

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

**COMMENTS OF SAN JUAN CABLE LLC IN OPPOSITION TO  
THE PETITION FOR RECONSIDERATION OF  
PUERTO RICO TELEPHONE COMPANY, INC.**

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San Juan Cable LLC d/b/a OneLink Communications (“OneLink”), through undersigned counsel, respectfully submits these comments in opposition to the Petition for Reconsideration filed by Puerto Rico Telephone Company, Inc. (“PRTC”) on April 27, 2010 (the “Petition”),<sup>1</sup> requesting the Commission to reconsider its April 16, 2010 Order rejecting the creation of a new insular high-cost universal service mechanism that would benefit only PRTC (the “Insular Order”).<sup>2</sup>

**I. INTRODUCTION AND SUMMARY**

In the Petition, PRTC chastises the Commission for failing its statutory duty to provide universal service support to insular areas, and thus purports to seek the creation of a special insular high-cost mechanism for the benefit of all insular areas. However, what PRTC actually

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<sup>1</sup> Petition for Reconsideration of P. R. Tel. Co., Inc., In re High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109 (Apr. 27, 2010).

<sup>2</sup> Order and Notice of Proposed Rulemaking, In re High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109 (Apr. 16, 2010).

requests is special treatment for PRTC. In the *Insular NPRM*, the Commission found that “PRTC is the only incumbent carrier serving a high-cost insular area” that was not then receiving rural high-cost support, and therefore PRTC’s proposed *non-rural* insular mechanism “would only affect carriers operating in the Commonwealth of Puerto Rico....”<sup>3</sup> Thus, rather than establishing a special insular high-cost mechanism to support all insular areas or insular carriers, the relief sought by PRTC can more appropriately be thought of as the “PRTC high-cost mechanism.”

First, the Commission has concluded that “PRTC’s primary objection is that it does not receive high-cost model support under the non-rural mechanism.”<sup>4</sup> However, the Commission correctly concluded in the *Insular Order* that it is inappropriate to carve out exceptions to the existing universal service programs – at a substantial cost to consumers and at the threshold of a fundamental realignment of the universal service system – for the sole purpose of allowing PRTC to obtain additional subsidies for which it otherwise does not qualify.<sup>5</sup> The Commission found this particularly true in light of PRTC’s existing obligation to invest \$1 billion in exactly the types of infrastructure and improvements for which PRTC claims to require federal aid, which effectively eliminates any basis for PRTC to request high-cost support. The Commission should reject PRTC’s efforts to gain federal subsidies to offset its investment obligations.

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<sup>3</sup> Notice of Proposed Rulemaking, In re Federal-State Joint Board on Universal Service; High-Cost Universal Service Support, CC Docket No. 96-45, WC Docket No. 05-337, at ¶ 34 (Dec. 9, 2005) (“*Insular NPRM*”).

<sup>4</sup> Insular Order at ¶ 25.

<sup>5</sup> PRTC is in the enviable position of having the resources of an extremely large carrier (PRTC), one that is controlled by one of the largest telecommunications companies in the world (America Movil), while having costs that are too low to qualify for support. As the Commission found in the Insular Order, the primary issue facing PRTC is not unreasonably high facilities costs, but rather extremely low-income customers. See Insular Order at ¶¶ 11, 34, 51. However, as discussed herein, PRTC has recently urged the Commission *not* to adopt additional low-income support for eligible subscribers in Puerto Rico. See Section III.C.2, infra.

Second, PRTC's reading of the Communications Act and Commission precedent provide no basis for the Commission to overturn its conclusion that no separate insular high-cost mechanism is required. The claim that the Commission ignores the statute misconstrues the principles for universal service in Section 254(c) and ignores the definitions of universal service and rural carrier. The statute does not require the FCC to create an entire new program solely to benefit PRTC. The 10th Circuit recognized in both of the *Qwest* cases that Section 254(c) provides principles to guide the FCC and does not prescribe specific programs.<sup>6</sup> PRTC's claim that the Commission should not count wireless subscribers when it computes service penetration ignores the fact, recognized by the *Qwest* court, that "universal service" reflects an evolving level of service that takes into account technological and marketplace changes. Under this definition, the FCC was not only permitted but required to count both wireline and wireless subscribers in Puerto Rico. The Commission therefore properly included wireless service penetration when it concluded that telephone penetration in Puerto Rico has increased dramatically since 2005. PRTC also ignores the simple fact that the definition of rural carrier clearly excludes PRTC from receiving a rural subsidy.

Third, PRTC's claim that the Commission acted in an arbitrary and capricious manner and has "reversed course" with regard to PRTC ignores four prior decisions of the Commission in 1997, 2003, 2004 and earlier this year, in which the Commission denied requests from PRTC to receive a rural carrier subsidy and instead found that a large carrier such as PRTC enjoys economies of scale that make such subsidy inappropriate. The Commission also found that low penetration in Puerto Rico is due to low income issues that are addressed by the Lifeline program

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<sup>6</sup> Qwest Corp. v. FCC, 258 F.3d 1191 (10th Cir. 2001) ("Qwest I"); Qwest Comm. Int'l Inc. v. FCC, 398 F.3d 1222 (10th Cir. 2005) ("Qwest II").

which the Commission expanded in 1997 and found was the appropriate program for Puerto Rico. While the Commission tentatively considered adoption of a special subsidy program whose sole beneficiary would have been PRTC, the Commission ultimately rejected the *Insular NPRM* and followed its three prior decisions rejecting special treatment for PRTC. The instant order therefore was a decision *not to change course*, a decision buttressed by the significantly increased subscribership in Puerto Rico.

Fourth, PRTC's assertion that the *Insular Order* disserves the public interest is incorrect. In support of that claim, PRTC touts a "voluntary commitment" to invest the requested federal aid in broadband infrastructure, despite the Commission's conclusion that such commitment would not even address the problem for which PRTC claims to need additional support, *i.e.*, expansion of telephone infrastructure. Moreover, this new commitment would actually undermine PRTC's existing obligation to invest in wireline infrastructure in Puerto Rico by providing a public subsidy to offset a substantial portion of that commitment. PRTC's claim that the Commission is depriving Puerto Rico of universal service support is similarly absurd, as demonstrated by the fact that Puerto Rican carriers receive hundreds of millions of dollars in universal service subsidies annually and even now PRTC is opposing the Commission's efforts to expand low-income support in the Commonwealth.

## **II. THE COMMISSION HAS CONCLUDED THAT PRTC'S \$1 BILLION INVESTMENT OBLIGATION ELIMINATES PRTC'S CLAIMS FOR HIGH COST SUPPORT**

In response to the *Insular NPRM*, PRTC claimed that without high-cost loop support, "PRTC has found it too costly to deploy facilities" to areas without telecommunications

infrastructure,<sup>7</sup> which has “forced [it] to choose between fully investing in network development and expansion and raising rates to levels that could further diminish subscribership.”<sup>8</sup> However, in the *Insular Order*, the Commission decisively rejected PRTC’s assertions, stating that “the relevance of PRTC’s earlier (2004-2006) claim that it cannot invest in its network without additional high-cost support is *substantially diminished, if not extinguished*, by its later (2007) commitment – unqualified with universal service support – to the Commission that it would invest more than \$1 billion over five years to improve communications and information service in Puerto Rico.”<sup>9</sup> This conclusion alone is sufficient to justify the Commission’s rejection of a new and unique high-cost mechanism that will benefit only PRTC.

