March 27, 2006) (“Sprint Nextel Comments”), p. 10.

³ See Comments of Dobson Cellular Systems, Inc. (filed March 27, 2006) (“Dobson Comments”), p. 4.

cherry picking and other anti-competitive behavior by non-incumbent ILECs. The inadequacy of the current approach is obvious in Puerto Rico. Universal service providers such as PRTC need the ability to build infrastructure and provide service in high cost areas without fear of competitors taking advantage of the resulting disparities in cost and price between urban and rural areas.⁴

Further, we disagree with General Communications' view that "the Commission can address any need for additional support in Puerto Rico through increased Lifeline and Link Up support."⁵ The evidence of the past four years belies this fact. Lifeline and Linkup are helpful, but by themselves these modest non-structural initiatives serve a different purpose and were not designed to – nor can they -- lead to cost-effective investments in telephone infrastructure.⁶

AT&T Inc. ("AT&T")⁷ and Sprint Nextel⁸ are critical of a new non-rural insular support mechanism because the Commonwealth of Puerto Rico would be the only party to directly benefit from the mechanism change. This argument is misplaced. The appropriate factor to consider is the socio-economic welfare of Puerto Rico citizens, not the number of jurisdictions or carriers that would benefit from the program. In our prior comments, we highlighted the existence of severe gaps in universal service implementation that resulted from the lack of an appropriate measurement tool for calculating insular disbursements.⁹ We also demonstrated that the gap in telephone penetration rates is linked to disproportionately lower educational,

⁴ See Comments of MMTC (filed March 27, 2006) ("MMTC Comments"), p. 49.

⁵ See Comments of General Communications (filed March 27, 2006), p. 8.

⁶ See MMTC Comments, p. 14.

⁷ See Comments of AT&T (filed March 27, 2006), p. 36.

⁸ See Sprint Nextel Comments, p. 8.

⁹ See MMTC Comments, p. 7.

healthcare, social, and economic indicators for Puerto Rico citizens and for American Hispanics in general. Under section 254 of the Communications Act, the Commission has an obligation to provide specific, predictable, and sufficient universal support for insular areas.¹⁰ Regardless of how many jurisdictions are affected, the overriding principle should be finding proper tools to assess (and close) the service gap between citizens in Puerto Rico and citizens in other parts of the United States.

Further, implementation of a new, more accurate mechanism would not be exclusive to PRTC as a matter of law. As we stated in our Comments, there is a strong need for USF support to provide basic communications infrastructures where private technology firms are reluctant to invest.¹¹ A new insular mechanism would be available to all eligible telephone carriers (“ETCs”) in the region and would encourage infrastructure investment in Puerto Rico.

II. The Commission Should Not Defer Correcting The Insufficient Universal Service Support For Puerto Rico

We have submitted evidence to show that since the adoption of the Commission’s non-rural support mechanism, dial tone wireline penetration rates in Puerto Rico have stagnated. Citizens residing in Puerto Rico cannot afford to wait for future USF reform efforts – which may or may not be forthcoming – eventually to trickle down to them over time. Currently, parts of

¹⁰ 47 USC §254(b)(3) (“Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”)

¹¹ See MMTC Comments, pp- 25-26; see also Onyeiwu, Inter-Country Variations in Digital Technology in Africa – Evidence, Determinants and Policy Implications, World Institute for Development Economics Research, Discussion Paper No. 2002/72, July 2002, at p. 19.

Puerto Rico have less than 50% phone penetration. Approximately 200 rural communities with up to 200,000 households have no telephone infrastructure at all.¹² These areas are the least developed economically. Since the elimination of high cost loop funding in Puerto Rico, telephone penetration has stagnated, and, without proper intervention, it could decrease as population increases. Additionally, funding for repair and infrastructure upgrades has diminished. These facts require implementation of a non-rural insular mechanism without delay to address this problem.

