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EX PARTE

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

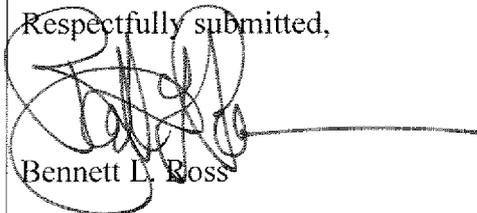
Re: *Federal-State Joint Board on Universal Service, High Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337

Dear Ms. Dortch:

On August 8, 2008, Nancy Victory and the undersigned, on behalf of Puerto Rico Telephone Company, Inc. ("PRT"), met with Nicholas Alexander, Legal Advisor to Commissioner McDowell. During this meeting, we discussed the pending Notice of Proposed Rulemaking in the above-captioned dockets and the Commission's tentative conclusion to establish a non-rural insular universal service fund mechanism. *See Federal-State Joint Board on Universal Service, High Cost Universal Service Support*, Notice of Proposed Rulemaking, 20 FCC Rcd. 19731 (2005). The attached documents also were discussed during the meeting.

Pursuant to 47 C.F.R. § 1.1206, please include this ex parte filing in the above-referenced docket.

Respectfully submitted,



Bennett L. Ross

BLR:rw

cc: Nicholas Alexander

Communications Service For Insular Areas: Fulfilling the Vision of the 1996 Telecommunications Act

Congress Mandated that the FCC use Universal Service Funding to Address Disparities in the Provision of Communications Services for Specific Areas of the Nation, Including Insular Regions Like Puerto Rico.

- The Telecommunications Act of 1996 (Section 254(b)(3)) promised that “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 services ... that are reasonably comparable to those services provided in urban areas”

Conditions in Puerto Rico Merit Universal Service Aid.

- Puerto Rico is emblematic of the unique challenges faced by insular areas to deliver telecom services:
 - Basic telephone subscribership levels on the island are less than 74 percent (compared to over 95 percent on average on the mainland). No other state has a penetration rate lower than 90 percent. Many isolated communities in Puerto Rico have subscribership levels closer to 50 percent.
 - Approximately 200,000 households in Puerto Rico have no access to telephone service due to a lack of infrastructure.
 - Puerto Rico suffers from a high cost of living (30 points higher than the U.S. average) and very low-income levels (median household income is \$17,621 compared to a national average of \$48,451; the poorest state—Mississippi—has median household income of \$34,473).
 - PRT has significantly higher costs to provide service to the island due to insular-specific shipping, climatic, and erosion costs.

Failure to Act Has Had a Disproportionately Negative Impact on Puerto Rico.

- All other insular high-cost areas except Puerto Rico are addressed under the FCC’s definition of rural. As a result, only Puerto Rico is left without high-cost loop support.
- The FCC revised its high-cost support program to eliminate \$50 million annually to Puerto Rico.
 - The FCC used a computer model to distribute universal service support for “non-rural” companies which produces erroneous results for Puerto Rico (under which Puerto Rico shares the same cost characteristics as New Jersey), since it fails to take account of Puerto Rico’s unique conditions.
 - The elimination of high-cost support to Puerto Rico has substantially slowed efforts to address low penetration rates in Puerto Rico.

- In spite of its line density in some areas, because of geographic and climatic factors, Puerto Rico's average loop cost is almost double that of similar situated carriers in non-insular areas.

In December 2005, the FCC Released an NPRM Tentatively Concluding to Adopt an Insular Fund—These Conclusions Were Supported by Chairman Martin, Commissioner Copps, and Commissioner Adelstein.

- Three of the FCC's Five Commissioners, including the Chairman, have publicly called for action to address insular areas most recently in the December 2005 *NPRM*.
- The FCC tentatively concluded that it had the authority to adopt an insular fund based on embedded or actual loop costs and specifically recognized that it needed to do more to advance universal service in Puerto Rico because of low subscribership. *See NPRM* at ¶ 33.
- The FCC does not need to wait for comprehensive reform to adopt this mechanism because whatever reforms it adopts for the rural mechanism could apply equally to the insular mechanism.

The FCC Must Adopt an Insular Mechanism.

- Puerto Rico Telephone has proposed a simple solution – a non-rural insular mechanism – modeled on the FCC's rural mechanism, setting support based on an insular carrier's actual cost to provide service.
 - Just like the rural mechanism, the insular mechanism would measure the extent to which a study area's average unseparated cost per loop exceeds certain percentage thresholds (starting at 115%) of the national average loop cost, which was frozen by the FCC in 2001 at \$240.
 - In 2005, PRTC's average unseparated cost per loop was \$393 for its central study (approximately 161K loops) and \$387 for its main study area (approx. 997,493).
- Only non-rural insular carriers would be eligible because the FCC already accommodates rural carriers under its existing high cost loop mechanisms.
 - Total cost of the fund would be less than \$25 million annually.