Since 2007, PRTC has reportedly invested approximately \$595 million in fulfillment of its investment obligation.<sup>10</sup> PRTC’s alleged concern about Puerto Rico’s lack of “critical wireline infrastructure” is belied by the fact that little more than half of that amount was invested in the basic telephone and broadband infrastructure for which the commitment was intended (and

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<sup>7</sup> Insular Order at ¶ 28 (citing Petition for Clarification and/or Reconsideration of Puerto Rico Telephone Company, Inc., In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, at 19-20 (Jan. 14, 2004) (“PRTC 2004 Recon. Petition”); Comments of P. R. Tel. Co., Inc., In re Federal-State Joint Board on Universal Service; High-Cost Universal Service Support, CC Docket No. 96-45, WC Docket No. 05-337, at 29 (Mar. 27, 2006) (“PRTC Insular Comments”).

<sup>8</sup> Insular Order at ¶ 29 (citing PRTC Insular Comments at 29; PRTC 2004 Recon. Petition at 20). As the Commission also noted, PRTC’s assertion that raising rates would have a negative impact on subscribership was inconsistent with PRTC’s own claim that “universal service is a virtual reality” (at 92.8%, which is just 0.9% higher than the estimates in the Insular Order) in Puerto Rico and that as a result, “increases in residential wireline telephone rates...would not be inconsistent with public policy.” Id. at ¶¶ 27, 29, n.103 (citing Letter from Nancy Victory, counsel for PRTC, to Marlene Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 05-337 (Dec. 12, 2006)).

<sup>9</sup> Insular Order at ¶ 29 (emphasis added). See also Memorandum Opinion and Order and Declaratory Ruling, In re Verizon Comm., Inc., Transferor, and America Movil, S.A.B. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), WT Docket No. 06-113, at ¶ 36 (Mar. 26, 2007) (“Transfer Order”).

<sup>10</sup> See America Movil Annual Progress Report for the Deployment of the Infrastructure Used to Provide Basic Telephone and Broadband Services in Puerto Rico, WT Docket No. 06-113 (Apr. 4, 2008; Jul. 8, 2009; Dec. 31, 2009) (collectively, the “Annual Reports”).

which PRTC’s proposed insular support mechanism would subsidize). The following chart shows the reported breakdown of PRTC’s investment for the first three years of that commitment:<sup>11</sup>

	2007	2008	2009	TOTAL
<b>POTS</b>	\$56,144,749	\$63,033,724	\$42,540,046	\$161,718,519
<b>Broadband/Data</b>	\$45,608,034	\$67,027,017	\$68,482,256 <sup>12</sup>	\$112,635,051 – \$181,117,307
<b>Video</b>	Unreported	\$52,037,243		\$52,037,243 – \$120,519,499
<b>Wireless</b>	\$87,740,811	\$68,840,528	\$44,015,296	\$200,596,635
<b>TOTAL</b>	\$189,493,594	\$250,938,512	\$155,037,598	\$595,469,704

As the chart demonstrates, even if PRTC’s basic telephone and broadband investments are aggregated, only somewhere between \$274 million and \$343 million of that amount – at *most* 58% of the total investment – has been invested in the basic telephone and broadband services for which the commitment was originally intended. The remaining \$252 million to \$321 million – at least 42% of the total investment – has been devoted to expanding PRTC’s existing wireless network (CDMA), overbuilding that with a *second* wireless network (GSM), and constructing a completely new Internet Protocol television system that fails to advance universal service goals in any way.<sup>13</sup>

<sup>11</sup> The investment figures in the table are taken from the Annual Reports. The yellow section of the chart shows basic telephone and broadband investment, the blue section shows video and wireless investment, and the green section represents undifferentiated broadband/data and video investment. It should be noted that “video” was not reported at all in the 2007 report, and it was not listed as a separate category, but rather as a line item under “broadband/data services,” in the 2008 and 2009 Annual Reports.

<sup>12</sup> Unlike the 2008 report, the redacted copy of the 2009 report does not separately identify the amount invested in video, and instead merely lists “video” as a \$1 million-plus line item under the broadband/data section. America Movil presumably did this to avoid increased scrutiny of PRTC’s video investments. To address this issue, the aggregate broadband/data and video investment amounts were calculated both including and excluding the entire 2009 investment, and the totals represent that range (although the reality is likely somewhere in the middle).

<sup>13</sup> PRTC also recently launched a satellite television service. See Press Release, PRTC, Entretenimiento a otro nivel con la llegada de Claro TV al Mercado (undated), available at (Cont’d on following page)

In its Petition for Reconsideration, PRTC blames the Commission for “relegat[ing] Puerto Ricans to fewer communications choices than other residents of the United States by effectively deciding that wireline service is not worthy of support by virtue of the presence of wireless alternatives in Puerto Rico.”<sup>14</sup> This is both disingenuous and deeply ironic, given that the category of service in which PRTC has invested the *least* under its \$1 billion commitment is “basic wireline service (POTS),” while the category in which it has invested the *most* is “wireless services.” The more than \$200 million that PRTC invested in wireless pursuant to its investment commitment between 2007 and 2009 is roughly equivalent to just over 6 years worth of the estimated support that PRTC would receive under its proposed insular mechanism.<sup>15</sup> If the \$52 – \$120 million that PRTC has invested in video (separate and apart from other broadband/data investment) during the same period is included in this calculation, the investment is equivalent to between 7.6 and 9.7 years worth of estimated support. However, rather than devoting those substantial resources to deploying infrastructure in the unserved or underserved areas on whose behalf PRTC now claims to be crusading, PRTC has instead invested them in bringing the triple- and quadruple-play to its existing more prosperous customers in areas of Puerto Rico that are already wired or are more easily (and cheaply) reached. Thus, contrary to PRTC’s complaints, it is apparent that PRTC, rather than the Commission, has “denied the people of Puerto Rico access

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<http://www.clarotodo.com/Default.aspx?SecId=357> (last visited Jun. 7, 2010); see also Michelle Kantrow Vazquez, PRT launches Claro TV satellite television service, Puerto Rico Daily Sun at P11 (Apr. 23, 2010). It is unclear whether the (likely substantial) costs of developing and deploying PRTC’s satellite television service are included in the reported investment – which would be contrary to the spirit, and likely the letter, of PRTC’s investment commitment – or whether PRTC has separately invested even more funds to that endeavor instead of basic voice and broadband service.

<sup>14</sup> Petition at 1-2.

<sup>15</sup> See Insular Order at ¶ 36 (citing PRTC’s estimate that it would receive \$33 million annually based on 2004 data).

to expanded critical wireline infrastructure that PRT[C] has voluntarily committed to build and that could be used for both voice and broadband services.”<sup>16</sup>

### **III. THE COMMISSION’S ORDER IS CONSISTENT WITH THE STATUTE, IS NOT ARBITRARY AND CAPRICIOUS, AND SERVES THE PUBLIC INTEREST**

The Commission has spent far too much time considering, and has taken far too seriously, the frivolous arguments of PRTC demanding a special insular high-cost mechanism. PRTC’s Petition rehashes the same arguments that the Commission has already rejected four times and should be summarily dismissed. As an initial matter, PRTC misconstrues the statute by taking a single word – insular – out of context and ignoring the definitions of universal service and rural telephone company. PRTC’s claim that the Commission has “reversed course” is obviously farfetched, given that the *Insular Order* follows four prior decisions ruling against PRTC. Finally, PRTC’s claim that the Commission’s refusal to create an insular high-cost mechanism disserves the public interest is plainly incorrect, as it is obvious that PRTC’s primary objective is to gain additional federal subsidies for itself rather than to deploy the “critical” infrastructure that Puerto Rico needs and that PRTC is obligated to provide.