A. The Public Interest Mandates Creating A Separate Non-Rural Insular Mechanism To Reap Long Term Economic and Social Benefits

There are significant public interest concerns supporting the Commission's adoption of a separate non-rural insular mechanism. The gap in telephone penetration in Puerto Rico exacerbates inequalities between citizens of Puerto Rico and citizens in rural and other high-cost areas on the mainland, as well as racial inequalities in telephone penetration nationwide. Puerto Rico's low telephone penetration rate creates economic and social disadvantages for the island's rural counties and undermines Congress' goal of fostering a strong national telecommunications infrastructure.

Data MMTC submitted on the record supports the position that the economic benefits of adopting a separate insular mechanism outweighs the short-term costs of raising the level of support. The cost of a non-rural insular support mechanism would amount to approximately \$3.08 per line in monthly support to Puerto Rico, or 0.59% of total universal service program

¹² See MMTC Comments, p. 5.

cost.¹³ However, adequate funding for a strong telephone infrastructure can engender significant returns on a micro and macro level. Increased telephone penetration rates increase access to and the quality of education and healthcare, as well as improve the transparency and accountability of government institutions.¹⁴ The telephone is key to improving trade and commerce, improved market efficiency through the exchange of information, entrepreneurship and employment. In addition, the use of an embedded-cost mechanism, available to all Puerto Rico ETCs would encourage further infrastructure investment because it factors in the actual costs (costs of service and sales, administrative expenses, depreciation and amortization). As noted in the NTCA White Paper, carriers will feel more confident in making investments in high-cost areas if they know their support will not be reduced whenever a newer and more inexpensive technological option becomes available.¹⁵

B. Implementation Of A Non-Rural Insular Mechanism Must Begin Promptly To Avoid Further Stagnation In Puerto Rico's Underserved Communities

Congressional policy mandating access to affordable telecommunications services, including in insular areas, dictates against entertaining any further delay. Congress has made universal service a national objective and has specifically required the Commission to achieve this objective in insular areas such as Puerto Rico.¹⁶ Among the responsibilities Congress assigned to the Commission is the implementation of universal service in accordance with the guiding principles of Section 254 and the recommendations of the Federal-State Joint Board on

¹³ *Id.*, p. 32.

¹⁴ *Id.*, pp. 22-25.

¹⁵ See Lehman, The Role of Embedded Cost in Universal Service Funding, National Cooperative Telecommunications Cooperatives Association White Paper, October 15, 2004, avail. at www.ntca.org/content_documents/Embedded_Cost_White_Paper.pdf ("NTCA White Paper"), p. 14.

¹⁶ See 47 U.S.C. §254(b)(5) (addressing how level of support is to be determined).

Universal Service. These principles mandate that universal service be explicit and sufficient, specific and predictable, and provided in all regions of the nation and to all citizens, including low income consumers and those in rural, insular and high cost areas. Section 254 evidences Congress' view that "universal service is a cornerstone of the Nation's communications system."

It is encouraging that the Commission has acknowledged its obligation to address disparities in telephone penetration. Compared to the rest of the nation and the developed world, Puerto Rico's citizens lag behind in the critical telecommunications sector. In light of the stagnation in telephone penetration experienced over the past four years, the Commission should act promptly to enable Puerto Rico to catch up with the rest of the nation in developing a modern telephone infrastructure.

C. The Commission Should Not Delay Implementing An Insular Mechanism Until Other, More Global, Policy Issues Are Addressed

The Commission should not delay implementing the proposed insular relief pending more global reforms. Verizon explains that the establishment of a non-rural insular mechanism "would not implicate the remaining issues with non-rural high-cost support," and thus "should not await resolution of those other, more complicated issues" in the overall proceeding.¹⁷ The Commission did not refuse to act immediately to address universal service in tribal lands areas before resolving other related issues, concluding that "[w]e do not believe that we should delay action to benefit those who, based on national statistics and the record before us, comprise the

¹⁷ See Comments of Verizon (filed March 27, 2006) ("Verizon Comments"), p. 31.

most underserved segment of our population.”¹⁸ This same approach should be applied to the establishing an insular mechanism that can address universal service needs in Puerto Rico.