**STATEMENTS FROM UNANIMOUSLY ADOPTED NPRM
TENTATIVELY CONCLUDING TO ADOPT AN INSULAR MECHANISM**

"We tentatively conclude that section 254(b) provides the Commission with the authority to establish a new interim support mechanism for non-rural insular areas based on embedded costs. . . . We agree with PRTC that, through section 254(b), Congress intended that consumers in insular areas, as well as in rural and high-cost areas, have access to affordable telecommunications and information services. We believe that the low penetration rates in Puerto Rico demonstrate that this goal is not being met and that the Commission could be doing more to help the residents of Puerto Rico."

-- *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 05-205 at ¶ 33 (Dec. 9, 2005).

"Because of the unique challenges in providing telephone service in Puerto Rico, we believe 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. The evidence provided by PRTC supports a finding that there appears to be a correlation between the recent decline in Puerto Rico's subscribership rates and the reduction of Puerto Rico's high-cost support."

-- *Id.* at ¶ 33

"We believe that our tentative conclusion to adopt a non-rural insular mechanism is appropriate because . . . newly available universal service funds will enable PRTC to construct new network and loop infrastructure to unserved areas, update its existing facilities, improve quality of service, maintain affordable rates, and educate and solicit potential first-time telephone customers."

-- *Id.* at ¶ 34

"[W]e tentatively conclude that adopting a non-rural insular mechanism would have a limited impact on the universal service fund because this mechanism would only affect carriers operating in the Commonwealth of Puerto Rico. . . . There would be no need for a rural insular mechanism because all rural insular carriers already receive rural high cost support."

-- *Id.* at ¶ 34

STATEMENTS OF CHAIRMAN MARTIN
AND COMMISSIONERS COPPS AND ADELSTEIN SUPPORTING
UNIVERSAL SERVICE SUPPORT FOR INSULAR AREAS

Chairman Kevin J. Martin:

“The Commission also rejects the Puerto Rico Telephone Company’s (“PRTC”) proposal to treat non-rural carriers serving Alaska or insular areas as rural carriers for purposes of calculating and distributing high-cost support. The decision also fails to address the PRTC’s separate request—which has been pending for more than one year--that the Commission create a separate category of “non-rural insular” carriers for purposes of intrastate high-cost support. As a result of the Commission’s modification of its universal service program, the PRTC lost all of its high-cost loop support within in a four year period. The record demonstrates the unique challenges facing insular areas, such as Puerto Rico, that have exceedingly low subscribership rates and unusually high costs to deploy and maintain affordable service to underserved rural areas. *Based on this evidence, I believe that the Commission could have moved forward to grant the PRTC’s proposal.* Accordingly, I dissent to this part of the Order.”

- Statement of Commissioner Kevin J. Martin, Approving in Part, Concurring in Part, Dissenting in Part, *Federal-State Joint Board on Universal Service*, Order on Reconsideration, FCC 04-237 (Nov. 29, 2004) (emphasis added).

Commissioner Michael J. Copps:

“One issue mentioned in today’s decision strikes me as demanding our attention sooner, rather than later: insular areas. Since 1999, the Commission has had open and outstanding a Notice of Proposed Rulemaking on universal service issues affecting insular areas. While these areas may benefit from our present universal service support mechanisms, the Commission has acknowledged that it must address separately the communications needs of remote and insular communities. Indeed, Congress specifically directed the Commission to ensure that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, *insular*, and high cost areas” have access to reasonably comparable services at reasonably comparable rates (italics in original). But the Commission has failed over time to give this phrase full meaning. *We are long past due to address this aspect of the statute and incorporate this concept in our universal service support system.* As we move forward and consider other universal service reforms, I hope that the Commission takes this statutory language into consideration.”

- Concurring Statement of Commissioner Michael J. Copps, *Federal-State Joint Board on Universal Service*, Order on Reconsideration, FCC 04-237 (Nov. 29, 2004) (emphasis added).

Commissioner Jonathan S. Adelstein:

“While I support efforts to reduce the Commission’s backlog, there are numerous fundamental universal service issues implicated here, including contribution methodology, the capping of the high cost fund, the sale of exchanges, and the *sufficiency of support for carriers in insular areas*. Each of these important subjects is raised more broadly in other open proceedings before the Commission. I hope that we move forward expeditiously with our consideration of those proceedings and my concurrence to this item does not prejudice my substantive policy position on the issues raised there.”

- Concurring Statement of Commissioner Jonathan S. Adelstein, *Federal-State Joint Board on Universal Service*, Order on Reconsideration, FCC 04-237 (Nov. 29, 2004) (emphasis added).