#### **A. PRTC Mischaracterizes The Universal Service Provisions Of The Communications Act**

PRTC contends that the Commission is required to create a special universal service program for Puerto Rico in order to give effect to the word “insular” in the statute. PRTC takes this one word out of context and ignores other important provisions of the statute, including the definitions of universal service and rural carrier. PRTC does not qualify as a “rural carrier” under the plain terms of the statute. The definition of universal service not only permits but

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<sup>16</sup> Petition at 21. PRTC’s *second* “voluntary commitment” to invest in voice and broadband infrastructure is addressed further in Section III.C.1, *infra*.

requires the Commission to take into account technological and marketplace changes and to consider the availability of both wireline and wireless service. Having done so, it is readily apparent that no justification is shown under the statute to create a special program to benefit PRTC, a carrier that does not qualify as a rural carrier.

1. PRTC Takes The Word “Insular” Out Of Context

PRTC’s claim that principles of statutory construction require the Commission to give effect to the word “insular” by creating a special program for insular areas takes that word out of context and therefore mischaracterizes the statute.<sup>17</sup> Section 254(c) is entitled “Universal Service Principles” and the introductory sentence states that the Commission shall “base policies for the preservation and advancement of universal service on the...principles” set forth in Section 254(b).<sup>18</sup> Thus, the following sections of Section 254(b) are intended to espouse principles for the Commission to use in creating universal service policies, not to dictate specific programs to be adopted by the Commission.

PRTC’s contention that “Congress articulated the means by which the Commission is required to achieve [universal service in insular areas],” is contradicted by the plain and unambiguous statutory language.<sup>19</sup> Congress *did not* articulate the means by which the Commission is required to achieve universal service in insular or any other areas. On the contrary, Congress only espoused “principles” on which the Commission should base “policies,” and left to the Commission the discretion to adopt specific rules and programs. As Section 254(b) does not contain detailed Congressional directives as to specific programs that the

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<sup>17</sup> Petition at 3-6.

<sup>18</sup> 47 U.S.C. § 254(b).

<sup>19</sup> Petition at 4.

Commission must create and merely sets forth “principles” upon which the Commission must base “policies,” the Commission is entitled to give effect to the word “insular” within that context and is not required to adopt a separate program for insular areas.<sup>20</sup>

In *Qwest I*, the 10th Circuit held that the principles in Section 254(b) are a “recommended course of action” and that any particular principle “can be trumped in the appropriate case”:

[E]ach of the principles in § 254(b) internally is phrased in terms of “should.” The term “should” indicates a recommended course of action, but does not itself imply the obligation associated with “shall....” Thus, the FCC must base its policies on the principles, but any particular principle can be trumped in the appropriate case. We hold the FCC may exercise its discretion to balance the principles against one another when they conflict, but may not depart from them altogether to achieve some other goal.<sup>21</sup>

Likewise, in *Qwest II* the court reiterated that in Section 254(c), Congress “enunciated various principles” to guide the FCC.<sup>22</sup> PRTC is therefore simply wrong when it contends that Section 254(c) mandates that the FCC create a special insular program apart from the rural and high cost programs.

## 2. PRTC Ignores The Definition Of Universal Service

PRTC’s argument that the Commission must subsidize wireline telecommunications service without regard to the availability of wireless telecommunications service is directly contrary to the plain language of the statute.<sup>23</sup> While PRTC accuses the Commission of ignoring *a word* of the statute, PRTC itself ignores *whole sentences* and, indeed, *an entire paragraph*. Congress devoted an entire paragraph of the statute to a broad grant of authority to the

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<sup>20</sup> Qwest I, 258 F.3d at 1200; Qwest II, 398 F.3d at 1226.

<sup>21</sup> Qwest I, 258 F.3d at 1200.

<sup>22</sup> Qwest II, 398 F.3d at 1226.

<sup>23</sup> Petition at 6-9.

Commission to define universal service in an evolving manner that takes into account technological and marketplace developments:

(c) Definition

(1) In general

Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services. The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services—

(A) are essential to education, public health, or public safety;

(B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers;

(C) are being deployed in public telecommunications networks by telecommunications carriers; and

(D) are consistent with the public interest, convenience, and necessity.<sup>24</sup>

Thus, the statute defines “universal service” as “an evolving level of telecommunications services,” not a static concept such as traditional, wireline telephone service. In defining universal service, the Commission not only may but “shall” take into account “advances in telecommunications and information technologies and services.” The Commission also must consider what telecommunications services are being used “through the operation of market choices by consumers” and are being “deployed in public telecommunications networks.” The 10th Circuit noted in both of the *Qwest* cases that universal service is based on an evolving notion of what constitutes telecommunications.<sup>25</sup>

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<sup>24</sup> 47 U.S.C. § 254(c).

<sup>25</sup> *Qwest I*, 258 F.3d at 1195 (“Universal service is an evolving level of telecommunications services ... taking into account advances in telecommunications and information technologies and services” (quoting 47 U.S.C. § 254(c)(1)); *Qwest II*, 398 F.3d at 1226 (“Universal service incorporates the goal of insuring that consumers throughout the nation, in both rural and urban markets, have access to an evolving range of telecommunications services”).

Technological advancements have made wireless telecommunications service the preferred telecommunications service in the eyes of many consumers who have deliberately chosen to “cut the cord.”<sup>26</sup> The Commission was well within the bounds of Section 254(c) to consider the technological and marketplace developments that lead to an “evolving” definition of universal service and therefore to include both wireless and wireline service in Puerto Rico to assess whether existing universal service mechanisms are adequate.

PRTC’s argument that the Commission should exclude wireless service when considering service penetration is fundamentally at odds with the evolving nature of the universal service program and would in effect roll back the clock on long-established programs.<sup>27</sup> The Commission took pains to explain that the adoption of the universal service portability rule resulted in support becoming available to wireless carriers.<sup>28</sup> Given that universal service support is provided to wireless carriers, it necessarily follows that the Commission can, and must, count both wireless and wireline subscribers in assessing the availability of

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<sup>26</sup> Insular Order at ¶ 27 (“This decision to ‘cut the cord’ reflects a trend occurring throughout the country”).

<sup>27</sup> PRTC’s assertion that wireless service should not be factored into universal service analyses also contradicts PRTC’s own practice of including wireless penetration – leading to a conclusion that “universal service is a virtual reality” – in telephone subscribership studies intended to justify PRTC rate increases. See Insular Order at ¶ 29, n.103 (citation omitted).

<sup>28</sup> Id. at ¶ 17, n.50 (“In the Universal Service First Report and Order, the Commission concluded that high-cost support should be “portable”.... The Commission found that such a policy would ‘aid the emergence of competition.’ As a result, multiple providers – primarily mobile wireless service providers – are now eligible for high-cost universal service support in a given geographic area in Puerto Rico and throughout the nation”); see also id. at ¶ 27 (“The Commission measures telephone subscribership based on access to telecommunications service, regardless of whether such access is provided by traditional wireline service or by newer technologies, including wireless. This approach is consistent with our current universal service policies, which make high-cost support ‘portable’ to any carrier that serves a particular customer, regardless of the technology used”).

telecommunications service in any given area.<sup>29</sup> It is simply too late for the Commission to turn back the clock and make landline telephone service the sole focus of universal service support.

Not surprisingly, PRTC's argument also is fundamentally at odds with significant revisions to the universal service program proposed in the National Broadband Plan ("NBP").<sup>30</sup> In a nutshell, the Commission proposes to promote broadband availability through a reverse auction for financial support for broadband deployment by one carrier in each area regardless of the technology used. PRTC's contention that only wireline providers can provide "comparable" telecommunications services, and PRTC's further contention that wireline systems are essential to the provision of comparable information services,<sup>31</sup> would, if accepted, set a devastating precedent that would preclude the Commission from implementing the NBP in a technologically neutral, competitive and lowest cost manner.