We agree with AT&T that it is past time for the Commission to adopt a complete plan for providing universal service to consumers in rural, insular and high-cost areas, “regardless of the size or historical identity of the carrier serving them.”¹⁹ Over the long-term, “large” rural, insular carriers cannot feasibly draw upon other income streams to subsidize public policy goals that must be shouldered by all taxpayers. However, the Mechanism for Achieving Rural Communications (“MARC”) proposal put forth by AT&T is would not resolve the immediate problems faced by PRTC and the citizens of Puerto Rico.²⁰ Other commenters have requested the elimination of the distinction between rural and non-rural carriers.²¹ As with the currently existing support mechanisms, consideration of a new support mechanism, such as the MARC proposal, is a complex matter requiring further study of the legal, economic, and administrative impact for the telecom industry. There is an urgent and immediate need for resolution to the disparity in funding for universal service as applied to Puerto Rico’s unique situation, and it should be addressed as such. Therefore, the Commission should not delay consideration of its insular proposal, pending a fuller review of more global policy proposals.

Other issues raised by commenters should not hinder a swift and immediate resolution to the growing problems facing Puerto Rico for the past four years. Some commenters have

¹⁸ See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas (Twelfth Report and Order), 15 FCC Rcd 12208, 12226 ¶33 (2000).

¹⁹ See AT&T Comments, p. 5.

²⁰ See id., p. 37.

²¹ Id., p. 3; Dobson Comments, p. 12.

suggested that the Commission adopt an explicit mechanism to achieve targeted support for Carriers of Last Resort in remote regions, such as Alaska's bush country and Hawaii.²² We disagree. These areas are already receiving some level of loop support under the rural mechanism and would not be impacted by any modifications to the high-cost insular mechanism. There is no need to expand the Commission's proposed definition of insular.

The Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") is concerned that combining the cap for rural ILECs would affect the support that rural ILECs receive.²³ Western Telecom Alliance ("Western") raises a similar concern.²⁴ In its comments, PRTC argued that the insular mechanism should be established separate from the rural mechanism. The rural cap would not apply to this separate non-rural insular fund. This and the other issues raised by the commenters should not delay prompt implementation of a non-rural insular mechanism.

III. The Commission Should Not Disregard The Unique Set Of Circumstances Faced By Service Providers In Puerto Rico As Compared To Rural Carriers On The Mainland

As stated by Sandwich Isles Communications Inc. ("SIC"), "the logistical issues of shipping equipment and supplies to ... remote areas, [and] managing larger inventories" are present in insular areas and mean that "[u]ndoubtedly, high cost support is essential."²⁵ The Commission has noted that "insular areas generally have subscribership levels that are lower

²² See AT&T Comments, p. 39.

²³ See Comments of OPASTCO (filed March 27, 2006), p. 6.

²⁴ See Comments of Western Telecom Alliance (filed March 27, 2006), p. 3.

²⁵ See Comments of Sandwich Isles, Inc. et al. (filed March 27, 2006), pp. 7-8.

than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations.”²⁶ As with similarly situated islands, Puerto Rico’s geography, weather conditions, and economy have made build-out difficult. Consequently, MMTC agrees with SIC’s assessment that a forward-looking cost model cannot capture the unique needs of insular areas. The non-rural proxy-model, in contrast, is based on mainland models and assumptions. The non-rural proxy-model does not account for the unique topography of insular areas. Consequently, the non-rural proxy model does not accurately predict the unique costs inherent to serving insular high cost areas.²⁷

We also concur with Hawaiian Telecom Inc.’s (“HT”) position that high-cost support should be calculated on the basis of embedded or historic cost.²⁸ An embedded cost mechanism is necessary to create certainty, which will generate confidence in financial markets and encourage investment.²⁹ The alternatives discussed by Sprint Nextel and AT&T are not consistent and reliable solutions for Puerto Rico. Sprint Nextel argues that there is no need to promote expansion of wireline customers, because there are wireless and VoIP alternatives.³⁰ However, basic telephone is the entry point for more advanced telecommunications and

²⁶ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8838-39 ¶112 (1997).

²⁷ Id.

²⁸ See Comments of HT (filed March 27, 2006), p. 7.