### 3. PRTC Ignores The Definition Of Rural Telephone Company

PRTC contends that the Commission should create a special program to allow PRTC to receive rural carrier subsidies, even though PRTC is not a rural carrier, simply because PRTC serves an insular area.<sup>32</sup> In making this argument, PRTC ignores the entire paragraph of the

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<sup>29</sup> Insular Order at ¶ 17, n.50.

<sup>30</sup> See FCC, Connecting America: The National Broadband Plan, Ch. 8.3 (Mar. 16, 2010); see also Notice of Inquiry and Notice of Proposed Rulemaking, In re Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, at ¶¶ 49-62 (Apr. 21, 2010) ("Connect America Fund NOI").

<sup>31</sup> Petition at 8-9.

<sup>32</sup> 47 USC § 153(37) ("Rural telephone company. The term 'rural telephone company' means a local exchange carrier operating entity to the extent that such entity—

(A) provides common carrier service to any local exchange carrier study area that does not include either—

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

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statute that defines “rural telephone company.” PRTC clearly does not qualify as a rural telephone company.<sup>33</sup> PRTC actually goes much farther and asks not only receive rural carrier support, but that the Commission change the rules that apply to rural carriers to enable PRTC to obtain money even though PRTC’s costs are too low to qualify for rural support.<sup>34</sup> The contention that PRTC should be treated as a rural carrier because it serves an insular area ignores the plain language of the statute.

Contrary to PRTC's own contention that principles of statutory construction require the Commission to give effect to every *word* of the statute, PRTC urges the Commission to ignore the *entire paragraph* that defines “rural telephone company.” Congress could have, but did not, define rural telephone company to include all telephone companies that serve insular areas,

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(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996”).

<sup>33</sup> Insular Order at ¶ 9 (“PRTC was then the twelfth largest telephone company in the nation, with more than 1.13 million access lines and annual operating revenues of \$1 billion”). And, of course, PRTC is a subsidiary of America Movil, one of the largest telecommunications conglomerates in the world. See id. at n.145 (stating that “America Movil, through various operating subsidiaries, provides telecommunications services to more than 110 million subscribers in 14 countries in North, Central and South America” and that “America Movil reported revenues of approximately \$30 billion and net income of approximately \$5 billion for 2009 for all subsidiaries”).

<sup>34</sup> Id. at ¶ 39 (“While PRTC claims that its costs are similar to those of rural carriers, PRTC’s embedded costs are actually too low to make it eligible for support under the high-cost support mechanism that currently funds much smaller, rural telephone companies that do not enjoy the same economies of scale and scope. Only by lowering the rural mechanism’s cost threshold significantly – from slightly more than \$400 per loop to about \$240 per loop (as proposed by PRTC) – would PRTC become eligible for the significant increase in high-cost loop support (about \$33 million annually) that it has requested. Thus, based on PRTC’s own embedded cost data in the record before us, we find that PRTC has not justified a departure from our prior determinations that, for purposes of high-cost support, PRTC should be treated as a non-rural carrier due to its size and resulting economies of scale and scope”).

regardless of their size, as PRTC would have it. Given that Congress did not create an exception for telephone companies serving insular areas, the request of PRTC to receive a rural carrier subsidy is inconsistent with the statute.<sup>35</sup> Under the express terms of the statute, PRTC does not qualify as a rural telephone company and is not entitled to support that is intended to help carriers who suffer higher costs due to their small size. PRTC is part of a giant, foreign-owned conglomerate and enjoys considerable economies based on its vast scale.<sup>36</sup> As a result, PRTC does not need a subsidy to overcome the challenges of serving an insular area and the Commission properly so found.<sup>37</sup>

The 10th Circuit in *Qwest I* and *Qwest II* recognized the fundamental difference between carriers eligible for rural support and carriers only eligible for high cost support. In *Qwest I*, the court quoted in full the definition of rural carrier and noted that “[i]n short, a rural carrier is one that serves rural, sparsely populated areas or that is small in size.”<sup>38</sup> Likewise, the court in *Qwest II* noted that “[r]ural carriers serve only rural areas or are small in size. In contrast, non-rural

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<sup>35</sup> 47 U.S.C. § 153(37).

<sup>36</sup> See, e.g., Public Interest Statement, In re Verizon Comm., Inc., Transferor, and America Movil, S.A.B. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), WT Docket No. 06-113, at 2 (May 9, 2006) (“AM Public Interest Statement”) (stating that “Puerto Rican consumers will benefit from...the operating experience and business approach America Movil has developed in offering service throughout the Americas...[and] from the economies of scale and scope that America Movil has achieved”); Insular Order at ¶ 38 (stating that “[i]n approving...America Movil’s 2007 acquisition of PRTC...[the Commission] found that America Movil ‘brings significant advantages of scale and scope to bear’ in providing telecommunications services to consumers” (citing Transfer Order at ¶ 39)).

<sup>37</sup> In fact, America Movil argued that its substantial experience in overcoming technological, geographic, climatic and socio-economic challenges in providing telephone service in areas similar to Puerto Rico demonstrated that its acquisition of PRTC was in the public interest. See generally AM Public Interest Statement. The Commission expressly adopted these assertions as a primary basis of its public interest findings in the Transfer Order, Transfer Order at ¶ 36, and reiterated those findings in the Insular Order. Insular Order at ¶ 33.

<sup>38</sup> Qwest I, 258 F.3d at 1204.

carriers are larger and serve some urban areas.”<sup>39</sup> PRTC is not small in size nor does it serve only rural areas. PRTC is a large company that serves urban areas in Puerto Rico. Thus, it is clear that the *Qwest* court would recognize that PRTC does not qualify as a rural carrier.

The court also was aware that, while rural carrier support is based on embedded costs, the support for larger high-cost carriers is based on forward-looking costs. In fact, the court upheld the Commission’s forward-looking cost model.<sup>40</sup> PRTC does not even attempt to show that it is entitled to support based on forward-looking costs, and, moreover, PRTC admits that it does not qualify based on embedded costs and asks the Commission to grant it special treatment by lowering the embedded cost benchmark.<sup>41</sup> Nothing in the *Qwest* cases supports treating PRTC as a rural carrier or changing the rural carrier rules to benefit PRTC. The Commission was well within the bounds of the statute to conclude that an insular area served by a large carrier does not need a special subsidy program.

**B. The *Insular Order* Is Consistent With Three Prior Decisions And Therefore Is Not Arbitrary Or Capricious**

The *Insular Order* represents the fourth time that the Commission has rejected the same specious and disingenuous arguments from PRTC, a large carrier with considerable economies of scale that nevertheless seeks to obtain subsidies to further enhance its profitability and its dominance in the wireline telephone market in Puerto Rico. While PRTC has continued to regurgitate the same arguments, the facts and circumstances have evolved in a manner that only serves to underscore how frivolous are PRTC’s claims. PRTC fundamentally mischaracterizes the *Insular Order* as an effort by the Commission to change a prior decision based upon a change

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<sup>39</sup> *Qwest II*, 398 F.3d at 1227.

<sup>40</sup> *Qwest I*, 258 F.3d at 1205-6.

<sup>41</sup> *Insular Order* at ¶ 39.

in circumstances. On the contrary, the *Insular Order* follows three prior decisions and the change in circumstances is not cited to justify a change in direction but rather to explain why the Commission's prior decisions are even more necessary and appropriate today. It would be arbitrary and capricious for the Commission to do anything other than follow its three prior decisions, especially given the changes in circumstances that only serve to underscore the basis for those decisions and undermine PRTC's alleged claims.

1. The *Insular Order* Did Not Reverse Course

In making its argument, PRTC ignores three prior decisions ruling against it and relies instead upon a "tentative conclusion" in a Notice of *Proposed* Rulemaking that PRTC mischaracterizes. Likewise, PRTC ignores the fundamental features of the universal service program that have resulted in the consistent and repeated rejection of PRTC's claims. After the 1996 amendments to the Communications Act, the Commission in 1997 established the current universal service programs, including the use of discrete programs to serve discrete purposes.<sup>42</sup> The Commission expanded the availability of the Lifeline program to assist low-income consumers, created a subsidy program for rural carriers based on their embedded costs and created high cost subsidy program for large carriers based on forward-looking costs.<sup>43</sup>

In the *Universal Service First Report and Order* in 1997 the Commission rejected PRTC's request that PRTC be given a rural carrier subsidy when PRTC's size clearly disqualified PRTC from being treated as a rural carrier:

We do not accept the suggestion of Puerto Rico Tel. Co., the twelfth largest telephone company in the nation, that non-rural carriers that serve Alaska or insular areas should be treated as rural carriers and allowed to postpone their conversion to the forward-looking economic cost methodology. Puerto Rico Tel.

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<sup>42</sup> Insular Order at ¶¶ 4-7.

<sup>43</sup> Id. at ¶¶ 5-8.

Co. argues that extreme weather and terrain conditions and high shipping costs justify its continued receipt of support based on embedded cost. The Joint Board's recommendation to postpone application of forward-looking support mechanisms to rural carriers, however, was based on the size of rural carriers and the fact that rural carriers generally serve fewer subscribers and do not benefit from economies of scale and scope as much as non-rural carriers.... [L]arge telephone companies such as Puerto Rico Tel. Co. should possess economies of scale and scope to deal efficiently with the cost of providing service in their areas, and thus, the level of that support will be determined through a forward-looking mechanism.<sup>44</sup>

In the *Insular Order*, the Commission notes that PRTC did not appeal the 1997 decision.<sup>45</sup>

Despite not having appealed the 1997 *Universal Service First Report and Order*, PRTC nevertheless filed the same request to be treated as a rural carrier again in 2003. In response, the Commission again rejected PRTC's redundant petition, noting that:

The Commission previously rejected Puerto Rico Tel. Co.'s argument that it should be treated as a rural carrier for purposes of intrastate high-cost support because it serves an insular area. The Commission explained that large telephone companies such as Puerto Rico Tel. Co. "should possess economies of scale and scope to deal efficiently with the cost of providing service in their areas, and thus, the level of that support will be determined through a forward-looking mechanism."<sup>46</sup>

Thus, the Commission again found that PRTC did not qualify for a rural carrier subsidy due to its large size. Perhaps more importantly, the Commission further noted that the rural carrier program was simply not intended to address the problems unique to Puerto Rico because those were low-income issues that were more appropriately addressed under the Lifeline program:

In addition, we are not persuaded that providing more high-cost support to Puerto Rico Tel. Co. would effectively address the underlying concern it identifies: low subscribership levels in Puerto Rico. As discussed above, the purpose of non-

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<sup>44</sup> Report and Order, In re Federal-State Joint Board on Universal Service, 12 F.C.C.R. 8776, at ¶ 315 (1997) ("Universal Service First Report and Order").

<sup>45</sup> Insular Order at ¶ 10.

<sup>46</sup> Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, In re Federal-State Joint Board on Universal Service, 18 F.C.C.R. 22559, 22636, ¶ 138 (2003) ("2003 Remand Order"), remanded in part, Qwest II, 398 F.3d at 1222.

rural high-cost support is to ensure reasonable comparability of rates among states. Puerto Rico Tel. Co. has not shown that the low subscriber-ship levels in Puerto Rico are related to local rate levels or that providing additional non-rural high-cost support would have any direct impact on subscriber-ship levels. As the Commission stated in the Seventh Report and Order, federal high-cost support is not the appropriate federal program for addressing issues of affordability and subscribership.<sup>47</sup>

Moreover, in rejecting PRTC's claim for more money, the Commission noted that PRTC was already receiving substantial subsidies:

Before the transition to forward-looking support for non-rural carriers, Puerto Rico Tel. Co. received over \$40 million annually in intrastate high-cost support based on its embedded costs.... We note that Puerto Rico Tel. Co. continues to receive almost \$90 million annually in interstate support.<sup>48</sup>

In the *Insular Order*, the Commission noted that PRTC's 2003 petition merely repeated the same claims that the Commission had previously rejected in 1997 and that PRTC again did not seek judicial review of the *2003 Remand Order*.<sup>49</sup>

Unswayed, PRTC made the same claim again in 2004 and the Commission again rejected PRTC's attempt to obtain a rural carrier subsidy. The Commission again explicitly found that large carriers serving rural and insular areas enjoy economies of scale that make it unnecessary for them to receive the rural subsidy based on embedded costs, that they should only receive a subsidy if they qualify under the high-cost subsidy program based on forward-looking costs, and that the Commission did not make its decision in isolation but followed a recommendation of the Joint Board:

The Commission noted that the Joint Board's recommendation to postpone application of forward-looking support mechanisms to rural carriers was based on the size of rural carriers and the fact that rural carriers serve fewer subscribers and do not benefit from economies of scale and scope as much as non-rural carriers.

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<sup>47</sup> 2003 Remand Order at ¶ 140.

<sup>48</sup> Id. at n.442.

<sup>49</sup> Insular Order at ¶ 11.

Because large telephone companies, such as PRTC, possess sufficient economies of scale and scope to deal with the cost of providing service in their areas, the Commission determined that non-rural carriers serving Alaska and insular areas should move to the forward-looking cost methodology at the same time as other non-rural carriers.<sup>50</sup>

The *Insular Order* notes that the *2004 Recon. Order* was the *third* decision by the Commission to deny PRTC's request for special treatment and that PRTC again declined to appeal the Commission's decision.<sup>51</sup>

Having failed three times in its efforts to obtain the rural carrier subsidy, while assiduously avoiding judicial review of all three decisions, PRTC apparently recognized the speciousness of its claim to be treated as a rural carrier and then shifted ground and pressed its petition to have the Commission create a new program for insular areas that would enable PRTC to receive a subsidy that would be even more favorable to PRTC than a rural carrier subsidy.<sup>52</sup> In response, the Commission issued the *Insular NPRM*, in which it sought comment on a "tentative conclusion" that it would create a special program that would benefit only PRTC. The *Insular NPRM* noted that Puerto Rico would be the only insular area served by a non-rural carrier and therefore PRTC would effectively be the only beneficiary of the special program.<sup>53</sup> In essence, the Commission in the *Insular NPRM* "tentatively concluded" that it would change course and reverse its three prior decisions finding that PRTC, as a large carrier with relatively

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<sup>50</sup> Order on Reconsideration, In re Federal-State Joint Board On Universal Service, 19 F.C.C.R. 23824, ¶ 18 (2004) ("2004 Recon. Order").

<sup>51</sup> Insular Order at ¶ 12.

<sup>52</sup> PRTC's embedded costs are *too low* to qualify for the rural carrier subsidy and therefore the proposed new insular area subsidy would have to be *more favorable* to PRTC than the subsidy that rural carriers receive.