²⁹ NTCA points out that “Forward-looking cost models are models: by definition, they are not designed to be 100% accurate. ... For example, a cost model may not adequately depict topographic features that impact deployment costs (e.g., hilly or rocky terrain). With varying topographies, costs may be overestimated in some wire centers and under-estimated in others.” NTCA White Paper, p. 10.

³⁰ See Sprint Nextel Comments, p. 8; Dobson Comments, pp. 6-7.

technology.³¹ For example, telephone density is a factor driving disparities among nations in personal computer penetration and Internet penetration.³² If a region does not even have basic telephone lines, the likelihood that it will receive advanced communication technologies is slight. Further, cost and the terrain make wireless communication an unrealistic and unreliable means for establishing in Puerto Rico what is already available on mainland – a robust and universal telecommunications infrastructure.

Wireline infrastructure, at least at present, is the only cost-effective way of bringing advanced communications, such as broadband services, to rural Puerto Rico. Although the universal service fund does not now support broadband services themselves, the Commission has recognized the importance of universal service in providing a basic infrastructure that is capable of delivering broadband services to all Americans.³³ Currently in Puerto Rico’s rural areas, the telephone network is the only available alternative to providing broadband services. Commission and congressional policymakers have expressed interest in promoting the development of broadband services in rural America.³⁴ At a minimum, the Commission should

³¹ See Becht, Taglang and Wilhelm, The Digital Divide and the US Hispanic Population, The Digital Beat, Vol. 1, No. 13, August 1999, www.benton.org/publibrary/digitalbeat/db080699.html (citing Jorge Reina Schement, Thorough Americans: Minorities and the New Media (The Aspen Institute, 1998)).

³² See Chinn and Fairlie, The Determinants of the Global Digital Divide: A Cross-Country Analysis of Computer and Internet Penetration, National Bureau of Economic Research, Working Paper 10686, August 2004.

³³ See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, 17 FCC Rcd 14095, 14102 ¶18 (2002); see also id., Separate Statement of Commissioner Michael Copps at 14152.

³⁴ See Remarks by Commissioner Kevin J. Martin To the Rural Utilities Service’s Public Meeting on Rural Broadband Access, June 27, 2002 (“Advancing broadband deployment in rural America is an area of great personal interest”); Vince Vittore, “NTCA: Copps Calls for New Push on USF, Broadband,” Telephony Online, February 7, 2006; Roy Mark, Bush Broadband Goal Fading, Internetnews.com, May 9, 2006 (quoting Senate Commerce Committee Chairman Ted Stevens: “The disparity of broadband deployment between rural and urban America . . . raises serious concerns. High-speed Internet access is absolutely essential to all Americans, whether you live in Manhattan or a remote village in Alaska.”)

establish an insular mechanism that would provide an efficient and effective means of achieving that very goal.

A sound and generally applicable solution is on the table - in a rulemaking that contains a tentative Commission conclusion to implement a congressional mandate to promote universal service in insular areas.³⁵ Thus, requiring PRTC to file for a waiver of the synthesis model is unnecessary. After ten years of deliberations, the Commission has acknowledged that universal service goals are not being met in Puerto Rico. The Commission correctly recognized in this rulemaking that it is willing to establish a non-rural insular support mechanism.³⁶ We believe this regulatory approach is the best, most efficient and long-term solution for redressing and maintaining levels of telephone penetration in insular areas such as Puerto Rico.

Conclusion

The Commission has wisely noted that a separate insular mechanism needs to be established to address high cost loop support for non-rural insular carriers. The disparities in telephone penetration in Puerto Rico and racial equality nationwide justify immediate action. Section 254 of the Communications Act requires that the Commission specifically address affordable telecommunications services in insular areas, which exhibit unique challenges in building out telecommunications infrastructure to underserved and unserved communities. Adopting the proposed mechanism would produce great social and economic benefits to the citizens of insular areas, including Puerto Rico. Because of these critical needs, the Commission

³⁵ See Sprint Nextel Comments, p. 10.

³⁶ See NPRM at 19744-48 ¶¶30-38.

should not delay implementation of its proposed insular mechanism until more global USF reforms are considered.

Respectfully submitted,

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