<sup>53</sup> Insular NPRM at ¶¶ 30-38.

low costs, did not need an additional subsidy beyond the millions of dollars that PRTC is already receiving.

Ultimately, however, the Commission decided *not to change course*. The *Insular Order* follows the three prior decisions of the Commission all of which rejected the claims of PRTC, a large carrier with economies scale, to receive a special subsidy to serve an insular area.

PRTC's contentions with regard to the facts relied upon by the Commission are meritless. The first two arguments continue to dispute the inclusion of wireless subscribers in the assessment of telecommunications service penetration.<sup>54</sup> As discussed above, the statute authorizes (and in fact requires) the Commission to define universal service in a manner that takes into account technological and marketplace changes, which indisputably include the rising use of wireless telephony. PRTC's third contention, that service levels in Puerto Rico still trail the national average by six percent contains its own rebuttal.<sup>55</sup> As PRTC notes, the continued minor discrepancy in service penetration is due to income disparity, a matter that already is addressed by existing programs and therefore is logically unrelated to the *high cost* support requested by PRTC.

PRTC's fourth argument is that the Commission should have considered PRTC's repeated requests for another subsidy in a vacuum, without reference to the substantial universal service support already being received by PRTC and other carriers in Puerto Rico.<sup>56</sup> On the contrary, it would have been arbitrary and capricious for the Commission to ignore the existing

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<sup>54</sup> Petition at 11-13.

<sup>55</sup> Id. at 14.

<sup>56</sup> Id. at 15-16.

subsidy programs while making a decision as to a request for another subsidy. Among the important facts noted by the Commission are that:

- In 2010, USAC projects that PRTC will receive approximately \$39.5 million, though this may be adjusted to the extent any further true-ups of 2008 support are required or if PRTC’s line counts continue to decline.<sup>57</sup>
- Indeed, carriers in Puerto Rico received \$215.6 million in Interstate Common Line Support (a form of high-cost support) during 2008, and rural carriers in insular areas received \$42.1 million in high-cost support. Likewise, Puerto Rico receives a substantial amount of low-income support – \$23.4 million in 2008. As a result, Puerto Rico currently is the fourth largest recipient of federal high-cost support, the seventh largest recipient of federal low-income support, and the third largest net recipient of universal service dollars among the U.S. states and territories.<sup>58</sup>

These findings demonstrate that *the Puerto Rico market* is already receiving substantial and important subsidies, and that PRTC’s complaint is largely that those subsidies are being shared with other carriers, rather than being directed solely to PRTC.

Taken together, these findings expose PRTC’s claims for what they are, an attempt to obtain more money for PRTC despite that it is already receiving substantial subsidies and that it is only one of several carriers that are ready, willing and able to provide telecommunications service in Puerto Rico. It would have been arbitrary and capricious for the Commission to reverse three prior decisions and create a special subsidy program for the benefit of PRTC, a large carrier that does not need additional subsidies to serve an insular area.

2. The Unique Circumstances In Puerto Rico Were Fully Considered By The Commission

It begs credulity to suggest that the Commission was unaware of the “unique needs of insular areas such as Puerto Rico,” given that PRTC has made the same arguments to the

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<sup>57</sup> Insular Order at n.52 (emphasis added).

<sup>58</sup> Id. at ¶ 23.

Commission in three previous petitions.<sup>59</sup> On the contrary, the Commission found that information supplied by PRTC further undercut PRTC's claim for another subsidy.

The Commission noted that PRTC's request for more money "is predicated, in part, on its long-standing contention that the extreme weather and terrain conditions and high shipping costs in insular areas make the cost characteristics of even large insular carriers more like those of rural carriers."<sup>60</sup> The Commission found that the evidence submitted by PRTC showed that its embedded costs were actually *lower* than the costs of rural carriers.<sup>61</sup> "Embedded costs" constitute a historical record of the costs that PRTC has actually incurred to provide service in Puerto Rico. That evidence shows that the cost of providing service in Puerto Rico has been *lower* than in other areas and that PRTC's contentions regarding "extreme weather and terrain conditions and high shipping costs" are contradicted by PRTC's own "embedded cost" evidence.<sup>62</sup>

PRTC also claims that the Commission ignored the fact that wireless service in Puerto Rico is more prevalent than it is on the mainland.<sup>63</sup> Again, PRTC seeks to overturn the Commission's longstanding determination to be technology neutral and to treat wireless telecommunications services on par with wireline services. As explained above, it is simply too

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<sup>59</sup> Petition at 16.

<sup>60</sup> Insular Order at ¶ 38. See also Petition at 17-18.

<sup>61</sup> Insular Order at ¶ 39 ("Even more significantly, record evidence in this proceeding reinforces our earlier decision. While PRTC claims that its costs are similar to those of rural carriers, PRTC's embedded costs are actually too low to make it eligible for support under the high-cost support mechanism that currently funds much smaller, rural telephone companies that do not enjoy the same economies of scale and scope.... Thus, based on PRTC's own embedded cost data in the record before us, we find that PRTC has not justified a departure from our prior determinations that, for purposes of high-cost support, PRTC should be treated as a non-rural carrier due to its size and resulting economies of scale and scope").

<sup>62</sup> Insular Order at ¶ 38.

<sup>63</sup> Petition at 19-20.

late to overturn the determination to include wireless carriers in the universal service program, given that universal service support is being received by numerous wireless carriers in Puerto Rico and elsewhere, and to decide now that wireless cannot substitute for wireline would jeopardize the NBP, which aims to be technology neutral and to support the least cost method of delivering service, be it wireline or wireless.

3. The Commission Did Not Treat PRTC Differently From Other Carriers

PRTC claims disparate treatment based on the fact that non-rural carriers, *i.e.* Qwest, were granted additional support in order to achieve rate comparability in rural areas of Wyoming.<sup>64</sup> However, PRTC acknowledges that the additional support granted to Wyoming was granted pursuant to Section 54.316 of the Commission's rules which is available to any non-rural carrier that can show that additional support is needed in order to achieve rate comparability in a rural area.<sup>65</sup> In order to obtain additional support under Section 54.316, a state must show that, "federal and state action together are not sufficient to achieve reasonable comparability of basic service rates in rural, high-cost areas served by non-rural carriers within the state when compared to urban rates nationwide."<sup>66</sup> PRTC fails to show that it would qualify for support under this rule, and therefore fails to show disparate treatment.

**C. The *Insular Order* Serves The Public Interest**

Contrary to PRTC's claims, the Commission's rejection of a PRTC-specific universal service mechanism benefits the public interest. PRTC's assertion that the Commission erred in

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<sup>64</sup> Petition at 20-21.

<sup>65</sup> 47 C.F.R. § 54.316.

<sup>66</sup> Order on Remand and Memorandum Opinion and Order, In re High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Joint Petition of the Wyoming Public Service Commission and Wyoming Office of Consumer Advocate for Supplemental Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier, WC Docket No. 05-337, CC Docket 96-45, at ¶ 85 (Apr. 16, 2010).

declining to accept PRTC's "voluntary commitment" to invest new federal aid in broadband infrastructure is simply wrong. By undermining PRTC's existing investment obligation – and failing to remedy the problem that it purports to address, *i.e.*, expansion of basic telephone infrastructure – such a new commitment would actually harm the public interest. Similarly, PRTC's claim that the Commission is depriving Puerto Rico of necessary funding plainly ignores both the substantial universal service support the Commonwealth receives each year and PRTC's opposition to the Commission's proposed expansion of other universal service programs on the island.

1. PRTC's Unreliable "Voluntary Commitment" Undermines, Rather Than Supports, PRTC's Claims For Additional Universal Service Support

The Commission was right to reject PRTC's "voluntary commitment" to invest the requested insular high-cost support in broadband infrastructure as a basis for creating such a mechanism. As an initial matter, PRTC has already made such a commitment to invest its own funds – another \$400 million-plus over the next two years – to accomplish precisely that purpose *without* imposing any additional burden on U.S. consumers. Granting PRTC new high-cost support for voice and broadband infrastructure development at this point would effectively be equivalent to providing a public subsidy to offset a portion of PRTC's existing commitment that PRTC has seemed only moderately interested in satisfying to date. That would clearly be contrary to the public interest and would violate the condition the Commission placed on America Movil's acquisition of PRTC.

Furthermore, PRTC has repeatedly demonstrated that it cannot be trusted to satisfy its investment obligations without qualification and in good faith when they are made. PRTC has an unfortunate history of making sweeping investment commitments in order to get what it wants

from the Commission, only to “clarify” the scope of those commitments after the fact or challenge efforts to see them enforced.

For example, in November 2006, in response to a Commission inquiry during its review of America Movil’s proposed acquisition of PRTC, America Movil stated that it was “planning to invest approximately \$280 million U.S. dollars in the next 3 years to upgrade and maintain [PRTC’s] wireless infrastructure in Puerto Rico.”<sup>67</sup> Then on March 23, 2007, after the review process had been on-going for nearly a year, America Movil independently committed – without reference to its earlier \$280 million wireless investment plan – to invest \$1 billion over five years to improve communications and information services in Puerto Rico,<sup>68</sup> and the transaction was approved three days later on the condition that America Movil comply with that commitment.<sup>69</sup>

However, PRTC’s investments pursuant to the \$1 billion commitment have been questioned from the outset. In its initial 2007 Annual Report, America Movil reported investing approximately \$220 million dollars in telephone, broadband and wireless services from March through December 2007.<sup>70</sup> Shortly after that report was filed, the Telecommunications Regulatory Board of Puerto Rico (“TRB”) – which had opposed America Movil’s acquisition of PRTC in the first instance – requested the Commission to reject the report on the grounds that (1) it did not contain “quantifiable and verifiable data” supporting the reported investment, as

<sup>67</sup> Response to FCC Information Request, In re Verizon Comm., Inc., Transferor, and America Movil, S.A.B. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), WT Docket No. 06-113, at 4 (Nov. 28, 2006).

<sup>68</sup> Letter from Michael G. Jones, counsel to America Movil, to Marlene Dortch, Secretary, FCC (Mar. 23, 2007) (“Commitment Letter”). Specifically, America Movil stated that it was “committed to investing directly or through [Telecomunicaciones de Puerto Rico, Inc., PRTC’s direct parent] \$1 billion over five years in communications and/or information services in Puerto Rico, and that these investments will promote improvements in these services.” Commitment Letter at 1.

<sup>69</sup> See Transfer Order at ¶ 36.

<sup>70</sup> See America Movil Annual Progress Report for the Deployment of the Infrastructure Used to Provide Basic Telephone and Broadband Services in Puerto Rico, WT Docket No. 06-113 (Dec. 31, 2007).

required in the *Transfer Order*, (2) it impermissibly included maintenance costs that did not qualify as new investment, and (3) it included wireless investments that should have been addressed separately as part of America Movil's \$280 million wireless upgrades.<sup>71</sup> In the Motion to Reject, the TRB called the 2007 report "an attempt to pull the wool over the eyes of the Commission" and an "attempt at obfuscation [that] must be rejected."

In opposing the TRB's motion, America Movil carefully parsed the language of the *Transfer Order*, distinguishing the public interest analysis from the ordering clauses and the "requirements" from the "conditions," to conclude that the commitment was "sufficiently vague as to lump together wireless, wireline, broadband and virtually anything else...."<sup>72</sup> America Movil also asserted, for the first time, that the \$280 million it committed to invest in wireless was part of the \$1 billion obligation, rather than a separate commitment.<sup>73</sup> Concurrent with the filing of its opposition, America Movil also filed a revised 2007 report that adjusted the previous "estimated" investment downward by \$30 million, to reflect a new 2007 total of \$190 million.<sup>74</sup>

The TRB continued to challenge America Movil's 2007 report, asserting that without "further detail, on a more granular level...America Movil will be able to avoid the commitment

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<sup>71</sup> Motion to Reject, In re Verizon Comm., Inc., Transferor, and America Movil, S.A.B. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), WT Docket No. 06-113, at 3 (Feb. 7, 2008) ("Motion to Reject").

<sup>72</sup> Opposition to Motion to Reject, In re Verizon Comm., Inc., Transferor, and America Movil, S.A.B. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), WT Docket No. 06-113, at 2-5 (Feb. 20, 2008) ("AM Opposition") (citing, in part, the Motion to Reject at 5).

<sup>73</sup> AM Opposition at 3-4. Moreover, even if the \$280 million commitment was in fact part of the larger \$1 billion obligation, PRTC has nevertheless failed to satisfy it. As noted in the chart in Section I, PRTC invested \$200 million in wireless from 2007 to 2009 – nearly \$80 million less than it committed to invest.

<sup>74</sup> See America Movil Annual Progress Report for the Deployment of the Infrastructure Used to Provide Basic Telephone and Broadband Services in Puerto Rico, WT Docket No. 06-113 (Feb. 20, 2008) (explaining that the amounts in the initial report were estimated because America Movil's books had not closed for 2007 as of December 31, when the report was due).

it made, to improve broadband and basic telephone service” and reiterating its concern “that portions of the so-called investment commitment are actually funds derived by the operating companies in the normal course of business.”<sup>75</sup> The TRB concluded, based on America Movil’s failure to address the latter concern, that:

[T]here is to be no influx of \$1 billion, but that a significant portion of that amount is coming not from America Movil, but from the rate-paying customers of PRTC.... There is no “new” commitment in that case, no “new” money, only the routine shuffling of amounts from one account to another in an attempt to convince the FCC that America Movil is complying with the commitment condition, when it is not.<sup>76</sup>

Though America Movil did not directly respond to the TRB’s continued concerns, it filed a further revised 2007 report that again adjusted the 2007 investment downward, this time by approximately \$500,000 to remove “donated plant” amounts from the report, and included a breakdown of all categories of infrastructure in which it invested more than \$1 million.<sup>77</sup>

The very fact that PRTC is offering to make a new commitment here is further evidence that it has no intention of abiding by its existing obligations and cannot be relied upon to abide by new conditions. PRTC’s proposed new commitment – which will be paid for by U.S. consumers, rather than America Movil – is an effective repudiation of PRTC’s responsibility under the prior investment obligation. Even if PRTC were to invest the more than \$400 million

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<sup>75</sup> Reply, In re Verizon Comm., Inc., Transferor, and America Movil, S.A.B. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), WT Docket No. 06-113, at 2, 3 (Mar. 19, 2008) (“TRB Reply”).

<sup>76</sup> Id. at 3. Notably, the Commission never ruled on the TRB’s motion.

<sup>77</sup> See America Movil Annual Progress Report for the Deployment of the Infrastructure Used to Provide Basic Telephone and Broadband Services in Puerto Rico, WT Docket No. 06-113 (Apr. 4, 2008). As noted in footnote 73, the Commission never ruled on the TRB’s motions or the sufficiency of this report. Nevertheless, each of the subsequent Annual Reports has been virtually identical to this “final” 2007 report, in some cases reproducing text from the 2007 report verbatim. As a result, any non-compliance or other deficiency in the 2007 report almost certainly exists in all subsequent reports.

remaining under the \$1 billion commitment, it would no longer have any reason to invest those funds in the infrastructure for which they were intended. Instead, PRTC would be free to engage in “routine shuffling of amounts from one account to another” – as the TRB warned that it would do – in order to funnel increasing funds into other projects that do nothing to advance universal service issues about which PRTC claims to be so deeply concerned.<sup>78</sup>

Once again in this case, PRTC’s initial position with respect to its proposed insular mechanism was that *no condition* should be imposed on the funds generated by that mechanism. Only as a last resort – after being rejected by the Commission three previous times – did PRTC “voluntarily” commit to invest the funds in actual broadband-capable infrastructure, and by that time, PRTC knew full-well that it was already obligated to invest in that infrastructure. Thankfully, the Commission realized that, in light of PRTC’s investment commitment track record, “establishing a non-rural insular mechanism would not guarantee that PRTC would deploy infrastructure to expand service.”<sup>79</sup> The Commission further noted that “PRTC’s proposed commitment fails to advance the rationale PRTC has given in this proceeding for creating a non-rural insular high-cost support mechanism, which is to expand infrastructure in unserved areas to increase voice telephone subscribership rates in Puerto Rico.”<sup>80</sup>

As the Commission must now be painfully aware, PRTC’s “voluntary commitments” are worth little. While PRTC has admittedly invested substantial amounts over the past three years, it has done so secretly,<sup>81</sup> self-interestedly,<sup>82</sup> and on its own terms,<sup>83</sup> regardless of the actual

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<sup>78</sup> See TRB Reply at 3.

<sup>79</sup> Insular Order at ¶ 28.

<sup>80</sup> Id. at n.96.

<sup>81</sup> Motion to Reject at 3 (claiming that America Movil’s first Annual Report was so lacking in “quantifiable and verifiable data,” as required by the Transfer Order, that it amounted to “an attempt at obfuscation [that] must be rejected”).

commitments it has made. Thus, there is a substantial foundation for the Commission to reject PRTC's offer to use federal subsidies to satisfy its out-of-pocket investment obligation as a basis for creating PRTC's new insular high-cost mechanism.

2. PRTC, And Not The Commission, Is “Starving The Island’s Wireline Infrastructure”

In its comments opposing the Commission's proposal to increase Link-Up support for low-income customers in Puerto Rico, PRTC asserts that the Commission “took away” “\$50 million in loop support...from Puerto Rico in 2001,”<sup>84</sup> as though the elimination of that support was imposed as some kind of punishment on Puerto Rico. However, as PRTC is well-aware, the phase-out of high-cost loop support in Puerto Rico was part of a systematic overhaul of the universal service program and was consistent with the Commission's cost models.<sup>85</sup> As discussed herein, PRTC “lost” some of its high-cost support because it was too big and its costs were too *low* to qualify. Furthermore, PRTC ignores that Puerto Rico has continued to receive hundreds of millions of dollars in universal service support since 2001, including approximately \$239 million in 2008 alone – of which PRTC received approximately \$75 million.<sup>86</sup>

PRTC's effort to demonstrate that the Commission is “starving [Puerto Rico's] wireline infrastructure of needed universal support” thus rings hollow. In support of this claim, PRTC

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(Cont'd from preceding page)

<sup>82</sup> As discussed in Section I, PRTC has invested hundreds of millions of dollars in overbuilding its own wireless network and developing two new video services (IPTV *and* satellite) while it claims that the Commission is depriving Puerto Rico of critical voice and broadband infrastructure.

<sup>83</sup> As noted above, America Movil asserted that its \$1 billion investment commitment was “sufficiently vague as to lump together wireless, wireline, broadband and virtually anything else....” AM Opposition at 3, n.7 (emphasis added) (citing Motion to Reject at 5).

<sup>84</sup> Comments of P.R. Tel. Co., Inc., In re High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link-Up, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, at 12 (Jun. 7, 2010) (“PRTC Link-Up Opposition”).

<sup>85</sup> See, e.g., Insular Order at ¶¶ 8, 10, 17, n.49.

<sup>86</sup> Insular Order at ¶¶ 17-20, n.49.

weakly attempts to distinguish the substantial amount of interstate common line support (“ICLS”) that it receives (over \$59 million in 2008<sup>87</sup>) from other forms of high-cost support in order to bolster its argument that it receives little or no high-cost support.<sup>88</sup> However, ICLS is clearly part of the high-cost universal support mechanism.<sup>89</sup> Even stranger, PRTC seems to imply that the creation of a new high-cost mechanism that will increase the universal service fund by well over \$30 million per year is somehow more in line with the cost *cutting* goals expressed in the NBP and the Commission’s Connect America Fund NOI<sup>90</sup> than the Commission’s rejection of that PRTC-specific program.<sup>91</sup>

In addition, just last week, PRTC even turned down the Commission’s recent proposal to expand Link-Up benefits to subsidize special construction charges for new wireline facilities to qualifying low-income residents in Puerto Rico, alleging that “the proposed additional \$70 per subscriber for installation costs is woefully inadequate to compensate for the substantial sums associated with line extensions in Puerto Rico.”<sup>92</sup> PRTC suggests that because the increased Link-Up funds will not solve the entire infrastructure expansion problem in Puerto Rico, they should not be allowed to solve *any* of the problem.<sup>93</sup>

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<sup>87</sup> Insular Order at n.49.

<sup>88</sup> Petition at 24.

<sup>89</sup> See, e.g., 2009 Universal Service Monitoring Report, CC Docket No. 98-202, at 31 (listing the federal high-cost mechanisms, including ICLS).

<sup>90</sup> See NBP at Ch. 8.3; Connect America Fund NOI at ¶ 49-62.

<sup>91</sup> Petition at 24.

<sup>92</sup> PRTC Link-Up Opposition at 5, 6.

<sup>93</sup> See Petition at 20, n.67 (opposing expanded Link-Up support because “[t]he additional \$70 support solves nothing because the cost to build out these lines far exceeds that amount...”).

PRTC concludes the Petition by asserting that “the underfunding of infrastructure investment in Puerto Rico continues.”<sup>94</sup> To the extent that is true, PRTC has no one to blame but itself. PRTC has squandered a substantial portion of the almost \$600 million it has invested over the past three years on projects other than deployment of infrastructure that PRTC itself deems “critical” and PRTC owes the people of Puerto Rico at least another \$400 million of voice and broadband infrastructure improvement and expansion over the next two years. Puerto Rico would be better served by PRTC “putting its money where its mouth is” than by PRTC continuing to beg for ill-deserved and unnecessary subsidies from U.S. consumers in order to avoid its obligations.

#### **IV. CONCLUSION**

For the foregoing reasons, the Commission should once again reject PRTC’s request for the creation of a special universal service program to benefit PRTC. PRTC made an investment commitment that disqualifies PRTC from requesting another subsidy from the Commission. The universal service statute provides no basis for PRTC’s request and the request has already been turned down by the Commission on four prior occasions. Technological and marketplace developments since the last decision only serve to underscore the frivolous nature of PRTC’s repeated requests for more money. Granting additional universal service subsidies to PRTC would disserve the public interest as to would further entrench PRTC as the dominant carrier in Puerto Rico to the detriment of its competitors.

Furthermore, the Commission should clarify that PRTC has a responsibility to invest the amounts remaining under its \$1 billion investment commitment – and any amounts thereunder

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<sup>94</sup> PRTC Link-Up Opposition at 5-6.

improperly invested to date – to promote universal service in Puerto Rico by expanding and improving basic wireline infrastructure throughout the Commonwealth.

Respectfully submitted,

          /s/ Dana Frix          

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